



Before the  
**Maharashtra Water Resources Regulatory Authority**  
9<sup>th</sup> Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai-400 005  
Tel. No. 022 - 2215 2019, Fax: 022 - 2215 3765  
E-mail : mwrralibrary@yahoo.co.in

**Case No. 5 of 2011**

In the matter of

**Petition seeking waiver of tariff on Recycled Sewage Water allocated to  
Indiabulls Realtech Limited for their thermal power project at Sinnar, Nashik.**

Shri A.K.D. Jadhav, Member (Economy) & Presiding Chairman

Shri V.V. Gaikwad, Member (Engineering)

Indiabulls Realtech Limited, Mumbai.....

Petitioners

**Versus**

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

Government of Maharashtra, Mumbai.....

Respondent

A.?



*[Handwritten signature]*

## ORDER

Date : 13<sup>th</sup> April 2012

The subject Petition was filed before the Maharashtra Water Resources Regulatory Authority (hereafter "Authority") on 02/07/2011. The Petitioner is setting up a 2700 MW thermal power plant in the Multi Product SEZ, Sinnar, Nashik, Maharashtra. According to the Petitioner, water was originally allocated by the Water Resources Department (WRD) [on 24/07/2009] to the Nashik Municipal Corporation (NMC) from the Gangapur Darna aggregate system of dams on the condition that the sewage generated by the NMC would be recycled and the treated water would be put back into the Godavari River. The quantity of treated water so released was to be 65% of the original allocation i.e. 270 mld out of allocation 390 mld. Subsequently, by its order No. उमप्र/तां-२.३/सिचन/पाणी आरक्षण प्रस्ताव/३७६६ / सन २००९ dated 07/09/2009, WRD allocated 100 mld out of this treated water to IRL Limited on the condition that IRL would construct a barrage on the Godavari River about 15 kilometres downstream and lift the water from the resultant storage. Thereafter, on 09/11/2011 vide order No उमप्र/तां.२.२./६२६२/सन २०११ an additional 90 mld recycled sewage water was allocated, making an aggregate of 190 mld water and instead of constructing a barrage on the Godavari River downstream, IRL was given the option of constructing a Sump near the STP outlet and lift the treated water directly from it. On 8/2/2012 this arrangement was formalized in an Agreement signed between WRD and the Petitioner which gave three options to IRL, namely, constructing a storage bandhara on the river or constructing a Sump well near the STP or lifting water directly from river from the existing storage bandhara.

2. The prayer of the Petitioner is that the Authority should exempt/waive the water charge to be levied on IRL by WRD for the recycled water allocated to it. This water charge, according to the Petitioner, would come to Rs. 10.70 per 10 cubic metres if the rate for industrial users as per the bulk water tariff order of the Authority issued on 30/05/2011 is applied. The expenditure incurred on infrastructure for tertiary

Am

IP



*[Handwritten signature]*

treatment is tantamount to sharing proportionate cost which is the condition for reduced tariff as per the said Order. The waiver / exemption of even this reduced tariff is claimed on the following grounds :-

- (i) Since the water might have to be lifted from the Sump rather than from the storage of the barrage on the Godavari river, IRL would have to undertake tertiary treatment of recycled water involving considerable expense;
- (ii) It is the policy of the State government to encourage recycling and usage of waste water as per the State Water Policy;
- (iii) The Authority is not only required to follow the State Water Policy but also promote optimal use of waste water by virtue of certain provision in the MWRRRA Act.
- (iv) No Criteria has been laid down by the Authority for determining the tariff on treated or recycled water and no tariff has been fixed for such water in the Order of the Authority dated 30/05/2011;

#### Chronology of Events

3. On receipt of the Petition on 02/07/2011, a copy was served on the Respondent with a direction to file its reply by 01/08/2011. The Authority also raised some specific queries to be replied to by the Respondent, namely,
  - (i) the quality of the sewage effluent which NMC is required to maintain in terms of Biological Oxygen Demand (BOD) as per agreement with WRD and the actual quality of the effluent being discharged.
  - (ii) Whether WRD has agreed to treat the construction of STP, Sump and other ancillary sewage treatment works to be executed by IRL as infrastructure works in lieu of the barrage proposal, thus making IRL eligible for reduced tariff.
  - (iii) The specific response of WRD to the contention of the Petitioner that high treatment costs would have to be incurred by it;

Ani

Uf



*[Handwritten signature]*

4. The Authority held the first hearing of the Petition on 11/08/2011. The Respondent filed its reply during the hearing. The Authority directed the Parties to file additional data, including water quality data, by 25/08/2011. This direction was complied with by both the Parties within the stipulated time.
5. The Authority held the second hearing on 29/08/2011. In the context of the data submitted by the Parties the Authority sought further clarification from each Party as below.
- (a) Clarifications sought from Petitioner
- (i) Reasons as to why tertiary treatment is required
- (ii) O&M cost data of at least two tertiary treatment plants for comparison
- (b) Clarification sought from Respondent
- (i) Reason why the pick up point of treated sewage was changed from barrage on river Godavari to a Sump
- (ii) Detailed configuration diagram of the whole system
- (iii) Concurrent water quality data of (a) the water at the Gangapur - Darna dam reservoir from where the water is lifted by NMC (b) the influent sewage at STP, (c) the secondary treated sewage effluent from STP of the NMC and (d) at the proposed barrage site on river.
- (iv) Quality of raw water supplied to other thermal plants in the State

Compliance with the above was completed by the Parties by 03/10/2011.

6. During the pendency of the above Petition before the Authority, NMC filed an Intervention Application on 29/09/2011, supplemented on 12/10/2011 in which NMC claimed that IRL should pay 'user charges'



*[Handwritten signature]*

to NMC by way of reimbursement of expenditure incurred by NMC for making available treated sewage effluent for reuse by the Petitioner. The Authority heard this Application on 13/10/2011 and 17/01/2012 and after hearing all the concerned Parties, the Authority, vide its Order dated 17/2/2012, dismissed the Application as the Authority was of the finding that it does not have jurisdiction to entertain the Intervention Application in these proceedings which are for the fixation of tariff payable by the Petitioner to the Respondent.

7. **Arguments of the Petitioner in main Petition**

- (i) IRL would have got fresh water from the storage but would now have to further treat the recycled sewage effluent to make it fit for use in the power plant.
- (ii) IRL will have to incur a capital cost of Rs. 140 crore on a tertiary treatment facility and also bear its operating cost. The effective cost of treatment has been worked out by the Petitioner as Rs. 63/10 cubic metres.
- (iii) Para 2.2 of Government Resolution dated 21/01/2003 states that if water is recycled and reused, WRD will not levy any separate royalty for the water.
- (iv) Promotion of use of sewage water for industry is recommended in the State Water Policy (Clause 2.2.3.) and MWRRRA Act 2005 (Sections 12 (4), 12 (5)).
- (v) It is WRD who have directed IRL to approach the Authority in this matter citing the Preamble of the Act which inter-alia requires the Authority to fix the rates for industrial use. (No written document has been produced by the Petitioner in support of this statement).
- (vi) The Authority has been entrusted with the responsibility of laying down the Criteria for fixing water tariff but in the Criteria laid down by the Authority for Bulk Water Tariff the category of recycled sewage water is not covered.

Ami

U.P.



*[Handwritten signature]*

8. Reply of the Respondent

- (i) As the project is not under MMISF Act 2005, the MWRRRA Act does not apply. This is clear from the Amendment Act of April 2011. Petitioner's request for fixation of rate needs to be therefore dismissed.
- (ii) As per the Memorandum of CE, NMR, Nashik dt. 24/07/2009, conveying sanction for allocation of water to NMC, 65% of the water allocated has to be made available for reuse after treatment and the BOD and pH values of the treated water are required to be as per standard norms of MPCB. The responsibility of treating the sewage water to acceptable standards is of NMC.
- (iii) As per Memorandum dated 07/09/2009 of Chief Engineer, NMR, Nashik conveying allocation of 100 mld of treated sewage effluent to IRL, its quality is not the responsibility of WRD and the cost of tertiary treatment does not concern WRD.
- (iv) As per minutes of the High Powered Committee (HPC) meeting held on 19/01/2011, a further 90 mld of treated sewage effluent was allocated to IRL Water tariff is to be paid by IRL to WRD as per applicable Government Resolution.
- (v) Further, as per decision taken in this HPC meeting, IRL can construct a Sump well near the STP to lift the treated water for its use. However, it is up to IRL whether to draw from the storage of the barrage or from a Sump well near the STP.
- (vi) 100 mld in the first phase will be made available to IRL from the generation of 130 mld treated effluent at the Tapovan STP, which consists of two STPs of 78 & 52 mld, and in the second phase, 90 mld will be made available from Agar Takli (70 mld), Panchak (21 mld) and Chehedi (20 mld) STPs by end of March 2012. Tertiary treatment is the responsibility of IRL
- (vii) No agreement between IRL & WRD is executed as yet. Amount for rehabilitation of irrigation affected area (of 5120 ha) at the prevailing rate has also not been deposited as required by HPC. Petitioner has therefore no locus to file this Petition. (\*See Note below).

Am

El



*[Handwritten signature]*

- (viii) NMC is observing quality standards of MPCB before letting water into the Godavari River.
- (ix) Authority has no jurisdiction to exempt any private individual from levy of royalty or water charges.
- (x) Construction of tertiary treatment plant, Sump and other ancillary works by Petitioner cannot be treated as infrastructure works.
- (xi) The condition of constructing a barrage on the mainstream is generally laid down where supply is from a non perennial river or canal. It is for Petitioner to make his own arrangement for lifting water by any feasible method.
- (xii) Water quality data now furnished shows that BOD in the reach of the river under consideration is less than 30 ppm. This is the same quality as supplied to other users.
- (xiii) Cost of treatment shown by Petitioner is very excessive.

*\*Note : On 16/01/2012, IRL and WRD entered into an agreement for supply of 100 mld of recycled water received from Nashik Municipal Corporation. The water tariff has been provisionally indicated in the agreement as Rs. 10.70 / 10 cu.m. till it is decided by the Government or MWRRA. IRL has also paid to WRD reinstatement charges of Rs. 2636.50 lakhs for curtailment of 5120 ha of irrigation area. Subsequently on 08/02/20112, the agreement for 90 mld was entered into.*

9. **Data submitted by Petitioner**

BOD of the treated sewage effluent of NMC (less than 20 mg/l) and BOD of water required for use for use in its power plant (less than 5 mg/dl).

- (i) Data justifying the need for tertiary treatment in terms of water quality required for the power plant.
- (ii) Detailed calculation sheet for treatment cost of 190 mld which works out to Rs. 68.35/10 cu.m. This was revised later to Rs. 78 / 10 cu.m.



*[Handwritten signature]*

- (iii) Treatment cost of some existing plants at Anjana, Bamroli (Surat), Bhairoba, Naidu, Mundhawa (Pune) and Tapovan (Nashik). .
- (iv) Test results of quality of water supplied to Khaperkheda Thermal Plant at Nagpur furnished showing BOD as less than 1 mg/lit.
- (v) Details of tertiary treatment costs incurred by Rashtriya Chemicals & Fertilizers, Mumbai and Madras Refineries; cost is in range of Rs. 65 to Rs. 80/10 cu.m.
- (vi) O&M cost details to be incurred by Petitioner for maintenance of STPs of NMC (Rs. 32/10 cu.m.)
- (vii) Water quality data of Upper Wardha dam (IRL thermal plant at Amravati) and Gangapur dam. These show BOD levels less than 3 mg/lit.

10. Data submitted by Respondent

- (i) Water quality data of MPCB at inlet & outlet of few STPs for a few years.
- (ii) Water quality data at Eklahare Thermal Power Station; and
- (iii) Water quality of Godavari River at Tapovan and Ramkund.

Framing of Issues

11. From the arguments advanced in the Petition and the replies of the Respondent the following issues arise for consideration
- (i) Whether the Authority has jurisdiction to hear the Petition?
  - (ii) Whether the Petitioner has *locus standi* to make such an application?
  - (iii) Whether the provision for lower tariff in lieu of sharing proportionate cost / bearing full cost of infrastructure is applicable?
  - (iv) Whether tariff as per extant Criteria and Orders can be made applicable in this case?





- (v) Whether waiver of the leviable tariff is warranted and if not then what should the tariff be?

The findings of the Authority on the above five issues are discussed *ad seriatim* below:

**Whether the Authority has jurisdiction to hear the Petition?**

12. The Respondent has submitted that the project is not covered by MMISF Act 2005. In view of the recent amendment carried out vide the MWRRRA (Amendment and Continuance Act) 2011 the Authority does not have jurisdiction over projects which are not covered by the MMISF Act and hence the Petition is not maintainable. There is nothing to sustain the aforesaid contention because the Petitioner in the present Petition has sought for a dispensation in the context of the tariff order dated 30.05.2011 issued by the Authority in exercise of powers conferred on it by sections 11(d) and 11 (u) of the MWRRRA Act 2005 whereas the MWRRRA (Amendment and Continuance) Act, 2011 lays down the role of the State Government and the Maharashtra Water Resources and Regulatory Authority in relation to the allocation of water and entitlements flowing from them. There is nothing in the Amendment Act, 2011 that traverses / fetters the powers of this Authority in relation to water tariff/charges. Hence, the issue of the project not being covered by the MMISF Act in view of the MWRRRA (Amendment and Continuance) Act, 2011, is not relevant. The Amendment Act concerns "Entitlements" and not "Tariff". Section 31 A of the Amendment Act only stipulates that the term 'Entitlement' shall apply to such areas where compliance of all relevant provisions relating to "irrigation management" including delineation of the command area has been completed. Since, the allocation to IRL is for non-irrigation industrial use, this objection of WRD is also not sustainable.
13. The Authority is charged with the task of determining the Criteria for fixing bulk tariffs for all categories of users under Section 11(d) of the MWRRRA Act, 2005. Vide Section 4 of Tariff Regulation, WRD is required



A handwritten signature in black ink, appearing to read 'J. V. Bode', written over a horizontal line.

to prepare tariff proposals based on the Criteria determined by the Authority and submit the same to the Authority for approval. The volumetric tariff order is then issued by the Authority. Thus the task of determining the Criteria and approving and issuing the final Tariff Order is that of the Authority.

14. In the present Petition the Petitioner has approached the Authority for exemption from the tariff levied on the treated water supplied to it by WRD. It is a fact that there is no provision to cover treated water allocated to bulk users in the Criteria finalized by the Authority and hence there is no special tariff available for such water in the tariff order dated 30/05/2011. For this reason the tariff levied on industrial bulk users who are allocated water directly from the storage-canal systems of WRD automatically becomes the applicable tariff in respect of the Petitioner. Since the task of fixing Criteria for tariff payable on all kinds of water supplied by WRD to all kinds of bulk users vests in the Authority vide Section 11(d), it has to be concluded that the Authority does have jurisdiction to deal with the Petition and the prayer of the Petitioner which seeks determination of criteria and tariff for industrial users who are allocated treated sewage.
15. As regards the contention of the Respondent that the Authority has no jurisdiction to exempt any private individual from levy of royalty or water charges, we are of the opinion that the jurisdiction to fix tariff for bulk water user includes deciding nil tariff where considered appropriate. In view of the above, the aforesaid contention raised by the Respondent is devoid of merit.

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

16. The Petitioner is a bulk water user under the industrial user category and is hence liable to pay the water charge fixed for industrial users based on the Criteria determined by the Authority. The Respondent has not disputed the fact that 190 mld of recycled sewage water has been allocated to the Petitioner on which the tariff to be levied is the same as

Amr

CLD



*[Handwritten signature]*

for directly allocated water although the quality of recycled sewage water is lower than the quality of directly allotted water from the reservoir of the dam. Hence the Petitioner's prayer for a lower tariff has sufficient sustainability and *locus standi* cannot be denied on the ground of non-enforceability of rights under the existing dispensation. Justiciability and merit have to be considered and the Petitioner cannot, therefore, be told off at the threshold.

17. In the tariff order issued by the Authority on 30/05/2011 the industrial user category, which covers different types of industries, does not separately classify industries which use treated water from sewage or other waste and incur expenditure in improving it. Since bulk users like the Petitioner are also members of the beneficiary public, being stakeholders in the system, it is incumbent upon the Authority to consider their views and like other industries, such as those who use water as raw material, determine the tariff fixation criteria for them and ensure that appropriate tariff orders are issued in respect of water supplied to such industries. Thus the Petitioner has the right to demand that a suitable tariff be fixed for him as it is fixed for other sub-categories within the industrial user category.
18. The Respondent has also challenged the locus of the Petitioner on the grounds that the Petitioner has not signed the Agreement with WRD (as on the date of the Petition) which is required to be signed before his entitlement becomes established. It is seen from paragraph 4 of the allocation order dated 07/09/2009, by which WRD has allocated water to the Petitioner, that the order will be implemented only after an Agreement is signed between WRD and IRL. Hence, the actual lifting of water is subject to the Agreement. However, as long as WRD's allocation orders dated 07/09/2009 and 09/11/2011 subsist, IRL's right and interest in the water remains. The issue of tariff is to be included in the Agreement and the same is within the jurisdiction of MWRRRA. Hence, the argument that the Petitioner does not have locus on the ground that there is no Agreement is not sustainable. Further, it will be seen from the

Am

Li



Shankar

Note below Para 8 above that the Agreements have in fact been signed for 190 mld and the issue of tariff has been kept open ended in the Agreements till it is decided by the Government or MWRRRA. A provisional tariff of Rs. 10.70/10 cu.m has been indicated for the purpose of calculating the Security Deposit and it is stipulated that

*"IRL undertakes to pay the Security Deposit at the rate that will be decided by the Government or the MWRRRA before lifting the water".*

Hence, the objection raised by the Respondent on the locus of the Petitioner on the ground of non-existence of the Agreement does not survive.

**Whether the provision for lower tariff in lieu of sharing proportional cost / bearing full cost of infrastructure is applicable?**

19. The tariff order dated 30.11.2011 issued by the Authority does not make a distinction between recycled water allocated from the STPs and non-recycled water allocated from the system. However, in Para 4.1.1 (4) of the tariff order and item 4 of the Table in Annexure 4 of the finalized Criteria, it is stated that if the cost of infrastructure is shared / borne by the user the lower tariff as indicated in the table, that is 33% of the basic rate, will apply. The question is whether construction of Sump or storage Bandhara by the Petitioner can be treated as sharing / bearing the infrastructure cost of the project and thereby making IRL eligible to get the lower tariff on this count.

20. The Agreements between WRD and IRL mentioned above state at Para 27 that :

*"IRL shall lift the treated 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."*

It is, therefore, for WRD to decide as a matter of policy as to whether construction of a barrage or Sump should be treated as infrastructure cost. WRD is free to take an appropriate view of the matter.

Asi

EW



*[Handwritten signature]*

Whether tariff as per extant Criteria and Orders is applicable in this case?

21. In June 2010, the Authority had determined the Criteria for bulk water tariff applicable for the period 2010-13 after following the procedure laid down in Section 11 (d) of the MWRRRA Act. Subsequently, in May 2011, the volumetric bulk water charges for industrial, domestic and agricultural uses applying the Criteria were issued. In so far as industrial uses are concerned, the Criteria & Tariff Order categorize the users as (i) use as raw material (beverages) and (ii) use in process industries (cooling, washing etc.) and rates were fixed accordingly. Within each category, there is further sub categorization linked to sources of supply, namely, assured water supply from storage, regulated water supply with transmission losses (in river portion below dam, canal lift, KT weir with back up reservoir, tail race from reservoir), partly assured water supply (from minor reservoir with canal, KT weir without back up reservoir, unregulated river) and reservoir constructed by the water user entity or where proportional cost is shared by such entity. While use for thermal plants is covered in process industry category, the allocation to IRL, the Petitioner, is not directly covered in the Criteria for the following reasons:
- (i) The allocation is not from raw water stored in river or released in river or canal from storage but from treated sewage effluent of a Municipal Corporation;
  - (ii) The pick-up is not from a dam or canal or river but from a Sump below the sewage treatment plant of the Municipal Corporation or from a bandhara constructed by the Petitioner downstream; &
  - (iii) The quality of treated sewage effluent supplied to IRL is inferior to stored water in terms of BOD necessitating expenditure on tertiary treatment to make the water fit for use.
22. It is accepted that the treated water is allocated to IRL by the WRD and not by NMC. There is no dispute in this regard. The treated water was to be put back into the main stream by the original user i.e. NMC and the



*[Handwritten signature]*

jurisdiction over the mainstream being that of WRD and not NMC the ownership of the treated water is clearly that of WRD and not NMC. The water allocated to IRL by WRD is this treated water and hence it is required to be covered by the tariff order of the Authority. However, neither the Criteria nor the tariff order for the period 2010-13 cover the tariff to be paid by bulk industrial users for treated sewage water. Under these circumstances, we find that the tariff for bulk water supply to the Petitioner cannot be directly fixed from the existing tariff orders issued by the Authority in May 2011.

Whether waiver of the leviable tariff is warranted and if not then what should the tariff be?

23. The Petitioner has argued that the treated water allocated to him by WRD is required to be put through a tertiary treatment process before it can be used in the thermal power plant. The cost of this process being substantial the tariff should be altogether waived to make up for this cost. Further, it is argued that this rebate is also warranted keeping in view that use of treated sewage water reduces the burden on stored fresh water resources and would be in consonance with the mandate given to the Authority under Section 12 (4) and provision in State Water Policy vide Para 2.2.3 to promote water conservation. The Respondent has argued that tariff is levied as per extant orders and the treated water being made available to the Petitioner is treated by NMC up to the BOD, pH values of MPCB's standard norms. Thus the responsibility of treating the sewage water even further up to standards desired by the Petitioner is the Petitioner's own. Further, the BOD in the reach of the river is less than 30 ppm and the same water is supplied to all users. Besides, the expense shown by the Petitioner on tertiary treatment is quite excessive.
24. The Petitioner has furnished details of costs for the tertiary treatment plant which works out to Rs. 78/10 cu.m. Tertiary treatment is required to bring down the BOD levels of the allotted treated sewage effluent from about 20 - 30 mg/lit BOD to less than 5 mg/lit. which is the quality

Ani

Uj



*[Handwritten signature]*

required for the thermal plant. The quality of stored water in the dams in the State, as per data furnished, is generally less than 5 mg/lit while in case of Godavari, it is in the range of 5 to 10 mg/lit. The cost of Rs. 32/ 10 cu.m projected by the Petitioner for maintenance of STPs of NMC cannot be taken cognizance of because this is an internal matter between the Petitioner and NMC and is not germane to the water allocation made by the Respondent to the Petitioner. However, the fact that tertiary treatment has a cost attached to it has to be considered.

25. From the BOD data furnished by the Parties, it is clear that -
- i) BOD of treated sewage effluent from NMC's STP is between 20-30 mg/lit.
  - ii) BOD of stored water in dams in the State is about 5 mg/lit, while in Gangapur-Darna system of dams on Godavari it is between 5-10 mg/lit.
  - iii) BOD below Eklahare where the barrage would have been constructed it is 5-15 mg/lit.

Had the Petitioner been allotted stored fresh water from a dam or released water from a canal or river bed upstream of the discharge point, the cost of tertiary treatment might have been avoided or minimized. The Petitioner has been allotted either treated sewage effluent from a STP at the Sump well or at the barrage site down stream. In both cases the water available to the Petitioner would be well below the quality of water at the reservoir on which the applicable tariff is levied though it would be somewhat better at the barrage relative to the Sump. The applicable tariff relates to water from the system i.e. the dam or the canal / river bed over which the water released from the reservoir flows. There is thus a case for relief to the Petitioner in tariff on water quality considerations. The difference between the quality of water at the dam or canal or river bed on the one hand and the quality of treated water at the Sump or at the barrage downstream warrants a discount in tariff to the extent of reduction in the quality of water at the pick up point.

hij

E.I.P



*[Handwritten signature]*

26. There are three ways in which the reduction in quality may be reflected in the tariff, namely, Percentage Reduction, Proportionate Reduction or Flat Discount.

(i) Firstly, a percentage reduction by way of rebate of one percentage point for each mg/lit by which the allotted water is above the BOD percentage of the water at the dam or canal/river bed could be considered. Thus, for example, if the average BOD of the allotted treated water is 25 mg/lit. and that of stored water / river water is 5 mg/lit., then a rebate of  $1\% \times (25 - 5) = 20\%$  in tariff could be considered. ; or

(ii) Secondly, the reduction in tariff can be in proportion to the reduction in quality of water. If the water quality at the dam is 5 mg/lit BOD and the quality at the Sump is 30 mg/lit BOD, then the deterioration in quality in terms of percentage of BOD is  $(30 - 5) \times 100 / 30 = 82\%$ . Hence the tariff will stand reduced by 82% or will be 18% of the tariff. ; or

(iii) Thirdly, in the existing Criteria for 2010-13 (vide Para 13.3.2 of the Criteria), there is a concession of 25% in tariff for industries adopting recycling and thus reducing their demand by at least 25%. In the instant case, the Petitioner is not recycling to reduce its demand but using treated sewage effluent and thus indirectly reducing the burden on fresh water sources in the system. If this criterion is applied to the Petitioner's case the consequential reduction in the tariff would be to the extent of 25%.

27. Since percentage reduction would carry a greater element of subjectivity a proportionate reduction would be preferable. However, both the approaches involve introduction of new provisions in the Criteria which were finalised after extensive public consultation as required by section 11 (d) of the Act and Regulation 3 of the Maharashtra Water Resources Regulatory Authority (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations, 2010. Hence, introduction of new / fresh criteria cannot be done *de hors* the public participation process specified under aforesaid section 11(d) and Regulation 3. As regards the third

A75

Wf



*[Handwritten signature]*



option, the issue is of the applicability of an existing criterion rather than of introducing a new one and hence can be examined in the context of Regulation 10 of the MWRRRA Regulations.

28. Regulation 10 of the MWRRRA (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations, 2010 allows this Authority to take such action as might be necessary to remove difficulties which arise while giving effect to the regulations. Regulation 10 provides as follows:-

*"10. Power to remove difficulties*

*If any difficulty arises in giving effect to the provisions of these Regulations, the Authority may, by general or specific order, do anything not being inconsistent with the provisions of the Act, which appears to be necessary or expedient for the purpose of removing the difficulty."*

In the present case, for the reasons mentioned earlier there exists a difficulty in giving effect to Regulation 3, namely, going through the public consultation process before introducing new criteria. However, the power of Regulation 10 of the MWRRRA (Fixing Criteria for and Issuance of Tariff Orders for Bulk Water) Regulations, 2010 cannot be exercised in respect of the first two options at Para 26 (i) and (ii) above as that would be inconsistent with section 11 (d) of the Act. On the other hand, it would be possible to exercise the power to remove the difficulty of Regulation 3 by extending the existing dispensation of Para 13.3.2 of the Criteria to industries using treated sewage effluent and thus indirectly reducing the burden on fresh water sources in the system. If this criterion is extended to the Petitioner's case it would not be inconsistent with any provision in the Act and the consequential reduction in the tariff would be to the extent of 25%.

29. We deem it fit, therefore, to invoke Regulation 10 and apply the third alternative mentioned above, namely application of an existing provision in the Criteria. Since the Petitioner's actions in terms of tertiary treatment will reduce the burden on the overall system and since the criteria already exists in the current dispensation in respect of



A handwritten signature in black ink, appearing to read "S. R. S.", written over a horizontal line.

industrial users who recycle their own water, a reduction in tariff by 25% should meet the grievance of the Petitioner of having been allocated water of inferior quality requiring incurrence of additional expenditure toward cost of treatment. Under Section 11 (u) the criteria for fixing water tariffs are to be revised by the Authority every three years and the Petitioner is free to seek a separate dispensation during the consultation process for the next tariff revision.

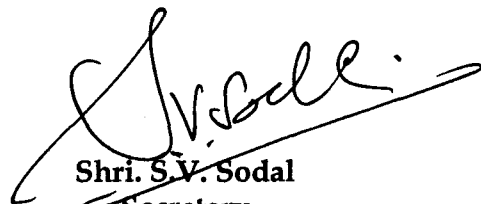
30. We do not accept the Petitioner's plea for waiver of tariff. We note that the Petitioner has not been allotted untreated sewage but secondary treated sewage. 190 mld of this treated sewage was flowing down the river and helping to reduce the pollution caused by untreated sewage inflows into the river from towns/villages along the banks. On both counts a full waiver would not be justified.
31. With the above, the present Petition stands disposed of.

Sd/-

Shri V.V. Gaikwad,  
Member (Engineering)

Sd/-

Shri A.K.D. Jadhav,  
Member (Economy) & Presiding Chairman

  
Shri. S.V. Sodal  
Secretary

