

# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

(महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण अधिनियम, २००५ चे कलम ३ अन्वये स्थापित वैधानिक प्राधिकरण)

## Maharashtra Water Resources Regulatory Authority

(A Statutory Authority Established u/s 3 of Maharashtra Water Resources Regulatory Authority Act, 2005)

File No. MWRRA/2017/Legal/ Case No. 3(2018)/613


Date : 15/07/2019

In the Matter of

Appeal filed by Adv. Shivaji Anabhule & 2 others through Adv. Kailash Shevale in the matter of releasing 1.2 TMC water from Kukadi Command into Sina Dam - Case No. 3 of 2018

Please find herewith a copy of MWRRA Order No. 8/2019 dated July 15, 2019 in the above matter.

Encl : As above

  
(Rasik Chauhan)  
Secretary

Copy for information and necessary action to:

1. Adv. Kailas Shankararao Shevale, R/o Pategaon Tal. Karjat, Dist. Ahmednagar for Adv. Shivaji Maruti Anabhule & 2 others
2. Secretary (WRM & CAD), Water Resources Department, Mantralaya, Madam Kama Road, Mumbai - 400 032.
3. Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barane Road, Mangalwar Peth, Pune 411 011.
4. Chief Engineer (Specified Project), Water Resources Department Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune - 411 011
5. Superintending Engineer, Kukadi Irrigation Circle, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune - 411 011



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Adv. Kailash Shevale in the matter of releasing 1.2 TMC water  
from Kukadi Command into Sina Dam - Case No. 3 of 2018.

1. Adv. Shivaji Maruti Anabhule, R/o. Ghumari, Tal. Karjat, Dist. Ahmednagar - 414401.
2. Adv. Kailas Shankarao Shevale, R/o. Pategaon, Tal. Karjat, Dist. Ahmednagar- 414401.
3. Shri.Milind Dattatray Bagal, R/o. Takali Khandeshwari, Tal. Karjat, Dist. Ahmednagar- 414401.

.....Appellants

V/s.

1. Secretary (WRM & CAD), Water Resource Department, Mantralaya, Madam Kama Road, Mumbai - 400032.
2. Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barane Road, Mangalwar Peth, Pune - 411011.
3. Chief Engineer (Specified Project), Water Resource Department, Sinchan Bhavan, Barane Road, Mangalwar Peth, Pune - 411011.
4. Superintendent Engineer, Kukadi Irrigation Circle, Sinchan Bhavan, Barane Road, Mangalwar Peth, Pune - 411011.

.....Respondents



Coram: Shri. V. M. Kulkarni, Presiding Member (WRE)  
Shri. Vinod J. Tiwari, Member (Law)  
Dr. S. T. Sangle, Member (Economics)

Date : July 15, 2019

## BACKGROUND

1. The matter is related an appeal arising out of an Order in Original as passed by the Primary Dispute Resolution Officer ("PDRO" for short) - dated March 3, 2018 pertaining to the issue of releasing 1.20 Thousand Million Cubic Feet ("TMC" for short) from Kukadi Left Bank Canal ("KLBC" for short) into Sina Medium Project ("SMP" for short) through Bhose-Khind Tunnel. The Appellants have approached with the present appeal to Maharashtra Water Recourses Regulatory Authority, ("Authority" for short) under Section 22(3) of the MWRRA Act, 2005, challenging the Order passed by the Chief Engineer (SP) Pune, the PDRO for Bhima Basin, dated March 3, 2018.
2. The Appellants had approached this Authority earlier (Case No. 10 of 2015) in similar matter. This Authority had disposed of the said application on December 21, 2015 with following directions;
  - (i) *"Having heard the background of the matter and preliminary arguments, the Authority feels that this matter should be first be examined by the Chief Engineer (Specified Project) Pune as the Primary Dispute Resolution Officer) PDRO) vide Section 22(1) of the MWRRA Act and as per the WRD GR dated 25/08/2009. The copy of GR is enclosed as Annex - II.*
  - (ii) *The PDRO has to follow the procedure for hearing the dispute as laid down in MWRRA (Conduct of Business) Regulation, 2013."*
3. Accordingly, Adv. Shivaji Maruti Anabhule & two others, Karjat (Ahmednagar) - the Appellants filed their Application before the PDRO for the Bhima sub-basin (Case No. 2/2016) with following prayers;

- (i) *To release 1.20 TMC of water from KLBC to SMP during ongoing Khairf rotation.*



- (ii) *Water shall be made available from KLBC during regular rotation to SMP on the principle of equitable distribution.*
- (iii) *Special provisions need to be made for the Sina sub-basin as it has been categorised as extremely deficit sub-basin in the Chitale Committee Report (Vol I).*
- (iv) *Allocation of 2 TMC of water be made from the 3 TMC of additional water made by the Krishna Water Dispute Tribunal for the Kukadi Project.*
4. The PDRO, after hearing of all parties, has passed its Order on March 3, 2018 and rejected the application on the grounds that there is no provision in the Project Report of the Kukadi Project to release water for irrigation from Kukadi Dam into Sina Dam as claimed by the Appellants in their Original Application. Thus, in the opinion of the PDRO, water cannot be released regularly for irrigation from Kukadi Project into Sina Medium Project.
5. The Appellant, being aggrieved by the said Order of the PDRO dated March 3, 2018 has filed an appeal before this Authority on April 4, 2018 under Section 22(3) of the MWRRRA Act, 2005.
6. The Authority, having examined the Appeal, issued notice to the concerned parties calling upon their say & reply on Affidavit and thus proceedings in the present matter have been commenced in the interest of justice.

#### GIST OF THE PRAYERS

7. The Appellants, through their appeal before this Authority has prayed for following reliefs:

- a) *Appellant's appeal to be accepted.*
- b) *In the facts and circumstances stated in appeal, this Hon'ble Court to issue suitable orders to release 1.20 TMC water regularly into Sina Dam out of total water available from Kukadi command keeping in mind the principles of equity & equitable distribution so as to fill deficit basin.*



- c) *As per the approved quota, water allocation and rotation program to be fixed simultaneously with the rotations of Kukadi Project. The Respondents be directed to make available water rotation for Sina Command alongwith Kukadi rotation as the standing arrangement.*
- d) *The orders be made for 1.20 TMC water to be made available for Sina Medium Project from Kukadi dam command as per equitable & right to justice.*

### THE PROCEEDINGS BEFORE THE AUTHORITY

8. This Authority, having been proceeded in the matter, has conducted four hearings i.e. (A) on 27 June 2018, (B) on 23 October 2018, (C) on 20 November 2018 and (D) on 5 December 2018 and thus afforded all fair and equal opportunities to the parties to present their case on merit.

#### A) GIST OF THE FIRST HEARING ON JUNE 27, 2018

- (i) This hearing was attended by the Appellants and representative of Respondent No. 1 & 4. During the hearing Respondent No. 4 submitted the Para-wise reply without any Affidavit and Appellants has submitted Government Letter No. कुकडी ०३१८/प्र.क्र.१३७/१८/मोप्र १, दिनांक २२/०३/२०१८.
- (ii) The Authority expressed displeasure over absence of representatives of Respondent No. 2 and 3 inspite of notices served to them.
- (iii) The Authority pointed out that the Reply filed by the Respondent No.4 is not acceptable as it is not in Affidavit Form.
- (iv) The Appellants tendered Government Letter No. कुकडी ०३१८/प्र.क्र. १३७/१८/मोप्र १, दिनांक २२/०३/२०१८ vide which Government has given in principle approval to let 225 Mcft water from Kukadi Project to Sina Project. In spite of this, the Project Authority has not obeyed the Government Directives.
- (v) The Appellants further pointed out that as per Revised Administrative Approval (hereinafter referred to as "RAA") to Proposal of Sina Medium



Project, there is a provision to let out 1200 Mcft of water from overflow of Kukadi Dam in Sina Dam.

- (vi) Respondent No. 4 argued that there is no corresponding provision in the project report of Kukadi Medium Project to let 1200 Mcft of overflow water into the Sina Dam and further submitted that the Government vide Letter No. कुकडी ०३१८/प्र.क्र.१३७/१८/मोप्र १, दिनांक २२/३/२०१८ has given in principle approval for use of 225 Mcft of water from Kukadi Project for Sina Project. However, subsequently while according clearance to the RAA of Kukadi Project, SLTAC has recommended to use 100 Mcft water from Kukadi Project for Sina Project. Hence exact quantum of water to be used for Sina project from Kukadi project will be finalized only after approval to the RAA by the State Government.
- (vii) **Observations of the Authority** - The State Government has done considerable investment to create infrastructure for transferring water from KLBC to SMP.
- (viii) Authority is of opinion that according sanction to RAA and according sanction to revised water planning are two different issues. The Government can approve revised water planning of the Kukadi Project, without waiting for approval to RAA.
- (ix) Taking into consideration the pleadings made by the parties & the inputs received during the hearing, the Authority issued the following Interim Order;

*“Respondent No.1 shall issue Government Resolution approving Revised Water Planning of the Kukadi Project within 45 days from the date of issue of this order which shall indicate specific share of Sina Project and also quota of water to be diverted to Sina Project in water surplus years (when reservoir is overflowing). Thereafter, within 15 days Respondent No. 2 - 4 shall to file an Affidavit in Reply. Thereafter, the Appellants may submit Rejoinder, if any, within a period of 15 days.”*



## B) GIST OF THE SECOND HEARING ON OCTOBER 23, 2018

- (i) The second hearing was attended by the Appellants, Advocate & Representative of Respondent No. 4. During the Hearing, Representative of Respondent No. 4 submitted Affidavit in Reply dated 19/10/2018 and SLTAC Report dated 07/05/2018. The Appellants also submitted it's affidavit dated 22/10/2018. In this Affidavit, the Appellants have submitted that they require water for survival of sugarcane planted by them.
- (ii) The Appellants pointed out that instead of legitimate share of 1200 Mcft they received only 367 Mcft of water in Sina dam. He further submitted that there is an acute drought in his area and the rainfall received is only 42 mm. The Appellants further prayed for action against the Respondent under Section 26 of the MWRRA Act, 2005 for not releasing 1200 Mcft of the water in Sina dam.
- (iii) The Representative of Respondent No. 4 submitted that during the monsoon there was over flow from Yedgaon dam in Kukadi Complex for 3 days during July 22-24, 2018. The discharge carrying capacity of Bhose-Khind tunnel is 400 cusecs. Thus, 103.70 Mcft of water is required to be given for Sina project. However, 467.20 Mcft of water has already been released from Kukadi canal into the tunnel out of which 367.70 Mcft of water was reached to Sina project. He further pointed out that in revised project report of Kukadi Project, there is a provision for releasing 1200 Mcft of flood water including 100 Mcft from design live storage of Kukadi project for Sina project.
- (iv) The Representative of Respondent No. 4 agreed to give 100 Mcft water during ongoing rotation and committed that at least 90 Mcft of water will reach to Sina dam.
- (v) Taking into consideration the pleadings made by the parties & the inputs received during the hearing, the Authority issued the following Directions:

- a) *The Respondent shall release 100 Mcft of water during ongoing rotation for Sina project and shall submit compliance to this Authority.*



- b) *The Respondent shall submit revised hydrology and water planning of Kukadi project and also the water account of this year i.e. opening balance, daily inflow, water used during Kharif, water released for Sina project, water balance at the end of Kharif season.*
- c) *Three weeks of time period granted for the Respondents to submit its say on the Interim Application of the Appellants.*

### C) GIST OF THE THIRD HEARING ON NOVEMBER 20, 2018

- (i) The third hearing was attended by the Appellants, Respondent No. 4 and Advocates of Appellants & Respondent No. 4. During the hearing, Appellants submitted an Application dated November 20, 2018. Respondent No. 4 submitted documents in compliance to directions issued during the hearing held on October 23, 2018 & letter dated November 19, 2018. Executive Engineer, KID 2, Shrigonda for Respondent No.4 submitted the Affidavit dated November 20, 2018.
- (ii) SE, KIC, Pune - Respondent No. 4 submitted documents in compliance to directions issued during hearing held on October 23, 2018 viz. hydrology, water planning & water account of this year of Kukadi Project. He submitted that Sina project's gross storage is 2399.65 Mcft of which 558.68 Mcft is dead storage. As on November 19, 2018, the storage in Sina dam was 480.74 Mcft i.e. below outlet level and the drinking water requirement till next July is 38.42 Mcft. The Collector, Ahmednagar has reserved all the water of Sina project and banned lifting of water from the reservoir for agricultural use.
- (iii) He further submitted that even if 100 Mcft water is released, as directed earlier by this Authority, no irrigation benefits are possible and it will add only to the dead storage & eventually will evaporate. Therefore, he requested the implementation of the MWRRA Order of release 100 Mcft water in fare weather season from next year onwards. However, he ensured that in subsequent part of this year he will release the water for drinking purpose if there is scarcity of drinking water.



*[Handwritten signature]*





- (iv) When asked about the basis for provision to release of 1.2 TMC floodwater from Kukadi dam to Sina dam, SE, KIC, Pune stated that they could not find the documents confirming 1.2 TMC water. He further submitted that Kukadi Project comprises of system of 5 dams system and canals off taking from the Yedgaon dam. The water to Sina dam is transferred during irrigation rotation from Kukadi Left Bank Canal through Bhose-Khind tunnel. Thus, whenever Yedgaon dam overflows, water quantity upto 1.2 TMC will be given to Sina dam. Also, as Yedgaon dam is smaller compare to upstream dams, it may be possible that upstream dams may not overflow but Yedgaon does.
- (v) The Appellants consented to the proposal of the Respondents to release of 100 Mcft water from next year. He further informed that he is having the copy of DPR of Bhose-Khind Tunnel and agreed to make available the copy of the same.
- (vi) This Authority has observed that interpretation of the term "Overflow water" is the key issue in this matter and justice cannot be done without judicious interpretation of the term "Overflow water" and issued the following Directions:
- a) *The Appellants shall submit copy of the DPR of the Bhose-Khind Tunnel project to the Authority & also to the Respondents.*
- b) *Both the parties shall give their interpretation of the term "Overflow water" within two weeks.*

#### D) GIST OF THE FOURTH & FINAL HEARING ON DECEMBER 5, 2018

- (i) The hearing was attended by the Appellants, Representative of Respondent No. 4 and Advocates of Appellants & Respondent No. 4. During the hearing, Respondent No. 4 submitted papers in compliance to the directions given on November 30, 2018. Appellants submitted an Application dated December 5, 2018.
- (ii) When asked about whether Government has given approval to 100 Mcft or 225 Mcft water transfer to Sina Medium Project, EE, KID 2, Shrigonda, for Respondent No.4 submitted that in the DPR of 3<sup>rd</sup> RAA of Kukadi



Project, under hydrology chapter provision of 100 Mcft water for Sina Medium Project through Bhose-Khind Tunnel was kept & the Government has accorded 3<sup>rd</sup> RAA to this proposal vide GR dated November 2, 2018. Thus, Government has given approval to the transfer of 100 Mcft water to Sina Medium Project through Bhose-Khind Tunnel. However, he could not explain the reason for not mentioning water planning in above said GR even though this Authority has specifically given such direction in its Interim order dated July 12, 2018.

(iii) EE, KID 2, Shrigonda, for Respondent No.4 also unable to explain that why the Authority's clearance not sought before according 3<sup>rd</sup> RAA to Kukadi Project wherein its live storage is proposed to be increased 2%.

(iv) The Appellants during the hearing made following arguments;

- a) He has submitted document about "Overflow Water". He reiterated that for the last 10 years 1.2 TMC overflow water from Kukadi was not released in any of the year to Sina Dam.
- b) The Government has given in-principle approval to 225 Mcft water to Sina Medium Project from Kukadi Project then how can Officers prepared 100 Mcft proposal for revised estimate.
- c) While planning Bhose-Khind link, the acute shortage of water in the Sina Medium project was considered.
- d) Therefore, minimum release of 225 Mcft in fair-weather season should be given in addition to flood water.

(v) This Authority expressed its observations as follows;

- a) In spite of specific direction of this Authority dated July 12, 2018 regarding issuing GR about revised water planning of the Kukadi Project, which shall indicate specific share of Sina Medium Project, the State Government has not mentioned revised water planning in the GR of the 3<sup>rd</sup> RAA dated November 2, 2018.
- b) As per the Sensitivity Analysis conclusion (Annexure 7 of SLTAC Report) success rate of combined project is 80.65% for irrigation if 5% deficits are ignored. Generally, projects are designed for 75% success



rate of irrigation. This indicates that transferring 225 Mcft of water into SMP would not have adverse impact on Kukadi Project.

- c) The State Government has also principally approved 225 Mcft water for Sina project vide its letter dated March 22, 2018.
  - d) The considerable expenditure is already incurred for transferring water from KLBC to SMP through Bhose-Khind tunnel.
- (vi) Taking into consideration the pleadings made by the parties & the inputs received during the hearing and observations recorded, the Authority issues the following Directions:
- a) *The Respondents shall give their interpretation of the term "Overflow water" within two weeks from the date of receipt of these proceedings.*
  - b) *The State Government shall issue Government Resolution declaring the water planning for Kukadi Project taking into consideration in principle approval given earlier vide its letter dated March 22, 2018 and the views of the Authority given above, within one month.*
  - c) *The matter is closed for the Final Orders.*

#### DATA AND FACTUAL MATRIX ON RECORD

9. The WRD vide letter No. कुकडी ०३१८/प्र.क्र.१३७/१८/मोप्र१ dated March 21, 2018 has given in principle approval to revised water planning of Kukadi Project which is as follows;

Sr. No.	Details	Original Water Planning (TMC)	Revised Water Planning (TMC)
1	Irrigation (Kukadi Project)	33.593	33.186
2	Chaudi, Dighi, Javala Weir	--	0.075
3	Sina Medium Project - Through Bhose-Khind Tunnel	--	0.225
4	Tukai Scheme	--	0.100
5	Bitkewadi Scheme	--	0.007
	<b>Total</b>	<b>33.593</b>	<b>33.593</b>



10. WRD vide G.R. dated November 2, 2018 has accorded 3<sup>rd</sup> RAA to the Kukadi Project. Water Planning incorporated in the 3<sup>rd</sup> RAA proposal of Kukadi Project is as follows;

Sr. No.	Details	Original Water Planning (TMC)	As per 3 <sup>rd</sup> Revised Administrative Approval (TMC)
1	Irrigation (Kukadi Project)	33.593	33.333
2	Chaudi, Dighi, Javala Weir	--	0.042
3	Sina Medium Project - Through Bhose-Khind Tunnel	--	0.100
4	Tukai Scheme	--	0.110
5	Bitkewadi Scheme	--	0.005
	<b>Total</b>	<b>33.593</b>	<b>33.590</b>

11. Planned Annual Utilisation of Kukadi Complex, as considered in the en-block water share of 599 TMC of the State of Maharashtra as communicated by the State Government to the Central Water Commission vide letter dated October 20, 2001 is as below;

Irrigation	35.450 TMC	(1003.831 MCM)
Drinking	2.78 TMC	(78.7207 MCM)
Industry	NIL	
<b>Total</b>	<b>38.230 TMC</b>	<b>(1082.551 MCM)</b>

12. Provision in the Integrated State Water Plan

Sr. No.	Name of the Project	Water Use in MCM (TMC)			
		Domestic	Industry	Irrigation	Total
507	Kukadi (5 Reservoirs)	10.661 (0.376)	3.614 (0.128)	1082.413 (38.225)	1096.688 (38.729)
10	Sina with Bhose-Khind	3.90 (0.14)	0	52.30 (1.85)	56.20 (1.98)
17	Mehekari	0	0	12.968 (0.458)	12.968 (0.458)



## DOCUMENTS RECEIVED AFTER FIANL HEARING

13. In response to directions of this Authority dated December 5, 2018 Respondent No. 4 has submitted the necessary information vide their letter dated January 1, 2019 & February 8, 2019. Also, Appellants vide their Affidavit date January 23, 2019 submitted additional information.

## BACKGROUND AND FACTUAL MATRIX

14. The Kukadi Project comprises of five dams in Pune District viz. Yedgaon & Manikdoh on Kukadi River, Vadaj on Meena River, Pimpalgaon Jog on Aar River and Dimbhe on Ghod River. The Kukadi Project Received Administrative Approval on November 8, 1966. It was proposed to irrigate 74,494 ha through combined live storage of five dams of 789.00 Million Cubic Meter ("MCM" for short). The project was planned to give irrigation benefits to scarcity areas of Pune, Ahmednagar & Solapur districts.
15. The Kukadi Project received first RAA on February 22, 1980 and was proposed to irrigate 1,09,753 ha through combined live storage of five dams of 855.33 MCM. During the Second RAA, which received on August 5, 1994, it was proposed to irrigate 1,46,053 ha through combined live storage of five dams of 846.89 MCM. Recently, November 2, 2018 the Kukadi Project has been accorded third RAA & it is now proposed to irrigate 1,44,912 ha through combined live storage of five dams of 864.48 MCM.
16. Sina Medium Project is constructed near village Nimgaon Gangarda across Sina River in Ahmednagar District. The project envisages construction of Dam with gross storage capacity of 2.40 TMC (67.96 MCM) & to give irrigation benefits to 8445 ha in Ahmednagar (7783 ha) & Beed (662 ha) Districts. Live Storage capacity of the dam is 52.30 MCM (1847 Mcft) & planned annual utilisation is 68.23 MCM (2409 Mcft). The Project received Administrative Approval on December 21, 1972. The gorge filling was done in 1983. The Sina Medium Project has two canals. Left Bank Canal is 13.20 km long & Right Bank Canal is 73 km long. The project along with canals was completed in all respect in 1991.



17. In 34 years i.e. from 1985-86 to 2018-19, Sina Medium Project was filled completely in 16 years.
18. The approved cropping pattern of the Sina Medium Project is eight monthly (Kharif 36%, Two Seasonal 5% & Rabi 56%). Season-wise planned water use and irrigation is as under;

Sr. No.	Season	Irrigation Potential (ha)	Water Use in Mcft
1	Kharif	3252	19.25
2	Rabi	5193	48.98
3	Hotweather	0	0
		8445	68.23

19. Sina Medium Project is also being used as a drinking water source. The details of water supply schemes sanctioned on Sina Medium Project are as under:

Sr. No.	Name of Scheme	Sanctioned Water in MCM (Mcft)
1	Grampanchayat Mirajgaon Water Supply	0.28 (9.89)
2	Nimgaon Gangarda & Other 17 villages	1.05 (37.09)
3	Grampanchayat Mandavgan Water Supply	0.23 (8.12)
	Total	1.56 (55.10)

Similarly, there are domestic water reservations of 0.0031 MCM water on Mehekari Dam.

20. Documents on record also revealed that the Ld. Collector, Beed and the Ld. Collector, Ahmednagar reserve water in Kukadi Complex for release of the same into Sina Medium Project to meet the drinking water needs of the Beed and Ahmednagar districts respectively. In the year 2018-19, the water reserved by the Ld. Collector, Ahmednagar was 9.91 MCM and that by the Ld. Collector, Beed was 1.55 MCM. Thus, total drinking water demand is about 13 MCM (459 Mcft).

21. Similarly, contingent drinking water demands on the Mehekari Project in the year 2018-19 are 1.044 MCM.



22. It is also observed that 30% losses are occurring while transferring the water from Kukadi Left Bank Canal to Sina Medium Project.
23. It is the admitted fact that the Kukadi Complex and Sina Medium Project are located in two independent hydraulic units (sub-basins). The Kukadi Complex is on Ghod Tributary in Upper Bhima sub-basin whereas Sina Medium Project is on Sina River in Sina sub-basin. Both the sub-basins are divided by a ridge and their catchments are entirely different.
24. As per the data available on record, the statement in Para 2.5.8 of *Maharashtra Water & Irrigation Commission Report, 1999*, annual average rainfall in Upper Bhima and Sina sub-basins is 908.9 mm & 620.6 mm respectively.
25. Further, as observed by the Irrigation Commission in the said Report, on the basis of natural availability of water, has classified Upper Bhima sub-basin as Normal & Sina sub-basin as Highly Deficit sub-basin.
26. Due to scanty rainfall in the catchment which is in Ahmednagar District, Sina Dam was filled on an average 50% till date. So even the dam is constructed, only 50% area gets irrigated. On this background, Executive Director, Maharashtra Krishna Valley Development Corporation ("MKVDC" for short), Pune vide it's Resolution dated November 20, 2000 has given approval to construct Bhose-Khind tunnel for transferring 1.20 TMC of flood water from Km 167 of KLBC to Sina Medium Project. The estimated cost of this tunnel at 1999-2000 price level was Rs. 118.94 crores. As per the Administrative Approval, out of 1.20 TMC of water, 0.70 TMC of water is for augmentation of the SMP and 0.50 TMC of water is to be further transferred to Mehekari Dam.
27. The Bhose-Khind Tunnel is now in operation. As per the data on record, on an average 441 Mcft of water has been transferred from Kukadi Complex to SMP during the period of 2012-13 to 2018-19. The maximum water transferred in the year 2013-14 was 793 Mcft.
28. Although, MKVDC has approved the augmentation of Sina Medium Project and Mehekari Project in Sina sub-basin by transfer of water from Kukadi Complex, it has not made any provision in the project report of



the Kukadi Project. It is observed that the MKVDC, Pune has framed this proposal on ad-hoc basis without hydrological study. There is just a mention that it will take 36 days to transfer 1.20 TMC of water at the rate of 11 cubic meter per second. However, availability of overflow water for 36 days was not ensured by any historical data or by simulation studies. Also, the extent of augmentation required to be made to Sina & Mehekari Projects was found to be decided on ad-hoc basis without any detailed water planning.

29. The Appellants vide their affidavit dated October 23, 2018 on behalf of farmers, who have cultivated Sugarcane, have emphasised the need of releasing water from Kukadi Complex to Sina reservoir for survival of already planted the Sugarcane. However, from documents on record, it is seen that the cropping pattern of Sina Project is eight monthly & there is no provision for water intensive crops like Sugarcane.

#### FRAMING OF ISSUES

30. This Authority, having considered the nature of the case, the order passed by the PDRO, the contentions made in the Appeal & submissions of the parties, the documents placed on record as well as data submitted, following relevant issues are drawn for consideration and adjudication:
- (i) *Whether the Order passed by the PDRO dated March 3, 2018 is liable to be interfered with or to be quashed & set aside?*
  - (ii) *Whether any interstate aspect is involved in the subject matter?  
If yes, whether any of the provision in the Krishna Water Dispute Tribunal Award (KWDT Award) is violated due to diversion of water from Kukadi Dam Complex to the Sina Medium Project?*
  - (iii) *Whether the Sina Medium Project is entitled to get 1.20 TMC of water from Kukadi Complex on permanent basis?  
If not, what quota of water needs to be transferred from Kukadi Complex to Sina Medium Project for mitigating the impact of water scarcity?*
  - (iv) *Whether any specific guidelines or reliefs are required to be given in the larger interest of the beneficiaries of the SMP?*





## FINDINGS OF THE AUTHORITY

31. This Authority, after reviewing the pleadings, submissions and evidences on record has adjudicated the above issues. The findings of this Authority on the above issues are as under:

(i) *Whether the Order passed by the PDRO dated March 3, 2018 is liable to be set aside?*

This Authority has examined the impugned order as passed by the PDRO for Bhima Basin dated March 3, 2018. The Authority has observed that the PDRO has decided the matter only on the basis of provisions in the Detailed Project Report (DPR) of the said Kukadi Project. The PDRO has not considered any of the provisions in the MWRRA Act, 2005. Also, the PDRO has not adjudicated all the issues referred to him.

Hence, in the considered opinion of the Authority, the said Order of the PDRO is liable to be quashed & set aside.

Thus, the answer to the issue is in affirmative.

(ii) *Whether any interstate aspect is involved in the subject matter?*

*If yes, whether any of the provision in the Krishna Water Dispute Tribunal Award (KWDT Award) is violated due to diversion of water from Kukadi Dam Complex to the Sina Medium Project?*

a) The Kukadi Complex and Sina Medium Project as well as Mehekari Medium Project are in K5 sub-basin of the Krishna Basin. River Krishna is the Inter-State River flowing thorough three States viz. State of Maharashtra, Karnataka & Andhra Pradesh (Undivided).

b) A dispute amongst these riparian States had arisen. The Krishna Water Dispute Tribunal was constituted on April 10, 1969 (herein afterwards refer as KWDT-I) by the Government of India under provisions of the Interstate Dispute Act, 1956. Its Report with Decision was delivered in 1973 and further Report with Decision in May 1976. This final Award is binding on all riparian States. The clause XIV of the KWDT-I Award provided a review of its Award after May 31, 200.



c) Thereafter, Krishna Water Dispute Tribunal - II (KWDT-II) was constituted on April 2, 2004. The KWDT - II has given its decision / Report on December 30, 2010 and further Report on November 29, 2013. However, the KWDT - II Award is not yet notified and hence not in force and binding to all riparian States.

**Thus, answer to the first part of the issue under consideration is in affirmative.**

d) KWDT - I Award vide its final Order has determined 2030 TMC of water at 75% dependability, distributed the same amongst riparian States. The water allocated to the Maharashtra State is 585 TMC (560 TMC + Regeneration/Return Flow to the extent of 25 TMC).

e) Further by virtue of the agreements signed between Andhra Pradesh and Karnataka dated August 4, 1978 and agreement between Karnataka and Maharashtra dated January 29, 1979, the State of Maharashtra is entitled to use 14 TMC of additional water rights due to diversion of 80 TMC of Godavari water by the State of Andhra Pradesh into the Krishna Basin from Polavaram Project.

f) The Government of Maharashtra in the 9<sup>th</sup> Cabinet sub-committee meeting convened on July 7, 2009, out of this additional entitlement of 14 TMC, has allocated 1.20 TMC of water to SMP through Bhose-Khind Tunnel.

g) Thus, due to diversion of water from KLBC to SMP, no provision in the KWDT-I Award is violated.

**Thus, the answer to the second part of the issue under consideration is in negative.**

*(iii) Whether the Sina Medium Project is entitled to get 1.20 TMC of water from Kukadi Complex on permanent basis? If not, what quota of water needs to be transferred from Kukadi Complex to Sina Medium Project for mitigating the impact of water scarcity?*

a) The Appellants argued that the SMP is in drought prone area and to give relief to this drought prone area, MKVDC Pune vide its Order dated November 20, 2000 has sanctioned Bhose-Khind Tunnel for diversion of 1.20 TMC of flood water from Kukadi Complex to SMP.



The Appellants have further claimed that they are entitled to get 1.20 TMC of water from the Kukadi Complex on priority & on permanent basis and prayed for entitlement of 1.20 TMC. The Appellants while establishing claim on 1.20 TMC of water have relied upon Section 11 and 12 of the MWRRA Act, 2005. The Appellants in its Affidavit dated October 22, 2018 has also prayed for transfer of water which is required for survival of the sugarcane.

- b) Responding to the above submissions of the Appellants, the Respondents categorically pointed out & submitted that;
- b1) There is a provision of only 100 Mcft (2.83 MCM) water in the Project Report of the Kukadi Project for diversion to SMP.
- b2) The discharge carrying capacity of the Bhose-Khind Tunnel is 400 cusecs and it requires 36 days to transfer 1.20 TMC of flood water into SMP. Thus, 1.20 TMC of flood water can be transferred only if Kukadi Project's overflow exists for 36 days.
- b3) The beneficiaries on the downstream side in the Ghod sub-basin also have right on the water flowing downstream of Kukadi Project.
- c) This Authority, from the documents on record and the pleadings made, has noted that;
- c1) Although, KWDT has considered both the Kukadi Complex & SMP in same K5 sub-basin in Tribunal Award, these two projects are in different hydraulic sub-basins having totally independent catchment areas.
- c2) As per the Hydrological and Simulation Study carried out by the Central Design Organisation, Nashik, the 75% dependable yield available at the Kukadi Project site is 1082.57 MCM (38.22 TMC). However, planned water use is 1114.84 MCM (39.366 TMC) which includes only 2.83 MCM (0.10 TMC) for SMP.
- c3) The SMP is located in Sina sub-basin which is classified as "Extremely Deficit Sub-basin". SMP has given relief to the beneficiaries in the command of the project to some extent. However, it is observed that due to scanty rainfall in the catchment, the yield is not assured.
- c4) SMP is being used as drinking water source not only by the beneficiaries of the command but by the adjoining population also.



c5) Planned annual water utilisation of the SMP is 68.23 MCM, but there is no provision for drinking water in the project planning. In ISWP water use considered for SMP with Bhose-Khind Tunnel is 56.20 MCM, which includes 3.90 MCM for domestic use and 52.30 MCM for agricultural use. However, the net drinking water supply demand is often considerable in this project. In the year 2018-19, it was 13.00 MCM.

c6) Gross storage capacity of the SMP is 67.96 MCM. It is observed from past data that there are some instances in which due to scanty rainfall, the water received in the dam was even not adequate to meet the drinking water needs viz. 2002-03, 2012-13, 2015-16.

c7) MKVDC, Pune vide its Order dated November 20, 2000 has given the Administrative Approval to the Bhose-Khind Tunnel Project for transferring 1.20 TMC (33.98 MCM) of flood water from Kukadi Complex to SMP.

c8) This decision of transferring 1.20 TMC of water was taken on ad-hoc basis without any hydrological studies. Even there is no clarity about definition of flood water. The Respondent could not submit the satisfactory interpretation of the term "Flood Water" even after written directions. Further, 1.20 TMC of flood water can be transferred only if the Kukadi Dam continues to overflow for 36 days, which is a very rare possibility. Since 2012-13, on an average 0.441 TMC of water was transferred. The maximum water transferred was 0.793 TMC in 2013-14.

c9) The lower riparian dams in Ghod sub-basin have also right on the water overflowing from Kukadi Dam.

c10) The command area of the SMP is not delineated under MMISF Act, 2005.

d) Legal aspects involved in the subject matter are;

d1) The Appellants have just made the mention of Section 11 & 12 of the MWRRRA Act, 2005. But they have not elaborated how these provisions are attracted in their case, either in Appeal or during their pleadings before this Authority.

d2) Hon'ble High Court at Bombay in PIL 173/2013 has held that the clause (c) sub-section (6) of Section 12 of the Act is not an



independent or a standalone provision. Hon'ble High Court, in the same judgement, has also held that the delineation of command area is necessary to enable the Regulatory Authority to exercise the powers under Sub-section (6) of the Section 12 of the Act.

d3) The powers, functions and the duties entrusted upon this Authority under the MWRRA Act, 2005 as provided in Section 11 (c) reads as under:

*"11(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."*

Thus, this provision applies during scarcity.

d4) The developments happened post conclusion of the hearing in the present case are also relevant to determine the contentious issue and therefore the proceedings and the minutes of the State Water Council ("SWC" for short) under the MWRRA Act & its minutes recorded in its meeting dated February 11, 2019 which has approved the Integrated State Water Plan ("ISWP" for short) for the State, are also need to be taken into the account while deciding the present appeal. The minutes of this meeting are also the part of ISWP. These minutes has given some operating guidelines for inter and intra sub-basin transfers. The relevant guidelines as far as the application in the present case, are as stated below;

*4(c) Water transfer schemes involving lifts shall be planned for minimum water needs of the Deficit basin / sub-basin. Minimum water needs, for this purpose, shall be considered as water per ha of CCA falling short of 3000 Cubic Meter considering its own availability as mentioned in column 10, Table 6.13, Volume - 1 of ISWP.*

*4(f) No water shall be exported from average, deficit or extremely deficit basins/sub-basins; water shall be exported from surplus and abundant basin/sub-basins only and water above 8000 Cubic Meter per ha of CCA shall only be exported.*

e) In view of the facts and legal provisions discussed as above, this Authority has now reached to the following conclusions.

e1) The command area of the SMP is yet to be delineated under Maharashtra Management of Irrigation System by Farmers Act, 2005



*[Handwritten signature]*



(MMISF Act). Moreover, the Kukadi & Sina Medium Project are located in all together two different sub-basins. Kukadi Complex is in Ghod sub-basin where as Sina Medium Project is in Sina sub-basin. Both these sub-basins are having separate independent catchments and are hydrologically independent.

Therefore, in the considered opinion of the Authority, the provisions under Section 12 are not attracted in this case.

e2) During the scarcity period, minimum water required, to meet the drinking water needs and agricultural needs to mitigate scarcity impact, need to be ensured in view of the provision in Section 11(c) of the Act. However, these provisions under sub-section (c) of section 11 are attracted only during scarcity.

e3) Thus, SMP is not entitled for transfer of 1.20 TMC of water from Kukadi Complex on permanent basis in light of the provisions in Section 11 or Section 12 of the MWRRA Act, 2005.

**Thus, the answer to the first part of the issue is in negative.**

e4) However, as expressed above, by virtue of provision under sub-section (c) of Section 11 of the MWRRA Act, 2005 SMP is entitled to get some quota of water from Kukadi Complex whenever the water naturally received in Sina Dam is inadequate to mitigate the impact of scarcity.

e5) Further, in view of this Authority, impact of scarcity can be mitigated if, minimum water required to meet the drinking water needs and sustainable agriculture is ensured in the interest of stakeholders.

It is relevant to note that earlier in 2008, a Committee was appointed by Godavari Marathwada Irrigation Development Corporation, Aurangabad under the Chairmanship of Shri. V. M. Ranade, Retired Secretary, Water Resource Department. One of the mandates given to this Committee was to give guidance regarding minimum water needs in the water deficit basins.

The Committee has recommended ensuring minimum of 3000 Cubic Meter of water (excluding water received naturally from rain) per ha of Irrigable Command Area (ICA) in deficit sub-basins to overcome scarcity impact.



e6) Hence, in view of this Authority, minimum water required to mitigate the impact of the scarcity in SMP can be considered as water required to meet following demands;

- 1) Norm based drinking water requirement of water supply schemes on the SMP and other norm based contingent demands as placed by the District Authorities.
- 2) Minimum agricultural demand at rate of 3000 m<sup>3</sup> per ha of ICA of the SMP. The irrigation benefitted area of SMP being 8445 ha, minimum agricultural requirement is (8445 X 3000) is 25.33 MCM
- 3) Corresponding evaporation and other losses.

After deciding the minimum water requirement of SMP as above, augmentation required for SMP can be computed as under:

Augmentation = Minimum water requirement to mitigate the required for SMP impact of the scarcity in SMP - Naturally in particular year available water in the SMP including the water used in Kharif season.

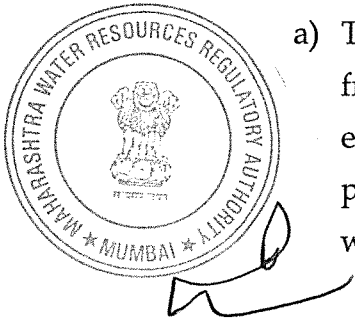
Minimum water requirement of Sina-Mehkari Project & augmentation required can also be determined on the basis of similar principles.

Thus, water required to be transferred from Kukadi Complex to SMP through Bhoose-Khind Tunnel, during scarcity periods shall be equal to the augmentation required to the SMP and Sina-Mehkari projects to ensure minimum water demands for mitigating the impact of water scarcity.

Thus, the second part of issue is answered accordingly.

(iv) *Whether any specific guidelines or reliefs are required to be given in the larger interest of the beneficiaries of the SMP?*

- a) The Appellants are cultivating sugarcane and are demanding water from Kukadi complex for survival of the sugarcane. SMP being in extremely water scarce sub-basin, only eight monthly cropping pattern should be adopted in the command area of this project and water intensive crops like sugarcane should be banned in order to



distribute the benefits of available water amounts large number of beneficiaries of the project.

- b) This Authority also finds it necessary to use the available water in SMP in an efficient manner. The Respondents need to monitor and ensure the compliance of all conditions stipulated in GR dated November 21, 2002 viz. installation of meters, using micro-irrigation techniques etc. under which the permission to individual lift owners are given. Further, it is also necessary to monitor and limit the quantity of water being lifted by individual lift owners within their season-wise sanctioned quota of water.

### DIRECTIONS

32. Having heard the parties to the litigation, and after giving due consideration to the documents as well as data on record, submissions made by the parties and having adjudicated the issues framed, this Authority, hereby directs as under:

- (i) Order passed by the PDRO dated March 3, 2018, being inconsistent with the provisions of the MWRRRA Act, 2005 is hereby quashed and set aside.
- (ii) The Appellants' demand of transferring 1.20 TMC of water from the Kukadi Complex to SMP on priority & on permanent basis during the regular rotations of Kukadi Project is not sustainable as per the provisions in the Act and hence, cannot be considered in light of the findings recorded herein above and thus, is rejected.
- (iii) However, in the scarcity years, the Respondents are directed to augment the water contains in Sina Medium Project by transferring water from Kukadi Complex through Bhose-Khind Tunnel, when the water contains in the SMP are inadequate to meet the impact of scarcity. Respondent No. 4 shall decide the quantity of augmentation required in particular year on the basis of principles mentioned in Para 31 (iii) above. The Respondent No. 4 shall strive to augment the contents of SMP by transfer of surplus water during the periods of overflow of the Yedgaon Dam of the Kukadi Complex. If the water transferred during the overflow period and





the yield received in Sina Medium Project taken together is inadequate to meet the minimum water requirements, the balance quantity of water shall be transferred during rotation periods of the Kukadi Left Bank Canal.

Similarly, if in a particular year, the water availability in Kukadi Complex is inadequate to meet its own minimum water demands, computed on the identical principles as discussed in Para 31 (iii) above, the quantity of water to be transferred shall be restricted to meet the drinking water demands of SMP and Mehekari Project.

- (iv) Both the Respondent No. 4 & the Appellants are directed to strictly practice 8 monthly irrigation in the command of SMP. The water intensive & perennial crops like sugarcane should be discouraged.
- (v) Respondent No. 4 is also directed to monitor and ensure the compliance of all conditions stipulated in the GR dated November 21, 2002 under which the permissions to individual lift owners are given.
- (vi) The Respondents are hereby directed to file compliance report every year within three months from the expiry of the irrigation year.

The Appeal is accordingly disposed off with no order to the costs.

Delivered on July 15, 2019

*S. T. Sangle*  
15/07/19

(Dr. S. T. Sangle)  
Member (Economics)

*Vinod J. Tiwari*  
15/07/2019

(Vinod J. Tiwari)  
Member (Law)



*V.M. Kulkarni*  
15-07-2019

(V.M. Kulkarni)  
Presiding Member (W.R. E.)

