



महाराष्ट्र जलसंपत्ती नियामन प्राधिकरण

**Maharashtra Water Resources Regulatory Authority
(MWRRA)**

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ORDER No.12/ 2017

In the matter of

Fixation of tariff for treated sewage water allocated to Rattan India

Company for TPP, Sinnar (Case No. 8/2016)

Rattan India Nashik Power Limited
(RNPL, formerly known as IndiaBulls Realtech Ltd.)

....Petitioner

Vs

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

.....Respondents

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

Date : October 13 , 2017



BRIEF FACTS OF THE CASE

1. A Petition under the subject was filed by M/S Rattan India Nashik Power Limited the then IndiaBulls Realtech Ltd. (here in after referred to as RNPL/ IRL/ Petitioner) before the Maharashtra Water Resources Regulatory Authority (hereinafter "Authority") on November 3, 2016. The Petitioner is setting up a 2700 MW Thermal Power Plant (TPP) in the Multi Product SEZ, Sinnar, Nashik, Maharashtra. According to the Petitioner, 190 MLD sewage water released into the river Godavari by Nashik Municipal Corporation (NMC) after secondary treatment was sanctioned by the High Power Committee (HPC) of the State Government to the Petitioner for reuse in its TPP. The sanction was given in two stages



i.e. 100 MLD for Phase - I of TPP in 2009 and 90 MLD for Phase - II of TPP in 2011. The Agreements for Phase - I and Phase - II, between RNPL and WRD, GoM were signed on January 16, 2012 and February 8, 2012 respectively. The agreement signed on January 16, 2012 is for 100 Mld i.e. 43 Mcum of annual water supply (36.5 Mcum Net + 7.30 Mcum conveyance losses). The agreement signed on February 8, 2012 is for 90 Mld i.e. 39.60 Mcum of annual water supply (33.0 Mcum Net + 6.60 Mcum conveyance losses).

2. Agreement between WRD and the Petitioner provides for three possible alternatives for lifting the treated water released by NMC viz by constructing a storage bandhara on Godavari River or from storage sump near Sewage Treatment Plant (STP) of NMC or from the existing storage bandhara on the Godavari River as may be finally approved by the Government.
3. The Petitioner opted for the alternative of lifting water from the existing MAHAGENCO owned Eklahare barrage on Godavari River. The Water Resources Department approved this arrangement.
4. Petitioner has signed separate agreement dated April 1, 2015 with the MAHAGENCO for the purpose of using their barrage as a joint user.
5. The Petitioner constructed an infrastructure to draw water from Eklahare barrage to his Thermal Power Plant. Petitioner is using water from Eklahare barrage since November 1, 2013 but according to him he is using the water only for conducting tests and trial runs and no commercial production of energy is started till May 29, 2017.
6. While signing the Agreement the amount of security deposit was worked out by considering the tariff at Rs.10.70/10 cum. However, Petitioner had given undertaking in the agreement that it will pay the security deposit at the rate that will be decided by the Government or the Authority.
7. Superintending Engineer & Administrator Command Area Development Authority (SE, CADA), Nashik (Respondent No.3) by his letter dated 13/06/2016 has directed to the Executive Engineer to charge Rs.64 / 10 cum rate with 25% reduction in tariff as per the Authority's order dated

13/04/2012 in Case No. 5 / 2011. Thus, effective rate adopted as Rs.48/10 cum. However, as stated in the letter dated 13/06/2016, this rate is provisional and subject to final approval by the Government. This letter was issued in exercise of the powers vested under Sections 10 and 89 of the Maharashtra Irrigation Act, 1976 and Clauses 12 (b) and 24 of the agreement.

8. The Petitioner having been aggrieved with the demand letter of the Respondent NO.3 dated June 13, 2016 has approached the Authority with a prayer to fix tariff for use of treated sewage water under Section 11(d) of MWRRA Act, 2005. The contention of the Petitioner is that no Authority other than MWRRA has powers to fix the tariff.


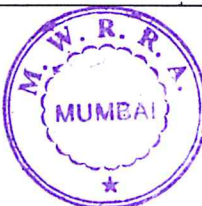
PRAYER OF THE PETITIONER

9. Prayer of the Petitioner is as follows:

- i. Quash and set aside the demand letter No.3961/2016 dated June 13, 2016 issued by SE, CADA, Nashik.
- ii. Fix the tariff for treated sewage water at the rate of Rs.10.70 per 10 cum minus 25% concession as ordered by the Authority earlier in Case No. 5/2011 on April 13, 2012.
- iii. Alternatively declare the water supply as Partially Assured Water Supply in case of the Applicant Company and charge at the rate of Rs.16.00 per 10 cum minus 25% concession.
- iv. Stay the effect and operation of the demand letter No.3961/2016 dated June 13, 2016 issued by SE, CADA, Nashik.

CHRONOLOGY OF EVENTS/ GIST OF THE HEARINGS BEFORE THE AUTHORITY

10. Authority held five hearings, details of arguments pleaded by parties are as follows:

On receipt of the Petition on June 3, 2016 the Authority held first hearing on April 24, 2017. Advocate Dewani, advocate for the Petitioner pleaded with reasons for fixing water rates as per the sub-category- 4 of industrial tariff and 25% concession thereon as per earlier Order of the Authority dated May 30, 2011. He advanced following reasoning in support of his demand -

- i) Petitioner has laid 35 km long water conveyance system, spending Rs.250 cr. for bringing water from Eklahare barrage to its plant at Sinner.
- ii) Petitioner has to pay annual charges of Rs 2.57 cr to the MAHAGENCO for using MAHAGENCO owned barrage.
- iii) Petitioner has paid security deposit to the Respondent.

He further pleaded that the water supply from the Eklahare barrage can only be said to be partly assured due to the restriction of the water level and considering this fact he requested to apply rates of Category- 3 (Rs.16/10 cum) if applicability of Category- 4 is not acceptable to the Authority.

He also pointed out that the Respondents are not following the earlier Order of the Authority regarding 25% reduction in tariff.

The SE, CADA, Nashik (Respondent No. 3) clarified that he has issued instructions vide letter dated June 13, 2016 for 25% reduction in tariff. He further pointed out that since another new barrage could not be built up on Godavari River, RNPL on its own had requested for permission to draw water from existing Eklahare barrage of MAHAGENCO. The Respondent No. 3 added that feeding from upstream Gangapur dam is required to maintain desired water level at Eklahare barrage. Hence it cannot be said to be partly assured supply.

The issue of hearing the case simultaneously at MWRRA and also at Hon. High Court was also discussed. Advocate of the Petitioner clarified that the Company had approached Hon. High Court only because there was



no Coram in the Authority at that time and HC has not given any stay for conducting hearings by MWRRRA.

11. The second hearing was held on May 29, 2017. The Advocate to the Petitioner briefed the Authority about commissioning of 4 units of Phase – I. However, it was clarified that no water is being used from Eklahare barrage and it is being used only for conducting tests and trials. He further added that no commercial power is being generated as Power Purchase Agreement is yet to be signed. The issue of various options available to the Petitioner for lifting water as per the agreement was discussed and it was explained by the Petitioner that SE, CADA, Nashik vide his letter to Municipal Commissioner, Nashik dated January 6, 2011 has objected to lifting of water from immediately downstream of STP of NMC on the ground that additional water to the Corporation has been approved on the condition that Corporation will release 65% treated sewage water for reuse. Since construction of a new bandhara on Godavari River was not feasible, the third option to use existing Eklahare barrage was opted.

Petitioner specifically prayed for quashing and setting aside the letter No.3961/2016 dated June 13, 2016 issued by SE, CADA, Nashik.

Authority, observing that the matter is yet to be decided by the Government, directed Secretary (WRM & CAD), WRD to take the decision and file affidavit by June 29, 2017.

12. The third hearing was held on July 11, 2017 during which Respondent No.3 tendered the copy of the Government letter dated July 10, 2017 which is addressed to Respondent No. 2 (Chief Engineer). In this letter the Government has directed the Chief Engineer to take appropriate action as per GR dated June 29, 2011 which is self-explanatory. The Authority directed the Respondents to submit following information in affidavit before the next hearing:

- i) Reply to application of the applicant dated November 3, 2016.
- ii) Whether the petitioner is actually using treated sewage water of NMC?



- iii) Whether the respondent is releasing freshwater from Gangapur dam for the applicant? If yes why? What will be the impact of this on other stakeholders?
- iv) Apparently, it is seen that the source of MAHAGENCO and Applicant is the same. Is there any grievance of MAHAGENCO regarding tariff?
- v) What type of physical arrangement exists at the site to ensure that Applicant is drawing water within limits of treated sewage water released by NMC?
- vi) Whether present lifting arrangement is interim or final?
13. The fourth hearing was held on July 31, 2017. Respondent submitted the Affidavit combining the reply to the original petition as well as information asked by the Authority during the hearing on July 11, 2017, However, information pertaining to point no. (v) & (vi) was not provided. Advocate to the Petitioner submitted Pursis giving chronology of events in detail. The Advocate to the Petitioner further asked some period for filing rejoinder on Respondent's affidavit filed during the current hearing. Time was granted up to August 10, 2017. The Petitioner submitted the rejoinder on August 10, 2017.
14. The fifth and last hearing was held on August 22, 2017. Respondent submitted Reply to the rejoinder of the Petitioner in his affidavit. Advocate to the Petitioner also submitted Pursis with some photographs and news items regarding pollution of water in Godavari River and brought to the notice of the Authority that he is not getting treated water. The Respondent No. 3 submitted test results of river water quality received from MAHAGENCO and also extract of the Water Quality Criteria of Central Pollution Control Board (CPCB) for different uses. The Authority enquired about status of payment of water charges. Respondent No.3 informed that bills of Rs.16 cr. up to February 2017 were raised and 50% amount i.e. Rs.8 cr. has been paid by the Petitioner. The bills up to June 2017 are also pending. The Respondent No.3 further clarified that WRD is billing to MAHAGENCO as per category 2 (presently Rs.64/10 cum) of MWRRA tariff Order dated May 30, 2011 and

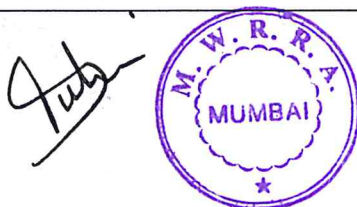


there is no dispute about the category of industrial rate at which billing is being done between MAHGENCO & WRD. However, the Petitioner brought to the notice of the Authority that MAHAGENCO has also approached the Authority for fixation of tariff for use of contaminated water (vide its letter dated August 16, 2017) in testimony of which he produced the copy of the letter.

SUMMARY OF THE ARGUMENTS OF THE PETITIONER

15. The summary of the arguments put forth by the Petitioner during the hearing and in the form of written submission is as follows:

- a) The Petitioner has approached the Authority as per Clause 6 (c) and (d) of the Maharashtra Water Resources Regulatory Authority (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations 2013, for review of the water tariff for its 2700 MW Thermal Power Plant in Multi Product SEZ, Sinnar, Nashik.
- b) The High Power Committee of Govt. of Maharashtra (GoM) has allocated to the Petitioner in two stages, 190 MLD of recycled water released by Nashik Municipal Corporation (NMC).
- c) Respondent has accorded permission to the Petitioner to lift water from existing MAHAGENCO owned barrage at Eklahare.
- d) Petitioner has signed a separate agreement with MAHAGENCO for joint use of MAHAGENCO owned Eklahare barrage facility. Petitioner is paying Rs.2.57 cr. annual charges to MAHAGENCO for using this facility.
- e) Petitioner has incurred capital expenditure of Rs.250 cr. for lifting arrangement from Eklahare barrage to its Power Plant.
- f) Petitioner is getting treated sewage water released by NMC.
- g) Petitioner has to spend on the tertiary treatment.
- h) There is no provision in existing tariff order for use of treated effluent.



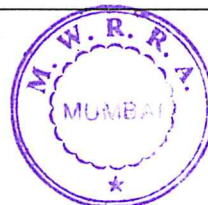
- i) Power of determination of water tariff is with the Authority under the Act (Sections 11 (d) & 11 (u) of MWRRA Act). Therefore, fixation of tariff by any other authority is absolutely illegal and improper.
- j) The Authority in its order dated April 13, 2012 in Case No. 5 of 2011 has ordered the reduction in tariff by 25%. The Petitioner relied upon the Principle of Promissory Estoppel and legitimate expectations in this regard. The said order passed by the Authority is not challenged by the Respondents and, is therefore binding on all parties as well as to the Authority.
- k) The Petitioner is paying annual rental of Rs.2.57 cr. to MAHAGENCO for availing storage facility of MAHAGENCO owned Eklahare barrage. This is to be considered as sharing of capital cost and accordingly tariff of Category- 4 of industrial tariff provided in Authority Order dated May 30, 2011 (i.e.Rs.10.70/10 cum) need to be made applicable. While calculating the amount of security deposit this tariff was considered by the Respondents. As per the Authority Order dated April 13, 2012, 25% concession shall be made applicable on this tariff.
- l) Water supply of NMC is varying as per the availability of water in the Gangapur reservoir and further governed by the allocation of water by the project authority. Accordingly, the availability of treated sewage also varies. Further, MAHGENCO has imposed restriction on lifting water from Eklahare barrage. As per this restriction Petitioner cannot draw water below 544.30 m level. Hence, Petitioner's supply is partially assured. As such Category - 3 tariff (i.e. Rs.16/10 cum.) minus 25% concession may be considered.
- m) The Respondents deliberately failed to comply with Authority Order dated April 13, 2012 and have given no valid and legitimate explanation for this. The doctrine pertaining to the principles of legitimate expectations and Promissory Estoppel prohibits the Respondents to back out from the concession once allowed to the Petitioner. Despite this, the Respondents were heard by the Authority.



SUMMARY OF THE REPLY OF THE RESPONDENT

16. The summary of the arguments put forth by the Respondent during the hearing and in the form of written submission is as follows:

- a) Petitioner has shown readiness to use recycled water from the STP of NMC vide its letter dated February 14, 2008.
- b) The Petitioner in its letter dated October 4, 2011 has confirmed that the daily discharge of water from STP arriving at Eklahare barrage is in excess of its daily requirement.
- c) Petitioner vide his letter dated October 4, 2011 has requested to allow lifting water from Eklahare barrage. Thus, lifting water from existing MAHAGENCO owned barrage is the choice of the Petitioner and it is approved by Respondent No.1 (Government) on February 22, 2016.
- d) Water lifted by the Petitioner is not treated sewage water but a mix of water released from Gangapur reservoir and treated sewage of NMC. Water is of good quality. MAHAGENCO and farmers are using the same water.
- e) There is no complaint either from MAHAGENCO or farmers that the water in the barrage is contaminated.
- f) The rate of Rs.10.70/10 cum. is applicable to users who have shared proportionate cost of irrigation project for the creation of entire storage required by the user. Petitioner has not constructed any dam. Petitioner is taking water from MAHAGENCO owned barrage storage capacity of which is very small. Petitioner's request is not eligible for tariff of partially assured supply (i.e. Rs.16/10 cum).
- g) Water reaching to Eklahare barrage is a mixture of regulated releases from Godavari (Gangapur) dam, other natural streams joining in the river and fixed discharge of NMC. Average 245 MLD of treated water released by NMC is assured as 400 MLD of drinking water supply being catered to NMC is assured. Thus, the source of supply is



regulated and assured. Hence, tariff for Sub-category-2 (rate of Rs.64/10 cum) is applicable as per Authority Order dated May 30, 2011.

- h) The level constraint on Petitioner for lifting water is as per the mutual agreement between MAHAGENCO and the Petitioner. It has not been approved by the Respondent. No other entity is responsible for this constraint. Record shows that sufficient water was available in the barrage.
- i) MAHAGENCO is using water from the same Eklahare barrage and is paying at Sub-category-2 tariff i.e.Rs.64/10 cum. There cannot be different rates for two different companies for the same water.
- j) At the time of filing the Case No. 5/2011, Petitioner was neither lifting water nor had any proposal of lifting site. The said petition was heard on the ground that Petitioner will lift the treated sewage water from STP site. However, now the Petitioner is lifting the water from Eklahare barrage which is fit for agricultural and industrial use. The water coming into Eklahare barrage is a mix flow from Gangapur reservoir, and secondary treated sewage of NMC. It needs no further treatment. As such, observations made in Case No.5/2011 about treated sewage water are not applicable here.
- k) Authority's Order dated April 13, 2012 does specifically instruct to give 25% concession in the rate to RNPL. In this Order it is mentioned that the Petitioner should seek separate dispensation during the consultation process for the next tariff revision. The Petitioner is lifting water from the barrage of MAHAGENCO which is equally good for other purposes such as agricultural and industrial use. Therefore, no concession can be claimed on the basis of further treatment.
- l) Nowhere in the State, discounted rate is applied to the water users lifting water from locations downstream of Municipal Corporation's treated sewage release point. As such, no special consideration be given to the claim of the Petitioner.



DATA SUBMITTED BY THE PETITIONER

17. Data submitted by the Petitioner during the course of hearings beginning with Original Petition is as under:
- i) Original Petition along with approval of HPC for Phase I and Phase II of TPP at Sinner, Agreements with WRD for Phase I & Phase II, translated version of GR for water tariff, copy of MWRRA order dated 13/04/2012 in Case No.5 of 2011, Copy of Agreement between RNPL & MAHAGENCO (MSPGCL) and photographs of infrastructure developed by RNPL.
 - ii) Water consumption details based on MoEF Notification dated 07/12/2015.
 - iii) High Court order dated 04/07/2017.
 - iv) Correspondence regarding fixation of tariff for treated sewage water as per Pursis dated 31/07/2017.
 - v) Documentary evidence claiming that the water reaching at Eklahare barrage is contaminated.
 - vi) Rejoinder dated 10/08/2017.
 - vii) Written submission with compilation of citations.

DATA SUBMITTED BY THE RESPONDENT

18. Data submitted by the Respondent during the course of hearings is as under:
- i) Letter to NMC dated 06/01/2011 regarding prohibition of sale of treated sewage water.
 - ii) Details of average monthly treated wastewater released by NMC and reaching to Eklahare barrage as received on 29/05/2017.



- iii) CPCB Standards for Effluent Discharge from STP. Pointwise reply to queries raised by the Authority in the hearing dated July 11, 2017.
- iv) Copies of test results of river water quality at Eklahare barrage as per MAHAGENCO letter dated 21/08/2017.
- v) Reply to the Petitioner dated 28/07/2017.
- vi) Reply to rejoinder of RNPL dated 19/08/2017.



IMPORTANT PROVISIONS IN AGREEMENT BETWEEN PETITIONER AND THE WRD

19. The important provisions in the agreements between the Petitioner and the Respondents related to the subject matter are as below:

Clause No.9: Billing should be done on bimonthly basis. The bill for the water drawn by IRL during previous two calendar months shall be sent in duplicate / triplicate by the Executive Engineer to the office of IRL within 15 days of the end of water consumption month. IRL shall thereafter pay the same by a demand draft drawn in the name of Executive Engineer, Nashik Irrigation Division, Nashik for and on behalf of the Government within a fortnight from the date of receipt of the bill and shall not allow the same to fall in arrears. If IRL fails to pay the amount within this stipulated time (15 days from the date of receipt of bill i.e. before the end of the current month) extra charge not exceeding 10% p.a. of the amount due will be charged. If the delay in payment of water charges exceeds 6 months, the Department reserves the right to terminate the water supply with a notice of 15 days in advance.

Clause No.10: The cost of all works in connection with the arrangements for water supply including the cost of measuring devices and its installation and maintenance shall be done by IRL.

Clause No.11: IRL shall pay to the Government at the time and water charges for the quantity of water drawn by IRL from the said river as measured by the said electronic measuring devices at the prevailing rates

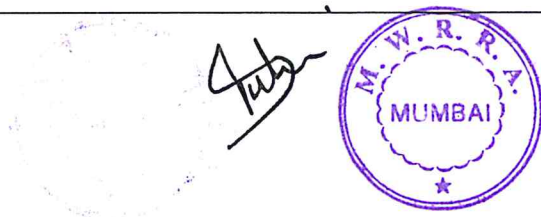
fixed by the Government from time to time for industrial purpose or as may be decided by MWRRRA.

Clause No.12 (b): In the case of disputes regarding quantity of water billed or rate at which the bill is prepared, IRL shall first pay the complete amount of the bill and then claim for refund of any excess bill charged giving the reason / justification of wrong billing. However, the decision of Superintending Engineer & Administrator, CADA Nashik in the regards shall be final and binding on IRL.

Clause No. 20: On the expiry of the term of this agreement, Government may renew this agreement within 90 days for such further period and on such terms and conditions, the Government may at its absolute discretion deem fit.

Clause No. 26: Water permission to IRL's Mega Power Plant is granted through water made available by recycling the effluent water from N.M.C. Nashik. There is no responsibility of W.R.D. regarding quality & quantity of water. Lifting of water shall be stopped if N.M.C. does not make water available by recycling the effluent water.

Clause No. 27: IRL shall lift the recycled water released by NMC by either constructing a storage bandhara on Godavari River or from the storage sump near Sewage Treatment Plant (STP) of NMC or from the existing storage bandhara on the Godavari River as may be finally approved by the Government. The construction and maintenance of storage bandhara shall be done by IRL, under supervision of W.R.D. at its own cost or IRL shall deposit the amount to WRD as a deposit work. If the work of storage bandhara shall be carried out by IRL at its own cost then in that case supervision charges shall be paid by the IRL to W.R.D. This storage bandhara shall be handed over at free of cost to W.R.D. after expiry of the usefulness of this bandhara.

A handwritten signature in black ink is written over a circular official stamp. The stamp is purple and contains the text 'M. W. R. R. A.' around the top edge and 'MUMBAI' in the center, with a small star at the bottom.

**IMPORTANT PROVISIONS IN AGREEMENT BETWEEN
PETITIONER AND MSPGCL, EKLAHARE**

20. The agreement of joint use of barrage was signed by Petitioner, and Chief Engineer, Nashik Thermal Power Station (NTPS) MSPGCL (MAHAGENCO) Eklahare on April 1, 2015 for joint use of Eklahare barrage, which was constructed by NTPS the important contents of this agreement are as under:

- a) The said agreement has been entered in to subject to the outcome of direction which would be given by Hon. High Court, Bombay in respect of PIL 176/2014 filed by Rajesh Madhukar Pandit and Others Versus Nashik Municipal Corporation and Others, wherein both the parties are added Respondents.
- b) Petitioner has to pay annual charges of Rs.2.57 crore to MSPGCL towards use of barrage and land under submergence in the first week of April of every year.
- c) In case of any major expenditure towards maintenance cost of capital nature like replacement of gates, desilting work, repairs to barrage structure MSPGCL reserves the right to recover additional charges of use from the Petitioner.
- d) Routine maintenance will be carried out by MSPGCL.
- e) In case of drawdown /scarcity of water, MSPGCL has right to draw the total available water on first priority.
- f) Permission to draw water (to the Petitioner) will be subject to the condition that until Irrigation Department issued sufficient water which can be shared between MSPGCL and M/s. RNPPL during the period of the agreement. Current water level in the barrage is maintained at 1792 feet. To make any change in the water level is the prerogative of MSPGCL (Principal user).



EKLAHARE BARRAGE

21. Eklahare barrage is on River Godavari, downstream of both Godavari dam and NMC STP discharge point. It is owned by MAHAGENCO and being used for lifting water for it's Thermal Power Plant.

Thereafter, the Petitioner has signed an agreement with MAHAGENCO on April 1, 2015 for lifting water for its Power Plant from the same barrage. Thus, MAHAGENCO and the Petitioner are the joint-users of the Eklahare barrage.

The letter of Chief Engineer, North Maharashtra Region, Nashik, dated February 15, 2012, which is a part of reply of the Respondent (Annexure – VI) indicate that the storage capacity of Eklahare barrage is 69 million cubic feet (Mcft) out of which 60 Mcft water is usable after deducting 9 Mcft of dead storage.

The same letter also indicates that the daily water use of MAHAGENCO and Petitioner together is about 10 Mcft. Thus, the storage capacity of Eklahare barrage can cater for 6 days requirements of both joint-users.

This confirms that Eklahare barrage acts as a balancing storage. It can't satisfy the entire demand of both the users at its own capacity. It has to be replenished by regulated releases from upstream sources. The said letter also indicates that Eklahare barrage gets regulated releases from Godavari dam and also from STP of NMC.

Thus, for both MAHAGENCO and the Petitioner, the Eklahare barrage is a balancing reservoir and their primary source of water is Gangapur dam and STP of NMC respectively.

CASE NO.5 of 2011

22. Earlier before signing the agreements, the Applicant Company had approached the Authority (Case No. 5 of 2011) for claiming waiver of



charges towards use of treated sewage water on the grounds that there is no tariff fixed by the Authority for use of treated sewage water in its order dated May 30, 2011 and also on the ground that, the company is required to incur substantial cost in imparting tertiary treatment for entailing reuse of the treated sewage water. The Authority by its Order dated April 13, 2012 has not accepted the Petitioner's plea for waiver of tariff. However, the Authority had expressed that reduction in tariff by 25% should meet the grievance of the Petitioner of having been allotted water of inferior quality requiring additional expenditure towards cost of treatment. Authority has not given any specific orders regarding applicability of Sub-categorywise industrial tariff mentioned in tariff order dated May 30, 2011. Authority, in Para 20 of the said Order, has directed WRD to decide as a matter of policy as to whether construction of barrage or sump should be treated as infrastructural cost. Authority had given freedom to WRD to take appropriate view in this matter.

Further, the Authority in its Order has stated that the Petitioner is free to seek separate dispensation during the consultation process for the next tariff revision.

WATER LIFTING ARRANGEMENT APPROVED BY WRD

23. In compliance to orders passed by Hon. High Court on September 11, 2015 and December 16, 2015, the Government of Maharashtra in Water Resources Department vide its letter No. Legal matter 2013/(656/13)/IM (Policy) dated February 22, 2016 has given permission to the Petitioner to lift the water from Eklahare barrage till October 31, 2017 i.e. until the expiry of existing agreement. This letter also hinted that the expiry of existing agreement may lead to change in arrangement for water supply to the Petitioner.

PREVAILING ORDERS REGARDING WATER TARIFF



24. The prevailing water tariff is as per the Order of the Authority dated May 30, 2011 which is circulated by the Government vide G.R. dated June 29, 2011. This Order categorize the industrial users as (i) use as raw material (beverages) and (ii) use in process industry (cooling, washing etc.) and rates are fixed accordingly. Within each category there is further sub-categorization linked to type of source of supply namely,

- i) Assured water supply : From major, medium storages/storage tanks without canal
- ii) Regulated supply with transit loss : Regulated river reach below dam/canal lift/K.T. weir with back up reservoir/tail race from reservoir.
- iii) Partly assured water supply : Minor reservoirs/KT weir without backup reservoir / unregulated rivers with even any KT weir or in unregulated river reach flowing within a command area where there is no bandhara or KT weir.
- iv) Reservoir constructed by Water User Entity/User Entity Sharing proportionate cost.

FRAMING OF ISSUES

25. From the arguments advanced in the Petition and the replies of the Respondent, following issues arise for consideration:

- a) Whether the Petitioner has *locus standi* to make such an application?
- b) Whether the Authority has jurisdiction to hear the petition?
- c) Whether the annual rental given by Petitioner to MAHAGENCO for using Eklahare barrage & capital investment made by the Petitioner to lift water from existing MAHAGENCO barrage at Eklahare to its TPP at Sinnar can be considered as a proportionate share of water user in the expenditure of construction of storage and accordingly Petitioner is entitled to get water at tariff of Category 4 in the tariff Order of MWRRA dated 30/5/2011 i.e. Rs. 10.70 per 10 cum?



- d) Whether the level constraint imposed by MAHAGENCO on the Petitioner for drawing water from Eklahare barrage as per agreement between the Petitioner and MAHAGENCO, can be considered as a 'Partially assured source and accordingly Petitioner is entitled to get water at tariff of Category 3 in the Order of MWRRA dated 30/5/2011 i.e. Rs. 16.00 per 10 cum?
- e) Which tariff is applicable to the Petitioner? What is the period of its applicability?
- f) Whether the Petitioner is entitled for 25% reduction in tariff, as observed by the Authority in its earlier Order in Case No. 5/2011?
- g) Whether the demand letter of respondent No. 3961/2016 dated June 13, 2016 is required to be quashed and set aside?
- h) Whether the Respondent can be said to have disobeyed the Order passed by the Authority dated April 13, 2012? If yes, whether defense of the Respondent to be treated as non- acceptable?

FINDINGS OF THE AUTHORITY

26. Findings of the Authority on the above issues are as under:

- a) Whether the Petitioner has *locus standi* to make such an application?

Petitioner is an industrial water user having a formal agreement with the Water Resources Department. Hence as per clause 11(2) (d) of MWRRA [Conduct of Business] Regulations, 2013, the Petitioner has a *locus standi* to make this application. *locus standi* of the Petitioner has not been objected by the Respondent.

- b) Whether the Authority has jurisdiction to hear the petition?

The Petitioner has approached the Authority as it is aggrieved by the demand letter of Respondent No. 3 for water supplied to the Petitioner.



Since the task of establishing water tariff system is developed upon the Authorities and Criteria for tariff payable in all kinds of water supplied by the WRD to all kinds of bulk water users is determined by the Authority vide Section 11 (d) of the MWRRA Act 2005, is amply clear that the Authority have jurisdiction to deal with the Petition. Further, Regulation 10 of the MWRRA (Fixing Criteria for and Issuance of Tariff Order for Bulk Water) Regulation 2013 allows the Authority to issue such an order which essentially appears to be for purpose of getting rid of any difficulty. Neither, party objected this contention.

- c) Whether the annual rental given by Petitioner to MAHAGENCO for using Eklahare barrage & capital investment made by the Petitioner to lift water from existing MAHAGENCO barrage at Eklahare to its TPP at Sinnar can be considered as a proportionate share of water user in the expenditure of construction of storage and accordingly Petitioner is entitled to get water at tariff of Category 4 in the tariff Order of MWRRA dated 30/5/2011 i.e. Rs. 10.70 per 10 cum?

The Petitioner is claiming for sub-category 4 ariff of the Tariff Order on the following grounds:

- i) Petitioner is paying annual rental of Rs 2.57 crore to MAHAGENCO, which is owner of the Eklahare barrage.
- ii) Petitioner has incurred huge expenditure of Rs.100 crore on infrastructure for lifting water from Eklahare barrage to convey to his Thermal Power Plant.
- iii) Respondent No.4 has considered Category-4 rate for calculating the amount of the security deposit.

The Respondent's arguments in this regard are as:

- i) The Sub-category 4 rate is applicable to users who have shared proportionate cost of irrigation project for creation of entire storage. Petitioner has not constructed any storage. They are taking water from a barrage of a small storage capacity.

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- ii) MAHAGENCO who is joint-user of Eklahare barrage is paying Sub-category- 2 tariff.

Petitioner has signed agreements for Phase-I and Phase-II water supply with WRD on January 16, 2012 & February 08, 2012 respectively. The preamble of the Agreements for Phase I & Phase II, makes a mention of the rate of Rs. 10.70/10 cum considered for calculating amount of security deposit. However, this rate was provisional. This provision is as below:

"Whereas the security deposit is worked out by calculating the water tariff at Rs. 10.70 / 10 cum IRL undertakes to pay the security deposit at the rate that will be decided by Government or MWRRA before lifting the water AND"

Clause 11 of both the agreements for Phase-I & Phase-II is specifically regarding tariff. This clause is reproduced below:

"Subject to provisions of Clause (8) hereof, IRL shall pay to the Government at the time and in the manner specified in Clause (12) hereof water charges for the quantity of water drawn by IRL from the said river as measured by the said electronic devices at the prevailing rates fixed by the Government from time to time for the industrial purpose or as may be decided by MWRRA. "

Therefore, it is far from acceptable to the Authority that the basis with which security deposit amount is calculated can equally be applicable for fixing the tariff of Rs.10.70/10 cum. The tariff as fixed by the Government or the Authority is binding to the Petitioner. Authority has issued a tariff order on May 30, 2011, which is still in force, is governing for this case.

The said tariff order categorizes the industrial users as (i) use water as raw material (beverages) and (ii) use water in process industry (cooling, washing etc.) and rates are fixed accordingly. The Petitioner's industry falls in Category of Process Industry. Within each category,

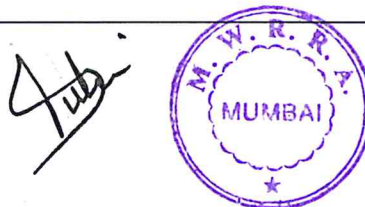
 

there is further sub-categorization linked to nature of sources of supply as below -

- i) Assured water supply : From major, medium storages/storage tanks without canal
- ii) Regulated supply with transit loss : Regulated river reach below dam/canal lift/K.T. weir with backup reservoir/tail race from reservoir.
- iii) Partly assured water supply : Minor reservoirs/KT weir without backup reservoir / unregulated rivers with even any KT weir or in unregulated river reach flowing within a command area where there is no bandhara or KT weir.
- iv) Reservoir constructed by Water User Entity/User Entity Sharing proportionate cost.

Petitioner is paying annual rental of Rs. 2.57 cr. to MAHAGENCO, for jointly using the storage facility of MAHAGENCO owned Eklahare barrage. The argument of the Petitioner to consider this as a capital contribution in Eklahare barrage and fix the tariff as per sub-category (iv) can't be accepted for following reasons:

- (a) The storage capacity of Eklahare barrage which is jointly used by the Petitioner and MAHAGENCO is very small as compared to their annual utilization of water. In fact it is, a balancing reservoir of capacity 60 Mcft Mcum which is not even adequate to cater for the week's demand of both users together and it is dependent on regulated flow from the allocated source i.e. STP of NMC / Gangapur dam. As such Eklahare, barrage has to depend upon upstream releases from Gangapur reservoir/STP of NMC.
- d) Whether the level constraint imposed by MAHAGENCO on the Petitioner for drawing water from Eklahare barrage as per agreement between the Petitioner and MAHAGENCO, can be considered as a 'Partially assured source and accordingly Petitioner is entitled to get



water at tariff of Category 3 in the Order of MWRRA dated 30/5/2011 i.e. Rs. 16.00 per 10 cum?

The Petitioner's arguments in justification of applicability of Sub-category-3 tariff are:

- a. The water supply of NMC is varying as per availability of water in the dam and allocation of water by the project authority. Accordingly availability of treated sewage also varies.
- b. The Petitioner, as per the restriction imposed by MAHAGENCO, can't draw water below level of 544.30 meter. Whenever there is a less discharge of treated sewage from the STP, water level draws down to below 544.30 meter and in such situation Petitioner is not able to draw water from approved source.

The Respondent's defense in this regard is:

- a. Drinking water supply to NMC is about 400 MLD. This is assured supply. Average water released by NMC is 245 MLD. WRD has allocated 190 MLD to the Petitioner. The water released by STP of NMC is sufficient to match the requirement of the Petitioner. Further, any shortfall is compensated by releases from the Gangapur reservoir. Thus, it is improper to say that water supply is partially assured.
- b. An agreement between Petitioner and MAHAGENCO is bilateral. The restrictions imposed by MAHAGENCO are not approved by the Respondent.

As per the agreements signed between the Respondent and the Petitioner, the Petitioner had following three options for lifting the treated water released by NMC.

- i) Constructing a storage bandhara on Godavari River.
- ii) From the storage sump near Sewage Treatment Plant (STP)
- iii) From the existing storage bandhara on Godavari River

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as may be finally approved by the Government.

Petitioner's arguments regarding applicability of Sub-category-3 tariff are not acceptable for the following reasons:

- i) Lifting arrangement is the choice of the Petitioner,
- ii) Terms & conditions of agreement between MAHAGENCO and the Petitioner were mutually decided by them. Respondent has never consented to these terms & conditions,
- iii) The drinking water supply has always the foremost priority. Water supply to NMC and consequently the treated sewage let out downstream can be considered as assured source,
- iv) Average water released by NMC after treatment is more than the water allocated to the Petitioner,
- v) During the hearing before Authority on May 29, 2017, the Petitioner has apprised the Authority that although 4 units of Phase I are commissioned, water is not being used except for test and trial runs and no commercial production is yet started. This attests that there is no evidence against the adequacy of water supply.

e) Which tariff is applicable to the Petitioner? What is the period of its applicability?

As already discussed above, the Petitioner is not entitled for tariff under Sub-category 3 (Rs.16/10 cum) or Sub-category 4 (Rs.10.70/10 cum). Sub-category 1 tariff is also not applicable as the Petitioner is not drawing the water from major or medium reservoir.

The Petitioner's arguments regarding non-applicability of Sub-category 2 tariff are as follows:

- a. The Sub-category 2 tariff is charged is for fresh, clean and potable water of the reservoir. Water allocated to the Petitioner is a treated

Sub



sewage. Water allocated to the Petitioner requires further treatment for making it fit for Thermal Power Plant.

- b. WRD is not required to release any water from the reservoir for the Company. Therefore, concept of 'Regulated River Reach below the Dam' is not applicable.

Respondent's say in this regard is:

- a. Water reaching to Eklahare barrage is coming from the regulated water supply of Gangapur reservoir, other natural streams joining the river and the treated sewage water from NMC makes it an assured source.
- b. MAHAGENCO, a joint user of Eklahare barrage is being charged with Sub-category 2 tariff. There can't be two different tariffs to two entities for the same water.

Authority analyzed the information made available to it regarding water allocation and actual water lifting arrangements of both the joint-users of Eklahare barrage i.e. the Petitioner and the MAHAGENCO. Authority noticed some common features as well as some distinguishing features. Distinguishing features are:

- i. Water allocation to MAHAGENCO is from Gangapur dam which is fresh water source; whereas water allocation to the Petitioner is from STP of NMC which is treated / recycled water.
- ii. MAHAGENCO is drawing water from 539.65 meter level whereas Petitioner is drawing from 544.65 meter level of Eklahare water storage (MAHAGENCO intake / suction level is deep seated). The Petitioner can't draw water below 544.30 meter.

The features common to both joint-users are :

- i. Both the joint-users are drawing water from the balancing storage i.e. Eklahare barrage and not from primary water sources allocated to them i.e. Gangapur dam / STP of NMC.



- ii. Both joint-users are getting regulated flow from their allocated sources. MAHAGENCO gets regulated water from Gangapur dam whereas the Petitioner is getting from STP of NMC.
- iii. The allocated sources of both the joint-users are on upstream side of the balancing reservoir site. The water allocated to them reaches the balancing reservoir (Eklahare barrage) after some conveyance losses. Agreements signed by the Petitioner with WRD on January 16, 2012 and February 8, 2012 provides for conveyance losses of 7.30 mcum and 6.60 mcum respectively.
- iv. Practically, both the joint-users are getting mix water, fresh water from Gangapur dam and treated sewage water of STP.

After considering the arguments of both the parties and analysis of facts and data made available, Authority makes sub-category-2 tariff (Rs.64/10 cum) applicable to the Applicant, because of following reasons:

- a. The Applicant is drawing water from the balancing storage i.e. Eklahare barrage and not from source allocated to it i.e. STP of NMC. Storage capacity of Eklahare barrage is very small as compared to the Petitioner's annual requirement of water.
- b. Applicant, through the balancing reservoir is getting regulated flow from STP of NMC, otherwise small capacity of Eklahare barrage which is jointly used by MAHAGENCO and the Petitioner would not have been sufficient.
- c. There exists transit losses between allocated source i.e. STP discharge point and the lifting point / balancing reservoir.
- d. MAHAGENCO the co-user of Eklahare barrage is also being charged under sub-category-2.

The Respondent vide letter dated July 26, 2017 has permitted to lift water with present arrangements up to October 30, 2017 i.e. date of expiry of the existing agreements between the Petitioner and the Respondents. After that there might be change in the terms & conditions of the agreements. Improvement in the quality of effluent released by NMC is also likely. In

July



addition, the tariff order dated May 30, 2011 is also under updation. Hence, the sub-category-2 tariff of Authority tariff order dated May 30, 2011 shall be applicable up to October 31, 2012.

- f) **Whether the Petitioner is entitled for 25% reduction in tariff as observed by the Authority in its earlier Order in Case No. 5/2011?**

Authority finds no reason to deviate from its earlier observations in Case No.5 of 2011 regarding 25% reduction in tariff.

- g) **Whether the demand letter [No. 3961/2016 dated June 13, 2016] of Respondent is required to be quashed and set aside?**

The Respondent's letter dated June 13, 2016 provides for provisional tariff. On issuance of this Order of the Authority, which provides for the applicable tariff, Respondent's letter dated June 13, 2016 is no longer applicable and can be set aside.

- h) **Whether the Respondent can be said to have disobeyed the Order passed by the Authority dated April 13, 2012? If yes, whether defense of the Respondent need to be treated as non- acceptable?**

Authority in its Order dated April 13, 2012 has expressed that reduction in tariff by 25% should meet the grievance of the Petitioner having allocated water of inferior quality requiring incurring of additional expenditure towards cost of tertiary treatment. The Respondent No.3 has treated this as indicative Orders and not the mandatory. However, he has directed Executive Engineer, NID, Nashik to accord 25% concession vide his letter dated June 13, 2016 and send proposal to higher authorities for confirmation. Instead he should have sought clarification from the Authority.

Authority has also observed that the Petitioner has also failed to comply with Clause 9 read with 12 (b) of the agreement, which provides for timely payments of water bills.



27. We record our appreciation for co-operation rendered by the Counsels representing the parties and the parties impleading in person.

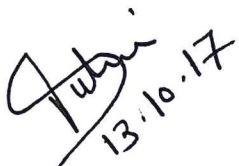
28. In exercise the powers conferred on the Authority under Sections 11(d) and 11 (u) of MWRRA Act, 2005 and Regulation No.10 of MWRRA (Fixing Criteria and Issuance of Tariff Orders for Bulk Water) Regulations 2013, we pass the following Order:

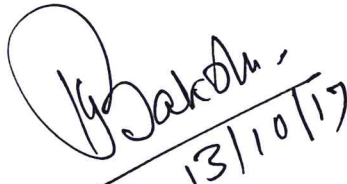
Order

We accept the Petitioner's plea for fixation of tariff. The Petitioner Company, by virtue of nature of source of supply of water falls under Sub-category-2 of the Authority's Tariff Order dated May 30, 2011. The applicable tariff to this Sub-category is Rs.64/10 cum. However, the Petitioner having been allocated effluent of Sewage Treatment Plant of NMC after secondary treatment, is entitled for 25% reduction in tariff as observed by the Authority in its earlier Order in Case No.5 of 2011 viz. April 13, 2012. Thus, the applicable tariff shall be Rs.48/10 cum. This tariff shall be applicable from April 13, 2012 to October 31, 2017. The tariff Order is case specific.

The Respondent's letter dated June 13, 2016 is set aside. Respondents shall issue fresh demand on the basis of this Order.

The petition is accordingly is disposed of with no costs.


13.10.17
Shri. V. M. Kulkarni
Member (W. R. Engg.)


13/10/17
Shri. K. P. Bakshi
(Chairman)



