



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण
Maharashtra Water Resources Regulatory Authority
(MWRRRA)

9th Floor, Centre - 1 World Trade Centre, Cuffe Parade, Mumbai - 400005. Tel.2215 2019 Fax 2215 3765 Email: mwrra@mwrra.org

Case No. 3 of 2013

In the matter of

A) PIL No. 95 of 2013, filed by Shri Panjabrao Bhagat & Anr., in the matter of releasing water from Veer, Bhatghar, Devaghar and Gunjawane dams and filling up all K T Weirs on Nira river every year.

- i) Shri Panjabrao Bhagat
at Kacharewadi, Post Sarati,
Taluka Indapur, District Pune -----Petitioner
- ii) Ramkrishna Dhondiba Gargade,
At Nimingaon, Post Sarati,
Talukar Indapur, District Pune-----Petitioner

Versus

The State of Maharashtra,
Through Water Resources Department,
Mantralaya, Mumbai -----Respondent

B) Intervening applications from Bira Ramchandra Chormale & others, Baban Vithal Jankar & others, Dhanalaxmi Pani Vapar Sanstha Maryadit & others regarding their demands in connection with NRBC water.

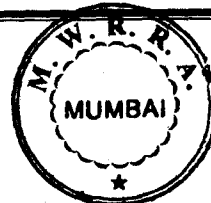
Shri Bira Ramchdrad Chormale & others,
at post Shirbhavi, Taluka Sangola, District Solapur-----Petitioner

Shri Baban Vitthal Jankar & others,
at post Shirbhavi, Taluka Sangola, District Solapur-----Petitioner

Dhanalaxmi Pani Vapar Sanstha Maryadit & others
at post Shirbhavi, Taluka Sangola, District Solapur-----Petitioner

Versus

The State of Maharashtra,
Through Water Resources Department,
Mantralaya, Mumbai -----Respondent



Shri. Machhindra Patil, Adv for Petitioners

Shri. Somnath Mohan Bhinge, Adv. on behalf of Interveners

Ramkrishna Dhondiba Gargade, Petitioner

Shri Panjabrao Appa Bhagat, Petitioner

Shri. S. A. Nalawade, Farmer

Shri. Gokhale B. S., Farmer

Shri. I. S. Choudhari, Superintending Engineer,
Pune Irrigation Circle, Pune for Respondent

Shri. Jengate T.M. Executive Engineer, NRBC Division, Phaltan

Shri. Rajendra Dhodapkar, AEE, Irrigation Sub-division, Baramati

**CORAM: RAVI B. BUDHIRAJA, CHAIRMAN,
CHITKALA ZUTSHI, MEMBER (ECONOMY) &
S.V. SODAL, MEMBER (ENGINEERING)**

DATE: 8th August 2013

ORDER

- 1.0 The Hon'ble High Court of Judicature, Mumbai in its order dated 21st May 2013 directed the Petitioners in PIL No. 95 of 2013 Shri. Panjabrao Appa Bhagat & others to approach MWRRA
- 1.1 Shri Panjabrao Appa Bhagat, At & Post Kacharewadi, Tal. Indapur, Dist. Pune and Shri Ramkrishna Dhondiba Gargade, At. Nirmimgaon, Tal. Indapur Dist. Pune (Petitioners) submitted application dated 21/5/2013 along with the copy of the PIL 95 of 2013 to MWRRA, praying to issue appropriate directions to the respondents to release water from Veer, Bhatghar, Devaghar and Gunjawane dams to fill K.T.weirs on Nira river every year.
- 1.2 MWRRA vide letter dated 28th May 2013, sent copy of petitioner's application dated 21st May 2013 along with copy of petition and copy of High Court of Bombay's order dated 21st May 2013 to WRD, Collector Pune & Collector Solapur to furnish information required in connection with the Petitioner's demand.



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- 1.3 Authority has heard the matter on 11/6/2013 and 26/6/2013 in its office in Mumbai.
- 1.4 In the hearing the respondent was directed to submit additional information for 1999-2000, 2008-09, 2009-10, 2010-11 regarding taluka wise sanctioned area, irrigated area, irrigation assessment details and actual irrigation recovery for NRBC & NLBC on or before 25/7/2013. This information is called for as additional water from Nira Devghar storage dam ranging from 239.01 Mm³ to 251.56 Mm³ was available for utilization for irrigation use in Nira Canal system, beyond 2007-08, in addition to 931 Mm³ of Vira & Bhatghar Storage. This information is to be used for assessing increased performance of the Nira canal system especially at tail portion of NLBC and NRBC.
- 1.5 Received three intervener's applications on 5/7/2013 viz. Bira Ramchandra Chormale & others, Baban Vithal Jankar & others, Dhanalaxmi Pani Vapar Sanstha Maryadit & others regarding their demands in connection with NRBC water. Authority has decided to club these three applications with PIL 95/2013 (Case No. 3/2013) and hearing was scheduled on 3/8/2013

2.0 Hearing on 3/8/2013 in the matter

2.1 Shri. I. S. Choudhari, Superintending Engineer, Pune Irrigation Circle, Pune submitted as follows:

a) **Details about sanctioned area, actually irrigated area, water charges levied, actual revenue realised etc.**

i) Sanctioned area - In the project report taluka wise sanctioned area is not given.

ii) Actual Irrigated Area - Taluka wise details of actual irrigated area under Nira Right Bank Canal & Left Bank Canal during the year 1999-2000 and year 2008-2009 to 2010-11 are given.

Chairman, MWRRA pointed out that area irrigated in Khandala, Phaltan & Malshiras talukas is increased during year 2008-09 to 2010-11 as compared to area irrigated in 1999-2000. However, it is seen that no such increase is observed in the corresponding area irrigated in Pandharpur, Sangola and Indapur talukas.

Member (Engineering) added that in view of additional water available from Nira Devghar dam, proportionate increase in irrigated area is expected during 2008-09 to 2010-11.



Similarly in case of Baramati & Purander taluka increasing irrigation area is seen, but in case of Indapur taluka no such increase in irrigated area is seen.

- iii) It is seen that levy of irrigation charges has increased during 2008-09 to 2010-11.
- iv) It is also seen that recovery has increased proportionately.

b) Details about K.T. Weirs

- i) It was also observed that in most of the cases adequate storage is achieved every year although as per the design the dependability of these K.T. Weirs is 50 %.
- ii) It was also noticed that actual area irrigated under each K.T. Weir is levied and revenue realised.

c) Water Planning for the K.T. Weirs -

- i. The dependability considered during design is 50 % for K.T. Weirs
 - ii. Adopted cropping pattern is same as that sanctioned
 - iii. The needles for K.T. Weirs installed so as to impound the post monsoon flow after 15th October each year and storage is achieved from post monsoon flow and regeneration flow. The water utilization is done up to the end of Rabi season i.e. up to 28 February each year.
- d) There is no provision in the planning of Vir dam or project report of Vir dam to let out water for filling K.T. Weirs downstream of the dam.
- e) The works of distributory network of canal system Nira Devghar dam were not completed and hence Nira Devghar storage water is utilised in Nira canal system during 2007-2012 with prior approval of Government.

Still these works are not completed, hence proposal for granting permission to utilise utilised water from Nira Devghar dam in Nira canal system beyond year 2012 is submitted to Government.



3.0 Shri. Machhindra Patil, Adv for Petitioners submitted his case on behalf of Mr. Panjabrao Appa Bhagat & Mr. Ramkrishna Dhondiba Gargade. The points raised by Shri Machhindra Patil -

- i) In the information submitted by Respondent it is seen that water is available in few K.T. Weirs beyond 28 February & that hot weather irrigation is effected through water from K.T. Weirs and hot weather crops are taken.
- ii) As per Annexure 7 furnished by Respondent it is clearly seen that hot weather irrigation is exercised through water from K.T. Weirs.
- iii) Petitioner requested to refer to MWRRA Act 2005, Section 11 (a) of which reads -

"11(a) to determine the distribution of Entitlements for various Categories of Use and the equitable distribution of Entitlements of water within each Category of Use on such terms and conditions as may be prescribed;"

He pointed out that Authority is empowered to direct Respondent to make arrangement for releasing water for filling up all K.T. Weirs on Nira river every year

Member (Engineering) pointed out that the MWRRA Act 2005 is amended in 2011 and as per MWRRA (amendment and continuance) Act 2011 the original Section 11(a) in the Act is substituted by -

"11(a) to determine the criteria for the distribution of Entitlements by the River Basin Agencies, within each Category of Use, on such terms and conditions as may be prescribed, after sectoral allocation is made under section 16 A;"

Section 16 A reads as follows -

"16 A. (1) Notwithstanding anything contained in section 11 or any other provisions of this Act or in any other law for the time being in force, the State Government shall determine the sectoral allocation :

Provided that, sectoral allocation so demined shall ordinarily be reviewed at such intervals of not less tan three years:

Provided further that, after publication of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Act, 2011, in the Official Gazette, the State Cabinet shall determine the sectoal allocation.

(2) After the sectoral allocation, as provided in sub-section (1) is determined, the Authority shall determine the criteria for the distribution of Entitlements under clause (a) of section 11."

4.0 Shri. Somnath Mohan Bhinge, Adv. on behalf of Petitioners Bira Ramchandra Chormale & others, Baban Vithal Jankar & others, Dhanalaxmi Pani Vapar Sanstha Maryadit & others regarding their demands in connection with NRBC water submitted his case as follows -



- i) Shri. Somnath Bhinge, Adv. submitted a copy of Government resolution dated 9/5/1969 wherein it is seen that additional area of 20,000 Acres as per revised crop pattern is approved for Branch III. The irrigation was effected on the principle of 'tail-to-head'.
- ii) In the pre-season meeting of the canal advisory committee held at Pandharpur on 9/3/2013 it was decided and agreed that 24.84 Mm³ i.e. 12200 day-cusec water for Sangola & Pandharpur for hot weather will be made available. On this basis, requisition Form No. 7 was submitted. Water was not made available during hot weather season of 2012-13, even though requisition in Form No. 7 was submitted well in time. In the reply from Respondent it is mentioned that the requisition for hot weather demand was not sanctioned. Advocate pointed out the provision in Maharashtra Irrigation Act 1976, Section 58 wherein the detail procedure about application for supply of water is given. The provisions are as follows :

"58 (1) Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a Canal Officer duly empowered in this behalf to receive such applications in such form as shall from time to time be prescribed by the State Government in this behalf. Such applications shall be submitted before such date as the Canal Officer shall duly notify in such manner as he thinks best for the information of all such persons interested in making such applications.

(2) On receipt of an application for supply of water on yearly or seasonal basis under sub-section (1), a Canal Officer shall acknowledge the same forth-with. If the application is not in accordance with the prescribed form, the Canal Officer may return it to the applicant and direct the applicant to submit it again in the prescribed form duly completed before, the date notified under sub-section (1). The application duly completed which is submitted before the date aforesaid shall also be duly acknowledged.

(3) Every such application shall be disposed of by the Canal Officer within fifteen days from the last date notified as aforesaid and the decision of the Canal Officer notified on the notice board in the office of the Canal Officer and at such other place or places as the Canal Officer may direct and the decision so notified shall be deemed to be notice of such decision to all the applicants.

(4) If the Canal Officer fails to notify his decision on the notice board in his office as aforesaid, then the applicant shall be deemed to have been permitted to take water from the canal specified in the application, but subject to the same conditions on which supply of water from the canal is sanctioned to other applicants.



- iii) Advocate of Petitioners added that requisition was submitted in time but it was not rejected by Respondent. Thus as per the provision in Act, the requisition is deemed as sectioned and the beneficiaries are deemed to have been permitted to take water.
- iv) In the reply given by Respondent it is mentioned that due to damage to Arch Culvert at ch. 134/475 of Nira Right Bank Canal in upstream reach of canal, water could not be supplied as the irrigation period was delayed by 12 to 13 days. Respondent has not furnished the reasoning about the breach of the Arch Culvert.
- v) As per MWRRA Act, Section 12 (7) irrigation is to be effected with the principle of 'tail to head' but the same is not followed by Respondent. Petitioner demanded that the Respondent may be directed to follow the 'tail to head' principle so that quota as per 9/5/1969 resolution can be availed by beneficiaries in Sangola & Pandharpur talukas.

5.0 Shri. I. S. Choudhari, Superintending Engineer, Pune Irrigation Circle, Pune, Respondent replied in response to points raised by Shri. Machhindra Patil, Adv for Petitioners on behalf of Mr. Panjabrao Appa Bhagat & Mr. Ramkrishna Dhondiba Gargade. The details are as below -

- i) Petitioner has pointed out that if water is available on 28 February then requisition in Form No. 7 is taken and water is supplied for hot weather. As per design of K.T. Weirs the post monsoon flow is utilised till its availability during a particular year. In few cases water is available in some K.T. Weirs even up to end of June.
Permission for hot weather irrigation is granted so as to utilise balance water as on 28 February. The levy of water charges is done on the basis of actual quantum of water used.
- ii) As per project report of Vir dam, there is no provision to let out water for filling up K.T. Weirs downstream of dam. Hence, the request of Petitioner may not be granted.

6.0 Shri. I. S. Choudhari, Superintending Engineer, Pune Irrigation Circle, Pune, Respondent replied in response to points raised by Shri. Somnath Mohan Bhinge, Adv. on behalf of Petitioners Bira Ramchandra Chormale & others, Baban Vithal Jankar & others, Dhanalaxmi Pani Vapar Sanstha Maryadit & others regarding their demands in connection with NRBC water. The details are as below -

- i) The repairs work of the Arch Culvert is carried out on priority basis and irrigation was started but the irrigation period is delayed by



12 to 13 days and irrigation programme for Sangola taluka could not be implemented and quota for the beneficiaries could not be completed. As per provision in Form No. 7 if water cannot be supplied due to reasons beyond control i.e. natural calamity, no compensation is admissible. However, for this beneficiaries deprived of hot weather irrigation, water is released in July 2013.

- ii) Nira canal system was originally designed in 1912. After that major changes in the crop pattern and irrigable area are done in 1954 and 1969. However, the designed discharge capacity of the canal in the canal system is unchanged. The discharge capacity of NRBC as per original design is 1550 Cusecs but the discharge capacity of distributaries supplying water to perennial area is 1887 Cusecs. The discharge capacity of the canal in the said area is 460 Cusecs. Thus the discharge capacity of NRBC is insufficient to carryout 'tail to head' irrigation. If 'tail to head' irrigation is to be implemented the discharging capacity NRBC should be 2400 Cusecs. This will be achieved, if NRBC is lined from its off take point. Presently water reaches in the said area in 15 to 21 days in Rabi season and hot weather season it reaches the said area in 20 to 40 days.

7.0 In the light of the above we are of the view that the following aspects need consideration:

- a) **PIL No. 95 of 2013, filed by Shri Panjabrao Bhagat & Anr., in the matter of releasing water from Veer, Bhatghar, Devaghar and Gunjawane dams and filling up all K T Weirs on Nira river every year.**

7.1 The prayer under this petition is to order or direct the Respondent to release water from Vir, Bhatghar, Devghar and Gunjawane Dams to Nira river for the villages of Kacharwadi, Sarati, Pithewadi, Nirningaon, Ozare, Giravi, Suruchi, Lumewadi, Chuyewadi, taluka Indapur, district Pune and villages Chakore and Anandnagar, taluka Malshiras, district Solapur and filling up K.T. Weirs every year.

7.2.1 We find that there was no provision in the original planning of individual K.T. Weirs to release water from upstream Vir dam. As each K.T. Weir is supposed to be filled from free catchment area as per provision at planning stage, hence the prayer of the petitioner to divert water from irrigation allocation from Vir system to K.T. Weirs on the downstream of Vir dam in Nira river is a matter of reallocation of previously approved sectoral allocation.



7.2.2 As per MWRRA (amendment and continuous) Act 2011 the original Section 11(a) in the Act is substituted as -

"11(a) to determine the criteria for the distribution of Entitlements by the River Basin Agencies, within each Category of Use, on such terms and conditions as may be prescribed, after sectoral allocation is made under section 16 A;"

The Section 16 A reads as follows -

"16 A. (1) Notwithstanding anything contained in section 11 or any other provisions of this Act or in any other law for the time being in force, the State Government shall determine the sectoral allocation :

Provided that, sectoral allocation so demined shall ordinarily be reviewed at such intervals of not less tan three years:

Provided further that, after publication of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Act, 2011, in the Official Gazette, the State Cabinet shall determine the sectoal allocation.

(2) After the sectoral allocation, as provided in sub-section (1) is determined, the Authority shall determine the criteria for the distribution of Entitlements under clause (a) of section 11."

7.3 It is, therefore, clear that as per above provision in the amended Act, the sectoral allocation is to be determined by the State Government. Hence, Petitioner may approach the Government in this matter.

b) **Intervening applications from Bira Ramchandra Chormale & others, Baban Vithal Jankar & others, Dhanalaxmi Pani Vapar Sanstha Maryadit & others regarding their demands in connection with NRBC water.**

7.4 The prayer under these three intervening applications is to direct the Respondent to supply irrigation water each year to the farmers from Sangola talukas under Mile 93 Branch 3, 4 & 5 of NRBC and water may be supplied to the farmers / water user associations as per sanctioned quota decided in pre-season meeting. The 'tail to head' principle as specified under Section 12 (7) of MWRRA Act 2005 may be followed so that appropriate quantity of water can be made available to tail enders in Sangola talukas.

7.5 We find that since requisitions in Form No. 7 of the applicants were not rejected by Respondents as per Section 58 of Maharashtra Irrigation Act 1976, the applications are deemed to be sanctioned. Project officers are expected to follow procedure laid down in Act so as not to cause inconvenience to farmers. This is a serious omission on the part of Respondent viz. Executive Engineer Nira Right Bank Canal, Division Phalton and his sub-ordinate. Such omission should not recur in future.

Also, the interveners could not get their quota in hot weather season as agreed in pre-season meeting on 9/3/2013. Respondents are directed to take sufficient care and see that such omissions will not occur in future.



7.6 Petitioners are directed to follow 'tail to head' principle for irrigation in future for NRBC & NLBC of Nira canal system. Necessary rotation programme from 'fail to head' irrigation (clubbing all tail distributaries and upward) be prepared in advance and got approved from competent Authority and canal advisory committee, well in time. Details about quota fixed for Sangola & Pandharpur and its actual delivery in each season viz. Rabi and Hot weather, be reported to Maharashtra Water Resources Regulatory Authority. MWRRA will monitor the issuance of water quota for each season under Section 12(7) of Act.

With these findings and observations, the Petition stands disposed of.

-Sd/-

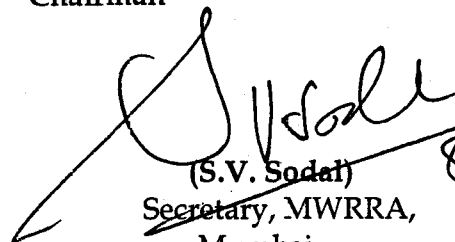
(S.V. Sodal)
Member (Engineering)

-Sd/-

(Chitkala Zutshi)
Member (Economy)

-Sd/-

(Ravi B. Budhiraja)
Chairman


(S.V. Sodal)
Secretary, MWRRA,
Mumbai. 8/8/13

