



महाराष्ट्र जलसंपत्ती नियामन प्राधिकरण

Maharashtra Water Resources Regulatory Authority
(MWRRA)

9th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai - 400 005. Tel.: (O) 2215 2019 Fax.: 2215 3765 E-mail.:mwrra@mwrra.org

ORDER No. 14/ 2017

In the Matter of the Proposal of Changing Planned Canal System of
Gunjavani Project by Closed Pipeline System

Coram: Shri. K. P. Bakshi, Chairman
Shri. V. M. Kulkarni, Member (WR.Engg.)

Case No.5/ 2017

Trimurti Co-operative Water Supply System Ltd.
Wanjale, Tal.Velhe, Dist.Pune represented by
Shri.Dinakar Sane Dharpale & 13 others
(Through Advocate Vishwanath Talkute)

.....Petitioners

Vs

Secretary (WRM & CAD),
Water Resources Department,
Mantralaya, Mumbai

.....Respondents.

And

Case No.6/ 2017

Arvind Gulabrao Sondkar, R/o. Didghar,
Tal.Bhor, Dist. Pune & 5 others.
(Through Advocate Ketan Joshi)

.....Petitioners

Vs

1. Principal Secretary (WRP & D), Water Resources Department,
Mantralaya, Mumbai



2. Secretary (WRM & CA D), Water Resources Department, Mantralaya, Mumbai
3. Chief Engineer (WR), Water Resources Department, Pune
4. Chief Engineer (SP) Water Resources Department, Pune
5. Superintending Engineer, Koyna Design Circle, Pune
6. Superintending Engineer, MKVDC, Pune

.....Respondents.

ORDER

Date : November 30, 2017

1. A Petition has been filed by Trimurti Co-operative Water Supply System Ltd. This case has been numbered as Case No. 5 of 2017. It is stated that five Co-operative water user societies and grampanchayat (Sonde - Sarpala) and 5 individual farmers of Velhe taluka have filed this Petition.

The gist of the prayers of the Petitioners are:

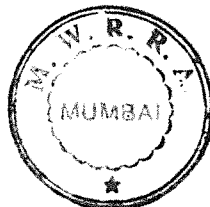
- (i) The objections raised by the Petitioners to the proposal of Gunjavani project approved by the SLTAC be heard and the proposal be rejected.
- (ii) Such other just, proper and equitable reliefs be granted in favour of the Petitioners.

2. Another Petition has been filed by Arvind Gulabrao Sondkar under Section 11(c) and 22 of the MWRRA Act, 2005. This case has been numbered as Case No. 6 of 2017. It is stated that five farmers and one Co-operative water user society from Bhor taluka have jointly filed this Petition.

The gist of the prayers of the Petitioners are:

- (i) A fixed quota of water for the K.T. weirs, drinking water schemes, LIS schemes which are already in existence along the Gunjavani river be provided in the project report.

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- (ii) A fresh environmental clearance from MoEF, Government of India be obtained by the Respondents.
 - (iii) The Respondents be directed to release flow of water from Gunjavani dam into the Gunjavani river for perennial irrigation as per established right.
 - (iv) Respondent be directed to complete R & R works of PAPs before getting approval from this Authority.
 - (v) Before getting approval to the revised proposal a public hearing be conducted by the Respondent.
 - (vi) The work of hydro project be continued which is almost nearing completion.
3. An Intervention Application has been filed by Atul Mhaske R/o Navali and 4 others from Purandar taluka through their Adv. Jyotiram S. Yadav.

The gist of the prayers of the Interveners are:

- (i) To grant opportunity to the Interveners to oppose the Application.
 - (ii) To dismiss the application of the Petitioners so as to clear the way for implementation of the project early.
 - (iii) To pass just and equitable orders in the interest of justice.
4. Before this Authority delves into the prayers and the submissions made by the aforesaid Petitioners and the Intervener, it would be essential to set out, at the outset, certain facts in regard to the Project in question, procedure for according the Revised Administrative Approval and the MWRRA's clearance under Section 11 (f) of the MWRRA Act, 2005.

FACTUAL MATRIX

5. The Petitioners and the Interveners have raised certain issues in regard to the Gunjavani Water Resources Project, located in Pune district. The said project was administratively approved on October 16, 1993 to give irrigation benefits to 15000 ha of area in Velhe, Bhor and Purandar talukas of Pune district.



Thereafter, first Revised Administrative Approval (RAA) was accorded on October 3, 2002. During this first revision irrigation benefited area was increased from 15000 ha to 16500 ha. Now, the project report is under second revision. During second revision the benefited area is proposed to be increased again from 16500 ha to 21392 ha.

As per the procedure laid down by the State Government in G.R. dated November 16, 2016 for RAA the project reports costing more than 25 crore are to be scrutinized first by the State Level Technical Advisory Committee (SLTAC). Accordingly, SLTAC has scrutinized the second Revised Project Report of the Gunjavani project within the framework laid down by the State Government vide G.R. dated September 9, 2015 and has submitted its exhaustive report. SLTAC has scrutinized various issues viz. water availability, cropping pattern, environmental clearance, forest clearance, CWC clearance, status of land acquisition, rehabilitation and resettlement of PAPs, execution status of various components of the project, expenditure incurred on various components and funds required to complete the balance work, reasons of cost rise etc. The committee has recommended the project proposal for administrative approval highlighting important observations.

In the proposed second Revised Project proposal the irrigation benefited area of the project is increased from 16500 ha to 21392 ha i.e. by 29.65%. Government Resolution dated November 16, 2016 has mandated prior approval of the Maharashtra Water Resources Regulatory Authority (MWRRA) under Section 11(f) of MWRRA Act 2005, if the Irrigation Command Area of the project (ICA) is increased by more than 10% during revision.

Accordingly the project authority, along with the SLTAC scrutiny report, has submitted the proposal to MWRRA for clearance under Section 11 (f) on August 9, 2017. MWRRA has set down guidelines for scrutiny of such a proposal. The proposal is under scrutiny as per the guidelines set down therefor. In the meanwhile the Petitioners have approached the MWRRA with this Application, with a pray not to accord clearance under Section 11(f) of the MWRRA Act, 2005 to the second Revised Project proposal of the Gunjavani project.

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The Petitioners are the beneficiaries of the Kolhapur Type weirs (K.T. weirs) existing on River Kanandi, the same river on which Gunjavani dam is constructed across upstream reach of the river, all the K.T. weirs being located on downstream reach of the river. The water draining from the catchment area on upstream side of the dam site is considered for the Gunjavani dam whereas the rainwater draining from the catchment area on the downstream side of the dam site is considered for the K. T. weirs. Thus, the catchment area i.e. drainage area is independent for Gunjavani dam and K.T. weirs.

The Petitioners have been given the long term permissions (18 years) for lifting water from K. T. weirs on the Gunjavani River by constructing their own schemes. The permissions are only for Kharif and Rabi seasons and not for perennial crops. There is no mention in such permission letter that these K.T. weirs will be fed by releasing water from the Gunjavani reservoir. However, there is a mention that no compensation will be given if the sufficient water is not available for sanctioned crops. It is also mentioned that in each season, seasonal permissions on form No. 7 shall be sought. It clearly indicates that only seasonal permissions have been given to the Petitioners and no permissions for perennial crops were granted.

Although, Gunjavani project was sanctioned on October 16, 1993, the gorge filling of the dam could not be completed till April 2017. Now though the dam work is physically completed, canal distribution network is still not complete. Hence, till now Petitioners i.e. beneficiaries of K.T. weirs are enjoying the water of Gunjavani reservoir also.

Now, in the second revision of the Project, the project authority has planned more efficient water conveyance system and more efficient water application methods. Pipe distribution system is planned instead of earlier planned open canal system; and instead of flow irrigation, drip method of irrigation is proposed. This has resulted into saving of some water. Some of the area (4648 ha) earlier included in the command area of the Gunjavani project is getting water from other source (Vir reservoir). This also has resulted into some saving of water in Gunjavani reservoir. With water so saved, due to deletion of overlapping area and due to increase in water use efficiency by way of adoption of modern irrigation techniques like piped distribution and drip

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irrigation, the project authorities have planned to extend irrigation facilities for additional area of 5400 ha in Purandar taluka, which is a drought prone taluka, through Narayanpur Lift Irrigation Scheme. The State Government has already accorded in principle clearance to this proposal vide its letter dated April 21, 2016.

Petitioners are opposing this proposal of pipe distribution and drip irrigation on grounds that their K.T. weirs will be deprived of canal leakage water if pipeline is constructed. They expect the feeding of their K. T. weirs by releasing water from Gunjavani reservoir and by leakages from open canal.

6. **Procedure for According Revised Administrative Approval :** In Para 4.4 of WRD's GR No. Misc/2015/(425/2015)/ Medium Project dated November 16, 2016 the procedure for submission of proposal for RAA to the water resources project is prescribed. This procedure involves following three distinct stages :-

Stage I: Initially, the comments and recommendations of the State Level Technical Advisory Committee (SLTAC) are to be obtained.

Stage II: Thereafter, if the project involves change in scope, then the consent of the MWRRA is to be sought under Section 11(f) of the MWRRA Act, 2005.

Stage III: And thereafter, along with the consent / recommendations of the SLTAC and the MWRRA, the proposal of RAA is to be submitted to the competent authority empowered to accord the RAA (Government / Governing Council).

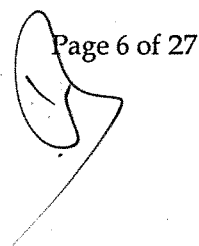
This procedure indicates that the Government (in case of projects in the jurisdiction of MKVDC, Pune) is the competent authority to accord the RAA which is supposed to take the conscious decision regarding RAA considering all relevant aspects including the recommendations of the SLTAC and clearance of the MWRRA.

7. **Provision in the Section 11(f) of the MWRRA Act, 2005 :** The Section 11(f) of the MWRRA Act, 2005 reads as under:

"To review and clear water resources projects proposed at the sub-basin and river basin level to ensure that a proposal is in conformity with Integrated



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State Water Plan and also with regard to the economic, hydrologic and environmental viability and where relevant, on the State's obligations under Tribunals, Agreements, or Decrees involving interstate Entitlements:

Provided that, while clearing the new water resources projects by the concerned for construction proposed by River Basin Agencies, the Authority shall ensure that Governor's Directives issued from time to time, relating to investment priority for removal of regional imbalance are strictly observed;

Provided further that, in respect of the projects situated in Marathwada and Vidarbha Regions, the powers to accord administrative approval or revised administrative approval, under this clause, shall in accordance with the Governor's directives, be exercised by the concerned River Basin Agency”.

The MWRRA is expected to scrutinize specific issues mentioned in the above said Section before according the clearance under Section 11(f) of the MWRRA Act, 2005.

HEARINGS HELD BEFORE THE AUTHORITY

8. On receipt of the petition on September 11, 2017 the Authority heard the matter on September 25, 2017 for Case No.6 /2017. Respondent vide its letter dated September 22, 2017 sought 15 days time to file say in the matter. Authority allowed the Respondent to file his say latest by October 7, 2017 with copy to the Petitioners.

During the hearing, on behalf of Water User Association and few farmers of Velhe taluka, Adv. Samarth Moray submitted that the sum and substance of the Case No. 5/ 2017 is similar to the Application filed by Petitioners of Bhor taluka (Case No. 6 / 2017). He submitted that his application be clubbed along with current petition. The Authority accepted the request.

Upon raising the issue of *locus standi* in Case No. 6/ 2017 by the Authority, Adv. Lendel Coutinho argued that his clients are going to be affected as a result of the proposal of laying closed pipeline from Gunjavani reservoir. He further argued that the Petitioners are the beneficiaries of K.T. weirs constructed across the river Kanandi downstream of the dam. He further pleaded that;

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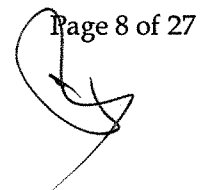


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- (i) K.T. weirs are functioning for more than 15 years; if the proposal of closed pipeline project is materialised water in the river will disappear.
- (ii) Water Resources Department (WRD) has not taken stakeholders into confidence by issuing a public notice.
- (iii) The Petitioners being beneficiaries of Gunjavani project are aggrieved by unilateral decision of the WRD.
9. The matter was thereafter heard on October 23, 2017. Respondent pleaded that he has not received the copy of application in Case No.5/2017 and requested for 2 weeks time. Adv. Ketan Joshi and Adv. Talkute both requested the Authority that Collector, Pune needs to be made Respondent. The Authority directed Advocates to make Superintendent Engineer, Pune Irrigation Project Circle (SE, PIPC), Pune as Respondent and serve him copy.
10. The matter was heard subsequently on October 30, 2017.
- (i) Adv. Nitin Deshpande on behalf of MKVDC, Pune raised a point that the application has been filed under Sections 11 (c) & 22 of MWRRRA Act, 2005. However, the Authority is supposed to grant clearance to the project under Section 11 (f) of the MWRRRA Act, 2005. The Sections under which Petitioners have sought relief are vague and irrelevant.
- (ii) Advocate to the Petitioners requested to grant 15 days time to file his rejoinder on the affidavit submitted by the Respondent.
- (iii) Adv. Talkute on behalf of Applicant Trimurti Co-operative Water Supply Society Ltd., Wanjale, Tal. Velhe pleaded that project authorities have not taken into confidence the public before making modifications in the project planning.
- (iv) Respondents, on query from the Authority, explained that;
- (a) No entitlement of Petitioners is going to be affected by the revision of Gunjavani Project Planning as K. T. weirs downstream of Gunjavani dam are not part of Gunjavani Project. K. T. weirs are designed for post-monsoon flow contributed by free catchment on



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downstream of Gunjavani dam and proposed to irrigate in Rabi season only.

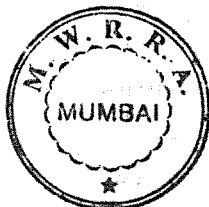
- (b) K. T. weirs have their independent catchment and therefore filling of K. T. weirs is not dependent on releases from Gunjavani dam.
- (c) The water planning of Gunjavani project does not include water supply to K. T. weirs. They are not part of the project planning of Gunjavani. Therefore, they are out of purview of SLTAC.
- (d) In the command of Gunjavani, some entitlements have been already sanctioned from the submergence of Vir reservoir. Also, there is water saving in conveyance loss due to conversion of open canal flow to pipe distribution. This together has enabled project authorities to extend benefits to more area.
- (e) It is not mandatory to farmers to adopt micro irrigation. There is option to continue with traditional method of irrigation like flood irrigation to cultivate paddy.
- (f) Adv. Ketan Joshi, for Petitioners in Case No 6/2017, informed that no canals are yet constructed to the Gunjavani dam. Water is being let out through Gunjavani reservoir in the river and presently, K.T. weirs are enjoying the benefit of water from Gunjavani reservoir.
- (g) Authority directed to make available copies of the affidavits / rejoinders, if any, to all parties in advance before final hearing on November 15, 2017.

SUMMARY OF THE ARGUMENTS OF THE PETITIONERS (Case No. 6/2017)

11. The matter was finally heard on November 15, 2017.

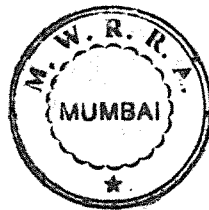
Adv. Ketan Joshi on behalf of the Arvind Sondkar and 5 others through his final written submission brought the following points to the notice of the Authority.

- (a) Respondent No.3 has unilaterally made changes in the plan without any public notice to the Petitioners as well as farmers.
- (b) Drinking water supply schemes and irrigation schemes are functioning on K.T. weirs for more than 15 years.



- (c) Due to new proposal of closed pressurised conduit system, flow in the river will not be available to the Petitioners and farmers who have established rights over the water from Gunjavani project.
- (d) Although the Petitioners are not directly harmed by the condition for which they are approaching the Court for relief, the harm involved has some reasonable relation to their situation; and continued existence of harm may affect others who might not be able to approach Court for relief. The party has automatic standing by the Act of law in cases pertaining to environmental issues etc.
- (e) Petitioners are beneficiaries from the notified Irrigation Command Area (ICA) of Gunjavani Project and till today the said command is not developed. Therefore, they lift water directly from K.T. weirs which are fed by Gunjavani reservoir. Hence, the Petitioners are affected by the project proposal.
- (f) It is mandatory to supply water for the notified command area.
- (g) Proposed project report is in respect of unnotified area which is never published in official gazette.
- (h) Implementation of the project report recommended by the SLTAC cannot be done on the projects where command area is fully developed like the present one.
- (i) Implementation of the project whose ICA is fully developed is contrary to the provisions of the Section 12 (6) (c) of MWRRA Act, 2005.
- (j) Petitioners are license holders of K. T. weirs. Therefore, they get water released from the Gunjavani reservoir every fifteen days normally. Since K. T. weirs are constructed downstream of Gunjavani dam, the said practice is backed by the provision of the Section 72 of Maharashtra Irrigation Act, 1976.
- (k) Due to pipe distribution, water releases from this reservoir go directly to the farms. Therefore, Petitioners will be affected.
- (l) There is a conflict between two government policies i.e. Policy of Water Resources Department regarding pipe distribution and the policy of the Environment Department of the State dated October 25, 2017 which has

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mandated WRD to maintain minimum environmental flow into the river and also construction of a chain of K.T. weirs across the river.

- (m) Ministry of Environment and Forest Departments (MoEF), Government of India has issued Environmental Clearance in the year 2005. The same has validity of 5 years. SLTAC report is based on the lapsed Environmental Clearance and hence it is illegal. Without seeking fresh environmental clearance, SLTAC Report cannot be considered.
- (n) The condition No. 15 of the Forest Clearance issued on June 13, 2016 by the MoEF, Government of India states that :
- The layout plan of the project shall not be changed without prior approval from the Government of India and submit revised SLTAC report failure to do so will be breach of the provision of the Indian Forest Act, 1980.*
- (o) As per the State Government Policy dated May 2, 2017 it is mandatory to the Respondent authorities to take consent in written format from the local representatives and stakeholders / beneficiaries before implementation of drip / micro irrigation methods. As this is not done before submitting the SLTAC report, it is illegal and contrary to the provincial policies of the Government.
- (p) It is essential and mandatory to take prior permission from the Hon. Chief Minister of the State before preparation of revised project report without hydropower component. Hence, SLTAC report is bad in law.
- (q) Command Area of revised project report is admittedly not notified in the official gazette. Hence, the right to appeal before the Chief Engineer on behalf of the affected farmers (farmers from uncommand area) under the provisions of the Sections 3(1), 2(2), (3), (4), (5) of Maharashtra Irrigation Act, 1976 is taken away.
- (r) Arbitrary stand of the Respondents that drip / micro irrigation methods are voluntary and not mandatory is going to affect the entire water planning of the project.
- (s) The submitted report of SLTAC - II is illegal and without any legal compliances. Therefore, no administrative clearance be accorded on the basis of this SLTAC-II Report.

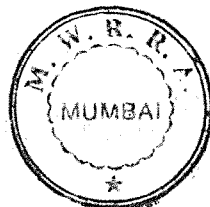


SUMMARY OF THE ARGUMENTS OF THE PETITIONERS

(Case No. 5/2017)

12. Adv. Talkute on behalf of Trimurti Co-operative Water Supply Society Ltd. and others brought to the notice of the Authority some issues by way of written submission, oral pleadings. Most of the issues raised by Petitioners in Case No. 6/2017 and in this case are identical. Hence only the additional arguments are mentioned here;

- (a) There is a change in distribution system and cropping pattern which will affect the agriculture of the Petitioner.
- (b) No provision is made for drinking water supply. The drinking water schemes are getting water regularly from Gunjavani reservoir. After construction of pipe-line, no water will be released into the river. This will adversely affect drinking water schemes.
- (c) The overlapped area of 1257 ha and 3391 ha in Bhor and Purandar talukas respectively is deleted. In revised project proposal water allocation for the overlapped area is not shown.
- (d) Main crop of Bhor and Velhe talukas is paddy which requires flood irrigation and cannot be irrigated by micro irrigation method. Revised planning of Gunjavani project contemplates 100% micro / drip irrigation for all crops. Expert consultation is not availed while planning drip irrigation for paddy cultivation.
- (e) Hydrological and Environmental cycles of the Gunjavani river will be adversely affected.
- (f) Petitioners also raised doubts about functioning of Narayanpur LIS on the basis of experience of other LI schemes.
- (g) The Resettlement and Rehabilitation of some project affected families is yet to be completed. Some PAPs have approached NGT, Pune which has restrained Water Resources Department from storing water by lowering the gates of the dam. Sanctioning revised project proposal without considering NGT's orders will amount to disobedience and contempt of Hon'ble NGT.
- (h) In oral pleading, the Advocate to the Petitioners raised objection for clearance under Section 11(f) of MWRRA Act, 2005 on following grounds:



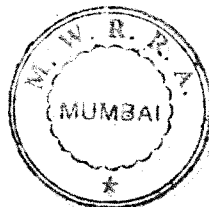
- (i) Rise in cost from Rs. 316 crore to Rs. 1313 crore.
- (ii) No sanction of Government which is required as per G.R. dated June 9, 2013 is sought.
- (iii) The permission of the Government vide letter dated April 21, 2016 is only in principle.
- (iv) Government has not approved economic viability.
- (v) The scope change though looking attractive on the ground that more area from Purandar taluka is getting benefits, people from Bhor & Velhe talukas who had sacrificed their lands for the project are not equally benefited.
- (vi) Considering geographical situation, supply of water at high altitude is doubtful.
- (vii) Unless the rights of beneficiaries are protected permission should not be granted to the revised project proposal.
- (viii) Other alternative alignments are not considered.

13. SUMMARY OF THE ARGUMENTS OF INTERVENERS

Adv. Jyotiram Yadav on behalf of Shri. Atul Ramesh Mhaske and others supported the revised project proposal. The facts brought to the notice of the Authority by the Interveners are :

- (a) Rainfall in Purandar taluka is about 300 mm and is too scanty. The public in Purandar taluka is suffering from want of water. Even in this year, 26 villages have been declared as drought villages. Considering drought situation, the Government has decided to extend irrigation benefits to these 26 villages.
- (b) Due to lack of water, farmers in Purandar taluka are not in a position to irrigate the lands and are migrating to Pune and Mumbai for their livelihood.
- (c) The Petitioners are prolonging the progress of work / project with malafide and with political interest.

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14. SUMMARY OF THE ARUGUMENTS OF RESPONDENTS

Summary of the arguments put forth by the Respondents during the hearings & in the form of written submissions is as follows;

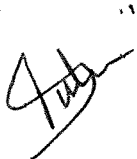
- a) It was submitted that the Petitioners have filed application referring to the Section 11 (c) and 22 of the Maharashtra Water Resources Regulatory Authority Act, 2005. However, the Authority accords clearance to projects under Section 11 (f) of the MWRRA Act, 2005. As per this Section, prayer of the Petitioners does not stand. The Sections under which Petitioners seek relief are vague and irrelevant. Petitioners have not raised any specific objection related to provision in Section 11(f) of the MWRRA Act, under which the Authority is supposed to accord clearance to the proposal.
- b) Although the Petitioners have approached the High Court, the High Court has not passed any prohibitory orders to stay the proceedings before the Authority.
- c) The work of the project has been started within five years after seeking MoEF clearance. As such, there is no violation of Environmental (Protection) Act, 1986.
- d) K. T. weirs are located on river reach downstream of Gunjavani dam site. The K. T. weirs are not part of Gunjavani Project. There is no provision in the sanctioned project report of the Gunjavani project to release water from the reservoir for filling the K. T. weirs. Hydrology of K. T. weirs is based on catchment area located on downstream side of dam location. As such the entitlements of K. T. weirs are not affected by the proposed Gunjavani project planning.
- e) The closed conduit system is not going to affect all irrigation and drinking water supply schemes on K. T. weirs. Permission for drinking water supply schemes is retained in the K. T. weirs. There will not be scarcity of drinking water for Bhor and Velhe talukas.
- f) The contention of Petitioners regarding adverse impact on the environmental cycle is not true.
- g) Respondent clarified that entitlements have already been sanctioned from the submergence of Vir reservoir for area covered under the command of

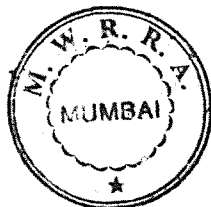


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Gunjavani project which resulted into saving of water in the Gunjavani reservoir. There is also water saving in conveyance loss due to conversion of open canal system to the piped distribution system. This together has enabled project authorities to extend benefits to additional area.

- h) Requirement of water for giving irrigation benefits to 5400 ha through Narayanpur LIS is 22.73 MCM. This water allocation is made available from saving of water earlier allotted to Purandar taluka. The saving of water in Purandar taluka due to overlap of area which already is being irrigated from Vir submergence is 22.73 MCM and water saving in Purandar taluka due to adoption of pipe distribution is 7.99 MCM. Thus there is water saving of 30.72 MCM in Purandar taluka. Thus the added area of Narayanpur LIS is planned from saving of Purandar taluka only. Talukawise allotment of water envisaged in earlier project planning is, therefore, unchanged. As such Petitioners are in no way affected.
- i) Government of India has also declared Pradhan Mantri Krishi Sinchayee Yojana (PMKSY). Under this scheme, 'Per Drop More Crop Program' has been undertaken. Government of India has also issued operational guidelines for this which advocates promotion of efficient water conveyance and precision water application devices like drip and sprinkler. Present proposal is as per this policy.
- j) Government of India has declared Piped Irrigation Network Policy. The said policy advocates modern methods of irrigation which are designed for saving in water.
- k) Government of Maharashtra issued a GR dated January 13, 2017 to motivate Piped Distribution System in order to avoid conveyance loss of water. The Government of Maharashtra has issued GR dated May 2, 2017 involving another policy decision towards encouragement of adoption of micro irrigation methods.
- l) The 2nd RAA proposal of Gunjavani project is formulated consulting experts and is submitted to the competent authorities.
- m) Purandar taluka is drought prone taluka whereas Velha and Bhor talukas are not drought prone.







- n) Regarding option of drip irrigation, it was submitted that it is not mandatory to farmers. The option of continuing with traditional method of irrigation like flood irrigation to cultivate paddy is open to the farmers.
- o) It is not true that all paddy crop cannot be irrigated by micro irrigation. Consultation from experts has been sought in respect of paddy in the cropping pattern.
- p) Delay in project implementation will add to the cost. Necessary clearances as may be required shall be taken before starting of work. Also, consultation with the beneficiary stakeholders will be held.
- q) After the Authority's approval, the proposal will go to the State Government for final approval. It is not mandatory to give notice to villagers as at present only proposal is being submitted.
- r) Section 11 (q) of MWRRA Act, 2005 entrusts the Authority the responsibility of promoting efficient use of water and minimizing wastage. Section 12 (10) of the Act places the responsibility on the Authority to strive to make water available to DP area of State.
- s) The proceedings in respect of Gunjavani project are pending before NGT, Pune. Matter being subjudiced, no comment was given by the Respondent.
- t) The beneficiary consultation is directory provision in WRD's G. R. dated January 13, 2017; there is no statutory provision of public hearing.
- u) The Petitioners' claim on likely leakage of water from canals has no legitimate base.
- v) The objections put forth by the Petitioners are founded on imaginary grounds. Also, the Application is premature; hence needs to be rejected.

FRAMING OF ISSUES

15. Considering the written and oral submissions by the parties, the Authority has framed the following issues in this matter;

- (a) Whether the Petitioners' legitimate rights are adversely affected by the proposed change in the scope of the project?



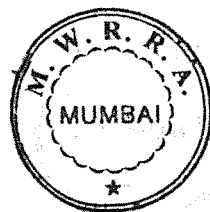
- (b) Is it mandatory to provide fixed quota of water in Gunjavani reservoir for feeding water to K. T. weirs to support drinking water schemes and perennial irrigation through existing private lift irrigation schemes as claimed by the Petitioner?
- (c) Is it mandatory to seek fresh environmental clearance under Environmental (Protection) Act, 1986 prior to MWRRA's clearance under Section 11(f) of the Act?
- (d) Whether, consultation with people's representatives and beneficiary farmers as proposed in WRD's GR dated May 2, 2017 or Hon. Chief Minister's prior permission for lift irrigation schemes are mandatory prerequisite for SLTAC clearance and/or MWRRA clearance?
- (e) Is it mandatory to complete the Rehabilitation and Resettlement (R & R) works for PAPs prior to seeking MWRRA's clearance?
- (f) Is it mandatory to continue with work of hydroelectric project?
- (g) Whether the proposed change in distribution system has merits?
- (h) Whether taluka-wise water entitlements are modified while revising the scope of the project?

FINDINGS OF THE AUTHORITY

16. Findings of the Authority on the above issues are as under;

- (a) Whether the Petitioners' legitimate rights are adversely affected by the proposed change in the scope of the project?

Petitioners are the beneficiaries of the K.T. weirs existing on the river Kanandi downstream side of Gunjavani dam. The K.T. weirs have their own catchment area which is independent of the catchment area of the Gunjavani dam. Also, there is no provision in the already approved earlier Project Report of the Gunjavani project to release water for these K.T. weirs from Gunjavani reservoir. Uptill now, Petitioners were enjoying water from the catchment of K. T. weirs as well as water from the catchment of the Gunjavani dam, as the Gunjavani dam and canal system was not complete. Now, dam is complete and the Government has planned Pipe Distribution System substituting earlier planned open canal system with an intention to give irrigation benefits to larger area and



larger number of farmers by saving in water losses. The legitimate rights of the Petitioners in K. T. weirs are intact. However, Petitioners are opposing the revised proposal in anticipation that their K.T. weirs will not get water from leakage/seepage which they were expecting from open canal system, which was planned earlier.

We are of the view that it was not lawful for the Petitioners to rely upon leakages from open canal system. The act of taking water from the KT weirs which are otherwise independent of the catchment area of Gunjavani Dam, cannot give rise to a legitimate entitlement or a vested right in law to the water in the Gunjavani Dam. Thus, the Petitioners cannot oppose the proposal of the WRD to have a piped distribution system in the RAA instead of the earlier planned open canal system as well as drip irrigation instead of flow irrigation. These measures cannot certainly be allowed to be objected as these measures would result in water saving. In fact, Section 11(q) of the MWRRA Act, 2005 mandates this Authority to promote efficient use of water and to minimize the wastage of water.

It can hardly be doubted that the revised proposal of the WRD to have a piped distribution and drip irrigation in the Gunjavani Dam would result in sound water management practice. This Authority is mandated under Section 12(4) as follows:

“(4) The Authority shall, in accordance with State Water Policy, promote and implement sound water conservation and management practices throughout the State.”

It is therefore clear from the above statutory provisions that the intention behind the legislation inter alia is to promote and implement sound water management practices as well as to support efficient use of water and minimizing the wastage. There is no doubt that closed piped distribution of water is for the purpose of avoiding wastage of water. The Authority is of the view that closed piped distribution and drip irrigation would result in efficient use of water which is one of the fundamental cornerstones of the 2005 Act.

The Petitioners have opposed the implementation of the project as per the revised plan quoting that implementation of the project whose ICA is

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fully developed is contrary to the provisions of the Section 12 (6) (c) of the MWRRRA Act, 2005. Section 12 (6)(c) reads as follows:-

" The Authority shall fix the Quota at project level, sub-basin level, the basis of the following principles :-

(a)

(b)

(c) *in order to share the distress in the river basin of sub-basin equitably, the water stored in the reservoirs in the basin or sub-basin, as the case may be, shall be controlled by the end of October every year in such way that, the percentage of utilizable water, including kharif use, shall, for all reservoirs approximately be the same."*

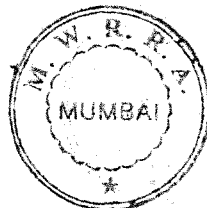
It is clear from the above that the provisions of Section 12(6)(c) apply only when the Authority is fixing the Quota for a project. However, we are not, in the matter relating to accordal of approval to the RAA of the Gunjavani Project, fixing any Quota for the said project. The Hon'ble Bombay High Court has in its judgment dated September 23, 2016 in Public Interest Litigation No.173 of 2013 and batch of other Writ Petitions upheld the position that for fixation of Quota under Section 12(6) in order even to apply the provisions of clause (c) thereunder, delineation of a project is necessary. We are quoting below the relevant portion of the aforesaid judgment of the Hon'ble Bombay High Court:

"145. In view of clause(a) of Sub-Section (6) of Section 12 which incorporates the principle of equitable distribution of command area of the project, the delineation of the command area is necessary to enable the Regulatory Authority to exercise the power under Sub-Section (6) of Section 12. "

In fact, the Gunjavani project has not yet been delineated and therefore the question of fixing the Quota under Section 12(6)(c) cannot be undertaken at this stage.

The Petitioners have also relied upon Section 11(c) of the 2005 Act which reads as follows:

"11. The Authority shall exercise the following powers and perform the following functions, namely:-



..

(c) to determine the priority of equitable distribution of water available at the water resource project, sub-basin and river basin levels during periods of scarcity;"

We are of the view that the reliance on Section 11(c) of the 2005 Act is clearly misconceived in light of the present proceedings which are related to exercise of the functions under Section 11(f) of the 2005 Act for according approval to the Gunjavani project keeping in view the economic, hydrologic, and environmental viability and the Governor's directives to the extent they are applicable. Therefore, the question of going into the need of equitable distribution of water available at Gunjavani project during periods of scarcity has neither been substantiated and/or corroborated by any data or materials by the Petitioners nor is such an exercise envisaged to be carried out in conjunction with the function to accord clearance and approval to a project under the provisions of Section 11(f). Hence, we are not inclined to go into the exercise envisaged under Section 11(c) of that of equitable distribution of water in the present proceedings. It will, however, be open to the parties to apply for suitable directions under Section 11(c) of the 2005 Act in appropriate proceedings in accordance with law if they are so advised.

Furthermore, though the Petitioners have referred to the provisions of Section 22 of the 2005 Act, there is nothing on record to show that any dispute is pending before the Primary Dispute Resolution Officer ("PDRO") or any Appeal that has been preferred to the Authority from any Order passed by the PDRO.

The Petitioners have also relied on provisions of the Section 3(1), 2(2), (3), (4), (5) of Maharashtra Irrigation Act, 1976 to claim that command area of the revised project report is not yet notified and hence the right of appeal to Chief Engineer is taken away.

Section 3 of the Maharashtra Irrigation Act, 1976 deals with the declaration of land under the irrigable command of the canal. Section 4 of the said Act defines the 'Wet land' and Section 5 of the said Act deals with the division of irrigation area of the State into regions, circles, divisions

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and sub-divisions. Thus, these sections have no relevance to the present proceedings which are related to exercise of the functions under Section 11(f) of the 2005 Act for according approval to the Gunjavani project keeping in view the economic, hydrologic, and environmental viability and the Governor's directives to the extent they are applicable. Also, we are of view that the notification under Section (3) of the said Act for revised command can only be published after RAA. Hence this objection is at present premature. However, any persons that would be aggrieved by such notification may file an appeal before Chief Engineer as per provision in Section 3 (5) of the Maharashtra Irrigation Act, 1976 within prescribed time limit.

Thus, we conclude that no legitimate interests of the Petitioners are likely to be affected adversely due to revised proposal. On the contrary, the proposed closed pipeline distribution system would be to further the objectives laid down in the 2005 Act including those in the aforesaid sections of the said enactment.

- (b) Is it mandatory to provide fixed quota of water in Gunjavani reservoir for feeding water to K. T. weirs to support drinking water schemes and perennial irrigation through existing private lift irrigation schemes as claimed by the Petitioners?

As the planning of K. T. weirs is based on the rainfall incident on catchment area located downstream of the Gunjavani dam, it is not necessary to keep any additional provision in the water planning of Gunjavani project for feeding the K. T. weirs. Already there is a provision of 0.43 TMC (12.18 MCM) of water in the water planning of the Gunjavani project for the purpose of drinking water which project officers can utilize for drinking water purpose in consultation with district authority and Maharashtra Jivan Pradhikaran for various drinking water schemes in the area. Further, the claim of the Petitioners for releasing water for K. T. weirs required for cultivating perennial crops is not reasonable and legitimate as the licenses of K. T. weirs are only for Kharif and Rabi seasonal crops. Thus, it is not mandatory to keep any additional provision in the water planning of Gunjavani project for K.T. weirs.

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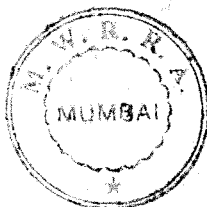
The Petitioners have relied on Section 72 of the Maharashtra Irrigation Act, 1976 for backing of Gunjavani dam for its K. T. weirs. The Section 72 of said Act reads as follows;

"72. (1) Where, in the opinion of the Appropriate Authority, a canal is likely to irrigate lands not exceeding 200 hectares (500 acres) in area, then with a view to providing supply of water from such a canal more economically in the public interest, the Appropriate Authority may, by notification in the Official Gazette, prepare a draft scheme for supply of water from such canal to such lands. The draft scheme shall provide for handing over the management of the canal and distribution of water therefrom to the Water Committee appointed under Section 74.

(2) The draft scheme shall contain the following particulars, that is to say :-

- (a) the area to which the scheme applies;*
 - (b) the survey numbers of lands included in such area and the names of holders and occupiers thereof;*
 - (c) the period or periods during which water will be supplied to such lands;*
 - (d) the crop or crops which will be permitted to be grown thereon;*
 - (e) the water rate at which water may be supplied to each land included in the scheme;*
- Provided that, no water rate shall be determined by any Zilla Parishad or the company except with the previous approval of the State Government;*
- (f) the amount to be paid by the Appropriate Authority for the management of the canal to the Water Committee;*
 - (g) for the publication of the scheme in the Official Gazette; and*
 - (h) fixing the period of not less than three months from the date of receipt of the individual notice under sub-Section (3) for submission of objections or suggestions to such scheme.*

(3) After the publication of such notification in the Official Gazette, the Canal Officer shall as soon as practicable serve individual notice on the holders and occupiers who are likely to be affected by such notification.



(4) After considering such objections and suggestions, if any, as may have been received within the period fixed as aforesaid, the Appropriate Authority may, after making due inquiries, sanction the draft scheme with or without any modifications or may reject it.

(5) The scheme as sanctioned under sub-Section (4) shall be published in the Official Gazette, and in the village and at the headquarters of the taluka and of the district in which the lands included in the scheme are situate and shall, on such publication, be final."

It would be clear from the above that it is for the "Appropriate Authority" to prepare a Scheme for supply of water to lands from a canal likely to irrigate lands not exceeding 200 ha (500 ha in area). Section 2(2) defines the term "Appropriate Authority" to mean the State Government, the Company or the Zilla Parishad. The MWRRA is therefore not the Appropriate Authority within the meaning of the 1976 Act. Moreover, Section 77 of the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 ("MMISF Act") has repealed Section 72 of the 1976 Act. Section 77 of the MMISF Act reads as follows:

"77. On the commencement of this Act, in relation to the areas under the Management of Irrigation Systems by Farmers, [SubSection (1) and (2) of Section 46,] sections 46 to 48, Section 55, sections 57, 58, 60 and 61 to 74 of the Maharashtra Irrigation Act, 1976, shall be deemed to have been repealed: Provided that, the repeal shall not affect - (i) the previous operation of any sections so repealed or anything duly done or suffered thereunder; or (ii) any right, privilege, obligation or liability acquired, accrued or incurred under any Section so repealed; or (iii) any penalty, forfeiture or punishment incurred in respect of any offence committed against any Section so repealed; or (iv) any investigation, proceeding, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment as, aforesaid, and any such investigation, proceeding, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed : Provided further that, subject to the preceding proviso, anything done or any action taken (including any charges created, appointments, rules, notifications, orders, summons, notices, warrants and proclamations made or issued, authorities and powers conferred or vested, record-of-rights prepared

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or revised, canals or any water works or water courses or field-channels constructed, any supply of water made, water rates charged, agreements or contracts made, any taxes or fees levied, any compensation awarded, any labour obtained or supplied for emergency works of canals, any rights acquired or liabilities incurred, any suits instituted or proceeding taken or appeal made), under any Section so repealed shall, in so far as such thing done or action taken is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act; and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act."

Hence, in view of the above, reliance on Section 72 of said 1976 Act is of no assistance to the Petitioners for claiming the release of water from Gunjavani dam for its K. T. weirs on regular basis.

- (c) Is it mandatory to seek fresh environmental clearance under Environmental (Protection) Act, 1986 prior to MWRRRA's clearance under Section 11(f) of the Act?

Ministry of Environment and Forest (MoEF), Government of India has already accorded environmental clearance to the Gunjavani project on April 29, 2005. The condition No. 8 of this permission is as below;

"This clearance letter is valid for a period of the five years from the date of issue of this letter for commencement of construction work"

It can be seen from the yearwise expenditure statement enclosed in SLTAC report that the construction work was commenced before this prescribed time limit i.e., within five years from April 29, 2005. Hence, the said project was within the subsistence of the aforesaid clearance letter.

However, the condition No. 6 in the MoEF's clearance states as follows:-

"In case of change in the scope of the project, project would require a fresh appraisal"

Hence, the Project Authority is supposed to do the needful accordingly. The Petitioner's argument that project authority should seek revised approval of MoEF prior to MWRRRA's clearance under Section 11(f) of the MWRRRA Act is unwarranted. MWRRRA's clearance is prerequisite for the

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RAA to be accorded by the State Government for the projects undergoing change in scope. In fact project authority can't approach MoEF prior to final approval of the State Government to RAA.

- (d) **Whether, consultation with people's representatives and beneficiary farmers as proposed in WRD's GR dated May 2, 2017 or Hon. Chief Minister's prior permission for lift irrigation schemes are mandatory prerequisite for SLTAC clearance and/or MWRRRA clearance?**

As per the provisions in the WRD's G.R. dated January 13, 2017 project authorities are supposed take participation of beneficiaries in the planning of piped distribution system. Also, as per WRD's G.R. dated May 2, 2017 it is expected that in paddy growing area, decision of drip irrigation shall be taken in consultation with the public representatives and the farmers.

The function to clear and review projects under Section 11(f) is a part of prudence check by the Authority and the same need not be again subjected to public notice. In any case, adequate opportunity has been given to the Petitioners to raise their objections before the Authority. Section 11(f) does not state that the clearance shall be accorded to a project after inviting objections and suggestions on the proposal. There is no scope of indiscriminate hearing of the public.

We also noticed that in Bhore and Velha talukas, Kharif paddy is a rainfed crop. Further, the Petitioners' rights in the K. T. weirs are intact. Hence it is not a critical issue.

- (e) **Is it mandatory to complete the Rehabilitation and Resettlement (R & R) works for PAPs prior to seeking MWRRRA's clearance?**

In our view, Section 11(f) of the 2005 Act does not stipulate that the R & R works for PAPs must be completed prior to the exercise of grant of clearance under the said statutory provision.

There is one petition (Application No. 43/2016) filed by some Project Affected Persons of the Gunjavani project which is pending before National Green Tribunal, Pune (NGT). Hon. NGT through interim order

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dated May 30, 2016 has put some constraints on creating the water storage against the gates till the permission is granted by Hon. NGT.

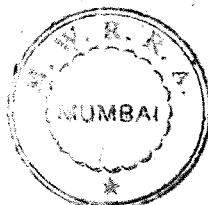
The Petitioners have not produced before us any order of the Hon'ble Tribunal staying and/or injuncting the Authority to carry out this exercise under 11(f) of the 2005 Act. In view of the above, the proposed prudence check for granting approval to the Gunjavani project under Section 11(f) of the 2005 Act by the Authority can carry on and need not be preconditioned upon the completion of R&R works for PAPs.

(f) Is it mandatory to continue with work of hydroelectric project?

The Government has allotted the small hydro projects of 2 MW installed capacity for development under its policy of "Development of Small Hydro Projects through Private Sector Participation" dated September 15, 2005. The then planning was to use head of water stored in the reservoir for purpose of generation of hydropower. Now, as per the revised proposal the head of water stored in the reservoir is proposed to be utilized for water distribution through pipes and for practicing micro irrigation. In the revised scenario the power generation may not be possible. Hence, the field officers have submitted to the State Government the proposal to cancel the hydro-electric project on July 15, 2017. The SLTAC has also pointed out this issue to the Government. The Government can take appropriate decision before or while according the RAA to the project considering benefits of the two alternative options and contractual obligations, if any. However, Authority is of the opinion that this issue does not prohibit clearance under Section 11(f) of the MWRRA Act. Authority also noted that the Applicant not being the developer of the Small Hydro Project has no reason to raise this issue.

(g) Whether the proposed change in distribution system has merits?

Proposed change in the distribution system (from open canal to closed pipe) and change in the irrigation method (from field-to-field irrigation to drip irrigation) has benefits in the form of higher water use efficiency. The proposal is in line with the principles set out in the State Water Policy (2003), National Water Policy (2012) and also with "Per Drop More Crop"



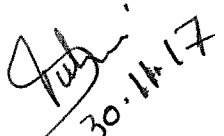
Program announced by Central Government. It has enabled to increase irrigation benefits from 16500 ha to 21392 ha. Significantly drought prone area of the Purandar taluka will get additional irrigation benefits. As per the report of State Level Technical Advisory Committee the proposal is technically and economically viable.

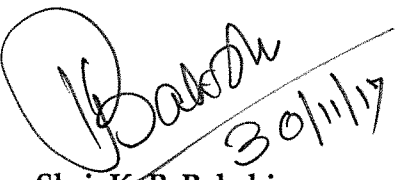
The Authority is yet to carry out and complete the process of according review and clearance to the Gunjavani project in accordance with all the parameters stated under Section 11(f) of the 2005 Act. The question as to whether the Gunjavani project would be or would not be meeting all the criteria under Section 11(f) of the 2005 Act is therefore still open. By the present order this Authority is only dealing with the petitions that have raised objection to the proposed exercise to be carried out by this Authority under Section 11(f) of the 2005 Act to grant the clearance to the Gunjavani project. The Authority has not by the present order accorded clearance to the Gunjavani project under Section 11(f) of the 2005 Act. As observed above, the process is yet to be completed. Therefore, whether the proposed change in distribution system has merit has been dealt with on prima facie basis only to deal with the contentions raised by the parties in the present proceedings.

(h) Whether taluka-wise water entitlements are modified while revising the scope of the project?

As per the SLTAC report, the taluka-wise water quota has been kept intact while revising the project report.

In view of our findings, the Petitions and the Intervention Application stand disposed of.


30.11.17
Shri. V. M. Kulkarni
Member (W. R. Engg.)


30/11/17
Shri. K. P. Bakshi
(Chairman)

