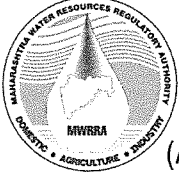




सत्यमेव जयते

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)

MWRRA/2019/Legal/Case No. 9 (2019)/273

Date : 13/05/2020


Case No. 9 of 2019

In The Matter of

An Appeal filed by Khed Economic Infrastructure Private Limited
against the order of PDRO dated April 25, 2019.

Please find enclosed herewith a copy of MWRRA Order No. 04/2020 dated 13/05/2020 in the above matter.

Encl : As above


(Dr. Ranmath Sonawane)
Secretary, MWRRA

Copy for information & necessary action to :-

1. Khed Economic Private Limited, Having its registered office at Level-4, Amar Avinash Corporate Plaza, Bund Garden Road, Pune-411001 (Appellant)
2. Adv. Nachiket Yagnik, DSK Legal, Advocates and Solicitors, C-16, Dhanraj Mahal, Apollo Bunder, Chhatrapati Shivaji Marg, Colaba, Mumbai- 400001 (Counsel for Appellant)
3. Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Pune- 411011 (Respondent No. 1)
4. M/s. Vindhyachal Hydro Power Ltd, 214, Empire House, Dr. D.N. Road, Fort, Mumbai- 400001 (Respondent No. 2)



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)

ORDER NO. 04 / 2020

In The Matter of

An Appeal filed by Khed Economic Infrastructure Private Limited (KEIPL)
arising out of the order of PDRO dated April 25, 2019 regarding not
granting permission to lift 18 MCM water directly from Chaskaman
Reservoir instead of downstream of Chaskaman Dam - Case No. 9 of 2019.

Khed Economic Infrastructure Private Limited (KEIPL),
Having its registered office at Level-4,
Amar Avinash Corporate Plaza,
Bund Garden Road, Pune-411001

Appellant

---Vs---

- 1) Maharashtra Krishna Valley Development Corporation,
Sinchan Bhavan, Barne Road,
Pune- 411011
- 2) M/s. Vindhyachal Hydro Power Ltd. (VHPL),
214, Empire House, Dr. D.N. Road,
Fort, Mumbai- 400001

Respondents



[Handwritten Signature]

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

Date : May 13, 2020

BACKGROUND

1. Khed Economic Infrastructure Pvt. Ltd (KEIPL) – Appellant, a joint venture Company between Maharashtra Industrial Development Corporation & Kalyani Group of Companies, having aggrieved by the Order of the Primary Dispute Resolution Officer of the Bhima basin, (“PDRO for short) dated April 25, 2019, has approached in appeal to this Authority, under Section 22 of the Maharashtra Water Resources Authority Act , 2005 (“ Act “ for short).

Background

2. Chaskaman Irrigation Project is located in Khed Taluka of Pune district. The project was constructed primarily for irrigation purpose. As per the project report, the annual utilization of the said project is 291.005 Million Cubic Meters (“MCM” for short) which includes 21.405 MCM for evaporation and rest of the water for providing irrigation facilities to 55, 214 Ha Culturable Command Area, located in Khed and Shirur talukas.
3. Respondent No. 1, Maharashtra Krishna Valley Development Corporation (“MKVDC” for short) had entered into an agreement with M/S Vindhychal Hydro Power Limited, the Respondent No. 2, on June 30, 1999. The said agreement is for setting up of Small Hydro Project (“SHP” for short) at the foot of the Chaskaman dam. The said agreement was pursuant to the policy of the State Government dated, December 20, 1997, which was intended to promote participation of the private sector in generation of the electricity for captive purpose. The said SHP was commissioned in the year 2002 and is in operation since then. The water to be released for the irrigation is routed through the SHP. The water after the power generation is released back into the irrigation canal.



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण
Maharashtra Water Resources Regulatory Authority

9th & 11th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai-400005.

Thus, the SHP generates Green energy which is of renewable nature, from the water which is being released for irrigation.

4. The Appellant has proposed to develop a Special Economic Zone (SEZ) for industrial sector along with Residential, Commercial, Recreational & other Social Infrastructure in the Khed City Project at villages Nimgaon, Dawadi & Kanersar, Taluka Khed and Village Kendur, Taluka Shirur, District Pune. The State Government initially had sanctioned total 48 MCM water for the said project vide letter dated 24/07/2008 based on meeting of the High Power Committee dated 01/07/2008. This sanction was valid upto 3 years and ultimately lapsed in the Year 2011 as no steps were taken by the Project Proponent. Later on the Appellant applied to the officials of Respondent No. 1 to allocate water for their standalone project.
5. The Appellant, vide letter dated December 10, 2014 made an application to Executive Engineer (EE), Khadakwasla Irrigation Division (KID), Pune for allocation of 22.50 Million Cubic Meter (MCM) of water for the Khed City Project from the Chaskaman Dam which was revised to 18 MCM vide letter dated February 16, 2015 after the remarks raised by EE, KID, Pune.
6. The Chief Engineer of the Respondent No.1, vide memorandum dated November 19, 2018 has sanctioned 18 MCM of water, out of which 11.60 MCM is for domestic consumption and 6.40 MCM is for industrial consumption. The source of water allocated to the Applicant is a river on the downstream side of the SHP. As per this memorandum, the Appellant is supposed to lift water from the river after power generation. The said permission of the Appellant is subjected to various other conditions stipulated in the said memorandum and the effective date of this memorandum is to be treated as the date of signing of an Agreement by the Appellant, with Executive Engineer in Charge of the said dam.

On the basis of the above said memorandum of the Chief Engineer, the Executive Engineer, in-charge, issued the Letter of Intent ("LOI" for short) on November 27, 2018, in favor of the Applicant. The said LOI



[Handwritten Signature]

had directed the Applicant to sign an Agreement, within six months from the date of issue of the Memorandum issued by the Chief Engineer i.e. up to May 18, 2019.

8. The Applicant instead of signing the Agreement later on approached to the PDRO with application dated March 5, 2019 against the LOI dated November 27, 2018 seeking following reliefs.

(i) Directions to Respondent No. 1 to allocate 18 MCM of water from Chaskaman dam itself, instead of river downstream as stated in the memorandum read with the LOI .

(ii) Directions to charge the Applicant for water use, at domestic water use rates which are applicable to Gram Panchayat/ULB/Municipal Corporations and not at 5 times the rate applicable to the Municipal Corporations

(iii) Pending final disposal of the Application, stay on Orders dated November 19, 2018 and LOI dated November 27, 2018.

9. The PDRO, vide his order dated April 25, 2019, disposed of the case denying the reliefs sought, further observed that the initial permission granted by the State Government vide its letter dated 24/07/2008 and the memorandum dated 06/09/2008 issued on the basis thereon has already been lapsed as the agreement has not been signed and executed so far. The PDRO further observed that the memorandum and the LOI is issued based on the terms and conditions of the sanctions given by the State Government and as such no concessions or reliefs can be granted against the terms and conditions stipulated in original sanction. Accordingly, PDRO disposed of the application of the Appellant based on the documentary evidences as recorded in his Order, copies of which are also appended to the said Order.

10. Therefore, the Applicant, having felt aggrieved by order of the PDRO dated April 25, 2019, has filed this Appeal under Section 22, of the MWRR Act, 2005 on 23/05/2019.

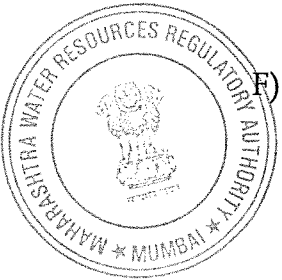


GIST OF THE PRAYERS

11. The Appellant, through his Appeal filed before this Authority, has prayed for following reliefs:

- A) To set aside the Impugned Order of the Ld. PDRO dated April 25, 2019.
- B) To direct the Respondent No. 1 to allocate 18 MCM water per annum for the said Project from the Chaskaman Dam reservoir in accordance with the Policy of the State Government, MWRRA order and pass appropriate orders in accordance with law.
- C) In the alternative, in case the Hon'ble Authority is not inclined to grant relief at (B) above, this Hon'ble Authority be pleased to direct the Respondent No. 1 to reconsider the application of the Appellant without taking into account the alleged loss of power generation and/or any objection raised by Respondent No. 2 and after giving reasonable opportunity to the Appellant, of presenting its case, pass an appropriate order keeping in mind the G.R. dated January 21, 2003, findings given by the Chief Engineer, Irrigation Department, Pune vide his letter dated July 15, 2017 and other applicable legal provisions.
- D) To direct the Respondent No. 1, to charge the Applicant, at the domestic water use rate, applicable to the Gram panchayats / ULBs / Municipal Corporations.
- E) To stay, the operation of the Order dated November 19, 2018 as also the Letter of Intent dated November 27, 2018, issued pursuant to the Order dated November 19, 2018 and to direct the Respondent No. 1 not to take any steps/actions on the basis of the said Letter of Intent and/or the Order dated November 19, 2018 have lapsed or towards cancellation of the same.

For such other reliefs as may be deemed fit.



THE PROCEEDINGS BEFORE THIS AUTHORITY

12. After filing of the Appeal, the Authority conducted three hearings in the matter i.e. on August 06, 2019, January 07, 2020 & January 27, 2020 and gave fair & equal opportunities to the parties to present their case on merit.

A) GIST OF THE FIRST HEARING ON AUGUST 06, 2019

13. This hearing was attended by the representative & Advocates of Appellant and also by the representative & Advocates of Respondent No. 1 & 2.
14. Adv. Jatin Pore for the KEIPL - Appellant, outlined the matter in brief and submitted that the PDRO has issued Order, dated 24 April 2019, without taking any hearing on their Application / Petition dated 05 March 2019. PDRO in his Order has expressed his inability to intervene, in the said permission, which was granted by the Hon'ble Minister, WRD and the Chairman, MKVDC, Pune under the powers vested in it by the Section 16A of the MWRRRA (Amendment & Continuance) Act, 2011.
15. Adv. Jatin Pore further submitted that even as per the State Water Policy, it is preferred to have direct pipeline from reservoir for non-irrigation water supply. Water Resources Department in its detailed analysis has found that there will be meagre reduction of 0.04 Million units as against 8.03 Million units of power generation by VHPL - Respondent No. 2, if the water is lifted by the Appellant directly from the Chaskaman reservoir instead of downstream.
16. On enquiry, as to why the reply has not been filed by Respondent No. 1, even after the notice was given by this Authority on 11 July 2019, Adv. J. S. Yadav submitted that Adv. Vilas Tapkir will make submission on behalf of MKVDC, Pune - Respondent No. 1 and requested to grant two weeks' time to file reply.



17. Adv. Ms. Shivangi Ray, Advocate for VHPL - Respondent No. 2, filed the Vakalatnama and submitted the Affidavit in Reply on behalf of Respondent No. 2. The copies of the same were given to Appellant and Respondent No. 1 during the hearing.
18. Taking into consideration the pleadings made by the parties & the inputs received during the hearing, the Authority issued following Directions:
- (i) Respondent No. 1 should file their Affidavit in Reply within two weeks' time and copy of which shall be served to all concerned.
 - (ii) The Appellant may file Rejoinder to the Reply of the Respondents, if any, within two weeks' time with service of copies to all concerned.
 - (iii) Parties to the litigation were directed to check the possibility of alternative layout which can optimally ensure efficient use of water for both power generation as well as industrial use and submit their comments thereon.

B) GIST OF THE SECOND HEARING ON JANUARY 07, 2020

19. This hearing was attended by the representatives & Advocates of Appellant and representatives & Advocates of Respondent No. 1 & 2.
20. Adv. Jatin Pore for the KEIPL - the Appellant, informed that as per the directions, given in the last hearing, regarding assessment of possibility of alternate layout, the Appellant had couple of meetings with the M/s. VHPL - Respondent No. 2. However, both parties could not reach to a conclusion and it was decided to have another round of meeting with senior representatives of both the parties. Thus, he requested to adjourn the hearing. He further submitted that the Appellant's main apprehension is that they need regular supply of water and they cannot construct small storage downstream of Chaskaman Dam.
21. Shri. M. N. Ramachandran, representative for Respondent No. 2, submitted that during the meeting with the Appellant, it was observed that they have two main apprehensions i.e. water tariff and continuous water supply. He further submitted that as per the Agreement between the Respondent No. 2, all water should pass through power house. If the



water is allotted to Appellant from the Dam, it will reduce the power generation.

22. Er. B. K. Shete for Respondent No. 1, submitted that the Appellant is not entitled to file application before this Authority, as Appellant is not in Agreement with the Respondent No. 1 and thus, the said application need to be rejected. Also, there has been revenue loss to Respondent No. 1 as there is no use of 18 MCM water, reserved for the Appellant, without paying any commitment charges which ought to have been levied, if agreement is signed.
23. The Authority refused to give further adjournment as it causes revenue loss to the Respondent No. 1. The Authority further expressed that the Appellant has two options, either reach to consensus solution in the form of alternate intake layout, between parties within 15 days or withdraw the present application with a liberty to file a fresh, if it require more time for consensus building. If the parties in litigation could not comes out with consensus solution in the form of alternate layout for lifting water till further hearing, this Authority will conduct the final hearing and after giving opportunities to all parties to present their arguments will decide the matter. Adv. Jatin Pore submitted to give 15 days' time.
24. Considering the submission made, the Authority directed the parties to sit together to workout mutually consensus technical solution. Respondent No. 1 shall co-ordinate such meeting and all parties shall participate. The report of same be submitted to this Authority before next date.

C) GIST OF THE THIRD & FINAL HEARING ON JANUARY 27, 2020

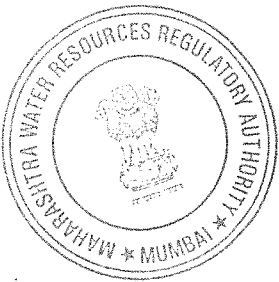
25. This hearing was attended representatives & Advocates of Appellant and representative & Advocates of Respondent No. 1 & 2.
26. Adv. Vilas Tapkir, for MKVDC, Pune - Respondent No. 1, submitted the minutes of meeting dated January 15, 2020 and stated that the meeting was adjourned without any conclusion regarding alternate solution.



However, Adv. Jatin Pore for the KEIPL - Appellant submitted that they are not agreeing with the Para 9(b) & 10 of the said minutes of meeting.

27. Adv. Pradeep Deshmukh for the KEIPL – Appellant, specifically pointed out and submitted that the PDRO has not followed proper decision making process and he has not even acted as a quasi-judicial officer. The Appellant, in the Year 2014 made application to the Respondent for 18 MCM of water which is based on the earlier sanction of State Government in 2008 for Khed City SEZ project. He has also objected to the Respondent No. 1's action on calling Respondent No. 2's comments on Appellant's proposal which in his opinion was unwarranted.
28. Adv. Pradeep Deshmukh, further submitted that State Government has decided the Sectoral Allocation. Accordingly, Respondent No. 2 is drawing water from 75% allocation of irrigation and Appellant is demanding water from non-irrigation allocation. The State Government has also sanctioned 6 - 7 non-irrigation reservations from Chaskaman Dam. The Authority pointed out that at the time of water allotment to Respondent No.2, all water was reserved for irrigation purpose only, as per the project report of the said dam.
29. Adv. Pradeep Deshmukh, further submitted that PDRO is established under the MWRRA Act, 2005 and he should give proper hearing & then to dispose the matter. However, in the Appellant case, the PDRO has not taken any hearing & disposed the matter on the basis of the documents relied upon by him unilaterally which PDRO referred it in his Order. He worked as subordinate to High Power Committee instead of working as quasi-judicial authority & not applied his independent mind to the facts and the grounds of the matter. Thus, a principle of natural justice was not observed and it is therefore requested to set aside the PDRO Order dated April 25, 2019 and the matter be remanded back to PDRO for fresh hearing. The Authority noted that the Order passed by the PDRO seems came to be passed without hearing the Appellant though the PDRO referred and relied upon the documents referred in the Order.

30. Adv. Vilas Tapkir for MKVDC, Pune - Respondent No. 1, submitted that EE CID, Pune vide letter dated November 27, 2018 issued LOI to



Appellant to sign and execute an Agreement. However, Applicant has failed to do the needful till date. Thus, they are not the customer of the WRD. Therefore, as per the Para 11 of MWRRA (Conduct of Business) Regulation, 2013, the Appellant's Appeal is not maintainable as they do not have locus, as the legally binding agreement is not in existence.

31. Adv. Shyam Dewani, Advocate for VHPL - Respondent No. 2, submitted that the SHP will be adversely affected if the water is released directly from the reservoir. He pointed out that the design of SHP has been executed considering the flow of water from the streams which came to be further released for irrigation purpose after the hydro-power generation. He pointed out that no prejudice will be caused to the Appellant, if the water for its project is lifted from downstream as per the memorandum & LOI issued by the officials of the Respondent No. 1. He, however, expressed that he has no objection to remand the matter back to PDRO. He further submitted that the main issue is not about the 18 MCM water but is about point of lifting. If the Authority remands back the matter to PDRO, then all contention should be kept open and the Authority should frame the issue on which the PDRO should conduct the hearing.
32. Adv. Jatin Pore for Appellant replied that if the Appellant entered into an agreement, they will not be able to raise objections to it and this way the Appellant cannot be forced to enter into an agreement. As per Para 11(c) of MWRRA (Conduct of Business) Regulation, 2013, the Appellant has locus to file an Appeal. The term "user" in Para 11(c) of said Regulation has broad meaning i.e. user including prospective users also.
33. After hearing all the parties, the Authority closed the proceedings for the Order.



FRAMING OF ISSUES

34. This Authority, having considered the contentions made in the Appeal & submissions of the parties, the documents placed on record as well as



data submitted, framed the following relevant issues for consideration and adjudication:

- (i) *Whether the Impugned Order of the PDRO dated April 25, 2019 is passed without giving an opportunity and following principles of natural justice?*
- (ii) *Whether the Impugned Order is liable to be set aside?*
- (iii) *If any other appropriate Order is required to be passed?*

FINDINGS OF THE AUTHORITY

35. This Authority, after giving due consideration to the pleadings, submissions and evidences on record has adjudicated the above issues. The findings of this Authority on the issues framed above are as under:

- (i) *Whether the Impugned Order of the PDRO dated April 25, 2019 is passed without giving an opportunity, following principles of natural justice & assessing the facts on merit?*

a) The bare perusal of the impugned order revealed that PDRO has committed procedural error in deciding the case. He has passed the Order, dated April 25, 2019, without conducting any hearing. He should have given reasonable opportunity of hearing to all the parties in litigation. As such the principles of natural justice have not been followed.

b) It is further observed that the contentions of the Appellant to the extent that PDRO expressed his inability to intervene in the decision of Hon. Minister (Water Resources) and Ex-officio Chairman of the MKVDC, on the ground that the said permission is as per the provisions in Section 16(A) of the MWRRA (Amendment and Continuance) Act, 2011, seems unfounded. This Authority, is of the opinion that the application before the PDRO was primarily against the LOI issued by the Executive Engineer in charge of the project who issued LOI based on the terms & conditions mentioned in the permission given by the MKVDC, Pune. As such, the point of source on the downstream of the river is arrived from the said permission. The concerned Executive



Engineer is duty bound to observe the terms & conditions of the original permission given by the MKVDC, Pune. As such, the PDRO while deciding the said point relied upon the facts that the LOI is issued on the basis of terms & conditions of the original permission and thus has not caused any prejudice to the Appellant. Moreover, it is the fact that the said original permission of MKVDC, Pune was not under challenge, as such being a quasi-judicial authority, the question of assessing the decision of the Chairman MKVDC, on merit, and confirm its correctness or otherwise, does not fall in the powers & domain of the PDRO, before whom only the LOI issued by the Executive Engineer in charge was under challenge. If at all, the Appellant feels aggrieved by the terms & conditions of the original permission given by the MKVDC, Pune, he would have approached the concerned authority for change in the said terms & conditions but in the case in hand, the Appellant without doing so opted to challenge the LOI before the PDRO under the provisions of Section 22(1) of the MWRRRA Act, 2005 and now approached this Authority by way of an Appeal under Section 22 (3) of the MWRRRA Act, 2005. As such this Authority do not find anything wrong with the assessment of the PDRO to the extent of above.

Thus, the issue is answered partly in affirmation.

(ii) Whether the Impugned Order of the PDRO dated April 25, 2019 is liable to be set aside?

This Authority has observed that the PDRO has not followed the principles of natural justice as no fair opportunity of hearing was given to the Appellant. Hence, this Authority is of the considered view that the Impugned Order of the PDRO is liable to be set aside and the matter needs to be remanded for fresh adjudication.

Thus, the issue is answered in affirmation.



(iii) *If any other appropriate Order is required to be passed?*

(a) Applicant has prayed for directions to the Respondent no.1, not to take steps/actions on the basis that the Letter of Intent or the Order passed dated November 19, 2018 have lapsed.

(b) This Authority has observed that the Letter of Intent was issued to the Applicant on November 27, 2018. As per the LOI the time limit prescribed for signing the Agreement was six months. PDRO, in its Order has indicated that the said permission of the Applicant shall automatically lapse if the he fails to deposit Irrigation Restoration charges and sign the Agreement within six months from the date of LOI.

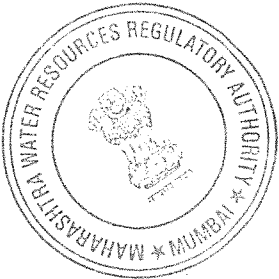
(c) The limit of six months has expired on May 26, 2019. However, before that the Applicant has filed this appeal on May 22, 2019. Hence, this Authority is also of considered view that the Applicant needs to be given protection against any coercive action, from Respondent No.1, till the case is finally decided by the PDRO .

The issue under consideration is answered accordingly.

DIRECTIONS

36. 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 as above, this Authority, hereby directs as under:

- (i) The Application is remanded for fresh adjudication on merit. The PDRO shall give reasonable opportunity of hearing to all the parties in litigation, including the Respondent No.2. In order to have fair trial before the PDRO, liberty is granted to all the parties in litigation to file any additional documents / evidence before the PDRO, which shall be considered by the PDRO. The proceedings shall be completed by the PDRO within six months from date of issue of this Order



- (ii) The Respondent No.1 or any of the officers responsible to him shall not take any coercive action, against the Appellant as well as Respondent No.2, till the case is finally decided by the PDRO.

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

Delivered on May 13, 2020

Sd/-

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

Sd/-

(Vinod J.Tiwari)
Member (Law)

Sd/-

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

Sd/-

(K. P. Bakshi)
Chairman

(Dr. Ramnath Sonawane)
Secretary

