



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

Maharashtra Water Resources Regulatory Authority (MWRRA)

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

No. MWRRA/legal/2016/Case No 4 of 2016/278


Date: 12/06/2017

Case No. 4 of 2016

In the Matter of Water Allocation between Dhom and Dhom-Balkawadi
Projects as per the approved Detailed Project Report under Section 22(3) of the
MWRRA Act, 2005

Please find herewith a copy of MWRRA Order dated 12/06/2017 in the
above cited matter.

Encl : As above


(Dr. Suresh Kulkarni)
Secretary

Copy for information & necessary action to :-

1. Adv. S. R. Palande, Lawyers Chambers No A-1. District Court Campus, Shivajinagar, Pune - 411005 (for Shri. Nandkumar Dagdu Mane (Patil), & others Rahimatpur, Taluka Koregaon, District Satara - 415511).
2. Secretary, (WRM & CAD), WRD, Mantralaya, Mumbai-400 032. (Attention: Shri. Sanjiv Tatu, Deputy Secretary - IM)
3. Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011.
4. Chief Engineer (S.P.), Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011.
5. Collector - Satara, Collector Office, Powai Naka, Satara - 415001. (Attn: Shri. Santosh Jadhav, SDO, Phaltan)

6. Superintending Engineer, Satara Irrigation Project Circle, Sinchan Bhavan, Krishnanagar, Satara - 415503
7. Superintending Engineer, Satara Irrigation Circle, Sinchan Bhavan, Krishnanagar, Satara - 415503.
8. Superintending Engineer, Pune Irrigation Project Circle, 10 Bund Garden Road, Opposite Council Hall, Pune - 411001.
9. Adv. V. S. Talkute, 5, 1st Floor, Parekh Vora Chember, 66 Nagindas Master Road, Mumbai - 400 001 (for Shri. Chandrakant Jagtap on behalf 10 other beneficiaries of Hanumant WUA, Phaltan).



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Case No. 4 of 2016

In the Matter of Water Allocation between Dhom and Dhom-Balkawadi
Projects as per the approved Detailed Project Report under Section 22(3) of
the MWRRA Act, 2005

Appellants

(1) Shri. Nandkumar Dagdu Mane (Patil),
Chairman, Shri. Chandragiri Kalva Pani Vapar
Sahakari Seva Sanstha Ltd., Rahimatpur, Dist: Satara.

(2) Shri. Avinash Jayant Mane, Chairman,
Kalbhairav Kalva Pani Vapar Sahakari Seva
Sanstha Ltd., Rahimatpur, Dist: Satara. And

(3) Shri. Shivaji Kondiram Mane,
Pavanputra Kalva Pani Vapar Sahakari Seva
Sanstha Ltd., Rahimatpur, Dist: Satara

All through Adv. Suresh Ramchandra Palande

Vs

Interveners

Shri. Vilas Namdeo Nalavade & others,
Hanumant Water User Cooperative Society Ltd,
Village Aljapur, Tal. Phaltan, Dist. Satara
All through Adv. V. S. Talkute

and

Respondents

(1) Primary Dispute Resolution Officer &
Chief Engineer (WR), Water Resources Department
Sinchan Bhavan, Barne Road, Pune 411 011.

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(2) Secretary (WRM & CAD),
Water Resources Department, Mantralaya,
Madam Kama Road, Mumbai 400 032.

(3) Collector, Collectorate Office, Powai Naka, Satara - 415001.

(4) Chief Engineer (SP), Water Resources Department
Sinchan Bhavan, Barne Road, Pune 411 011.

(5) Superintending Engineer,
Satara Irrigation Project Circle,
Sinchan Bhavan, Krishnanagar, Satara - 415503.

(6) Superintending Engineer,
Satara Irrigation Circle,
Sinchan Bhavan, Krishnanagar, Satara - 415503.

(7) Executive Director,
Maharashtra Krishna Valley Development Corporation,
Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011

ORDER

Coram : Shri. K. P. Bakshi, Chairman
Shri. V. M. Kulkarni, Member (W. R. Engineering)

Date : 12/06/2017

The Appellants has filed a Petition before MWRRRA (Case No 15 of 2015) in November 2015 with the main prayer of distribution of water of Dhom & Dhom-Balkawadi reservoirs in accordance with Section 22 (3) of the MWRRRA Act 2005. Subsequently, an Intervention Application by Shri. Nitin Nalavade on behalf 10 other beneficiaries of Hanumant WUA, Phaltan was received on December 8, 2015. The MWRRRA conducted a hearing on December 14, 2015 disposing the Petition on the ground of jurisdiction. As per the provision of MWRRRA Act, 2005, the grievance/ dispute is to be resolved first at Primary

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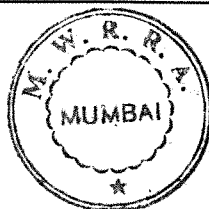
Dispute Resolution Officer (PDRO) level. Accordingly, MWRRA had issued its Order on December 21, 2015. A copy of the Order was also served to the Interveners.

The Appellants then filed a petition with the PDRO [in this case CE (WR) Pune] in January 2016. The PDRO dismissed their petition by his order dated April 05, 2016. The Appellants filed an appeal against PDRO's order before MWRRA on May 02, 2016. This appeal was assigned the number as Case No. 4 of 2016 on which two hearings - one on August 10, 2016 and another on October 19, 2016 were conducted by MWRRA. The Coram for that matter consisted of Smt. Malini Shankar, Chairperson and Shri. V. Giriraj, Member (W. R. Economy) of MWRRA Committee. The Interveners did not seek any intervention in the proceedings of those hearings. However, the Interveners filed an intervention application on October 24, 2016. The final hearing on the matter was therefore scheduled on December 19, 2016 which, however, could not take place owing to the transfer of Smt. Malini Shankar. That Committee's tenure also expired on January 06, 2017.

Subsequently, the State Government formed new Committee for MWRRA on March 6, 2017 with Shri. K. P. Bakshi as Chairman, Shri. V. Giriraj as Member which conducted two hearings - one on April 13, 2017 and another on April 26, 2017. As the case was not concluded and the State Government had reconstituted the Authority through the Notification dated May 5, 2017 by appointing the Chairperson and Member (Water Resources Engineering). This development necessitated a fresh / de novo hearing in this matter. Accordingly, the hearing was scheduled on May 22, 2017.

The relief sought by the Appellants is:-

- 1) The appeal of the appellants be approved;
- 2) The order dated April 5, 2016 issued by the PDRO be set side;
- 3) Order be issued according the water allocation between Dhom & Dhom-Balkawadi in consonance with the DPR.
- 4) The water allocation planning of both the reservoirs be decided.
- 5) As there is provision of release of water in Neera sub-basin from Dhom-Balkawadi only during Kharif season, no Rabi or Hot Weather rotation be practised. Order to that effect be issued.
- 6) As the Dhom-Balkawadi project is planned on the basis of surplus water and water unutilized in the Dhom sub-basin, no water be released in Neera sub-basin until Dhom reservoir is filled to its 100% capacity.



- 7) Which of the storage between Dhom & Dhom-Balkawadi be first got filled in? In the wake of hydrological drought in the command of Dhom, if without resorting to justful and time bound program of water utilisation devoid of any scientific planning be carried out, there will arise a serious situation due to shortage of water to which farmers, livestock in the command will be subjected.

It be made clear which of the two projects has the prerogative over water that is presently available in the sub-basin?


- 8) The Lift Irrigation Schemes (LIS) on Dhom Canal be closed down after the end of Rabi season as they are planned for 8 - monthly irrigation benefits.
- 9) And other proper and judicious orders be issued.

Hearing on May 22, 2017

At the outset the Authority explained the reason which necessitated a fresh / de novo hearing in this matter to which all the parties consented.

1. **Adv. Palande on behalf of Appellants' argued as follows,**

1. The preambulatory Statement of MWRRA Act, 2005 provides for the establishment of MWRRA *to regulate water resources within the State, facilitate and ensure judicious, equitable & sustainable management, allocation and utilization of water resources.* The Statement of Objects of MWRRA Act, 2005 also laid down the intention behind legislating the Act in the words ... *to establish an Authority to be known as MWRRA for control of water use in the State.*
2. The PDRO's decision is devoid of clarity. The directions given do not convey any meaningful substance either to Water Resources Department (WRD) or to the Appellants.
3. Dhom project was completed in 1977 and was planned as perennial project. The Dhom-Balkawadi project was originally planned as 4 - monthly to give benefits in Kharif season only. Subsequently it has been converted into 8 - monthly for which MKVDC, Pune has given approval. He invited the attention to Page no. 42 of Chapter 4 (Water Planning) of Third Revised DPR of the project pointing that diversion of water for Dhom-Balkawadi command should not be made beyond 15th October. He further submitted that the Revised Administrative Approval (RAA) to Dhom project was accorded in June 2002 & as per that about 2.75 TMC surplus water in Dhom project is planned to be utilized by constructing Dhom-Balkawadi dam on upstream of Dhom reservoir. This project has



not received CWC clearance. The Dhom-Balkawadi reservoir acts as a storage tank and is planned to release water in Dhom reservoir from which canal distribution systems for both Dhom & Dhom-Balkawadi command take off.


4. Due to conversion of Dhom-Balkawadi to 8 - monthly, irrigation in the command of Dhom project has been adversely affected. Moreover, water allocated for drinking water is being used for irrigation.
5. Water from Dhom reservoir is conveyed through a tunnel opening into Neera sub-basin. It is catered for drinking and irrigation in Bhor, Khandala & Phaltan talukas of Satara District. According to DPR, the sanctioned water use in Dhom-Balkawadi is only for Kharif. The diversion of water from Dhom-Balkawadi reservoir into Neera sub-basin should not be conceived beyond Kharif season.
6. At present only 9500 ha of command of Dhom project out of 18,100 ha is developed. The water shortage in Dhom command will be more severe when full command is developed.
7. The lands of farmers of Wai, Koregaon & Satara talukas were acquired for construction of Dhom dam. Although the rehabilitation of PAPs of 42 villages has been done, the first right of water of Dhom reservoir goes to them.
8. The approval & layout of Dhom-Balkawadi project is such that only Kharif use not exceeding 2.75 TMC is contemplated. In fact, more water is being used as can be seen from the following figures;

2012-13	2013-14	2014-15
3.02 TMC	3.83 TMC	3.78 TMC

9. The DPR of Dhom-Balkawadi project stipulates that water use in Dhom-Balkawadi command shall be such that planned water use in Dhom command is not adversely affected. Caution is required to be exercised so as not to upset the overall water plan of Krishna Project as per these stipulations. This important condition is now being violated.

(B) Shri. Nandkumar Mane, R/o Rahimatpur submitted as follows;

1. The Dhom project was constructed by considering 50% dependable yield whereas the design of Dhom-Balkawadi project is based on 75% dependable yield. This implies that Dhom reservoir is expected to be 100% impounded in 50 years out of 100 years whereas that of Dhom-



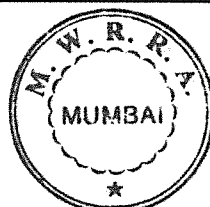
Balkawadi is expected to be 100% impounded in 75 years out of 100 years. This clearly shows that frequency of 100% impounding is far more in case of Dhom-Balkawadi than Dhom.

2. He also submitted that the water planning of Neera-Deoghar project did not provide for diversion of 0.93 TMC of water for Dhom-Balkawadi command to make out 1.75 TMC Rabi requirement of Dhom-Balkawadi project, after its conversion from 4 - monthly to 8 - monthly project.

(C) Shri. Vijay Ghogare, SE, SIPC, Satara submitted as follows;

1. Dhom reservoir was 100% full in 29 years out of last 36 years. According to the approved DPR of Dhom-Balkawadi, the planned utilization is 2.75 TMC including 0.05 TMC on account of evaporation. The frequent demand from the beneficiaries and pressure from the peoples' representatives of Dhom-Balkawadi command for more water during Kharif and Rabi seasons prompted the Government to accord approval on June 21, 2002 to the proposal of converting the project into 8 -monthly. As per the revised approved cropping pattern, water is let out for drought prone talukas of Bhor, Khandala & Phaltan for Kharif and Rabi season. Releasing water under scarcity relief program in Hot Weather was one of the measures to mitigate the severity of scarcity.
2. Due to conversion of project from 4 - monthly to 8 - monthly, the irrigation requirement rose to 3.36 TMC of which 1.75 TMC water is meant for Rabi. The deficit of 0.93 TMC is proposed to be met from Neera-Deoghar project whose canal and distribution system is yet to be completed.
3. The parawise reply has also been submitted by his office letter dated August 3, 2016. As regards the approval to the modified water planning of Dhom-Balkawadi project, the approval of MKVDC was sought vide letter dated April 4, 2000 which led the project in converting into 8 - monthly. The first RAA to the project was accorded by MKVDC through its office order dated July 4, 2002. The power of according AA to the projects was vested in MKVDC at that time and as such the approval is treated to be sought from a competent authority. This fact is being overlooked by the Appellants.
4. The Reservoir Operation Schedule (ROS) of Dhom-Balkawadi project is framed observing the guidelines laid down in Dam Safety Manual, Chapter 7 (Flood Forecasting, Reservoir Operation, Gate Operation). The ROS of Dhom-Balkawadi dam has been approved by the CE (SP) Pune in

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April 2015. Dhom-Balkawadi reservoir is being a storage tank, the depletion level is to be decided by the competent authority considering the provisions of the DPR and the actual requirement of water for irrigation & non-irrigation uses till October. He also brought to the notice that water use planning of Dhom & Dhom-Balkawadi reservoirs is being done as per the recommendations of the Canal Advisory Committee (CAC). He supported his contention with the minutes of the CAC of Hot Weather Irrigation Program of 2016-17.

5. He explained a proposal dated April 3, 2017 formulated by his office ensuring the quota of Dhom project viz. 11.69 TMC (including 2.64 TMC for drinking water). Only after ensuring quota for Dhom project, 2.70 TMC quota of Dhom-Balkawadi will be released. During the scarcity and drought condition, the irrigation in command of Dhom will be given first priority. This proposal is acceptable to the Appellants, as is clear from Appellants No. 1's letter dated April 13, 2017 which he submitted during the hearing on that date. The LIS in the command of Dhom are also required to be closed down beyond 28 February.
6. The sill level of H.R. is kept at 732.89 m to enable release of water for command of Dhom-Balkawadi project. The storage below this R.L. is 4.25 TMC meant for the command of Dhom project. Moreover, out of 3.96 TMC storage of Dhom-Balkawadi, 1.17 TMC water is being available for the use of Dhom project which is a component of Krishna project.

(D) Shri. V. S. Talkute, on behalf of Interveners;

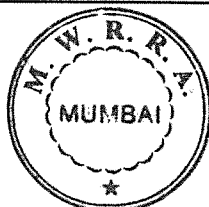
1. Before preparing his affidavit, he sought information regarding water allocation, cropping pattern and water utilization during last 10 years in Dhom command. He submitted his Affidavit-in-Reply and stressed the point that the PDRO did not invite the Interveners on whom in fact the copy of Order of MWRRA dated December 21, 2015 in Case No. 15 of 2015 has a specific mention of Intervener and also copy of the Order was served to them. If this appeal is allowed by MWRRA, the Interveners will have left no option other than to approach High Court. It is, therefore, required to be remanded the case to the PDRO as no notice was given to Interveners whose Intervention Application has been allowed by MWRRA before disposing the Case No. 15 of 2015. The PDRO has not followed the basic principle of natural justice.

Talkute



2. The Appellants have not disclosed the true and correct facts, suppressed various material facts. He went on placing on record necessary documents.
3. The proposal put forth by SE, SIPC, Satara dated 3 April 2017 assuring adequate water supply to Dhom command has not been approved by the officers higher than that SE, SIPC, Satara as such the proposal is to be rejected as not valid though it is acceptable to the Appellants.
4. In order to safeguard the rights of PAPs, the decision of MKVDC to switch over to 8 - monthly cropping pattern by utilizing surplus 2.70 TMC water of Dhom and 0.93 TMC water from Neera-Deoghar is justified. He denied that water released from Dhom-Balkawadi for irrigation in Rabi and Hot Weather in Neera sub-basin is an unauthorized utilization. In fact, beneficiaries of Dhom are using more water than entitled to them under the DPR. This is evident from the minutes of CAC of Dhom project for Hot Weather of 2016-17. As such farmers in the command of Dhom project are using more than allocated share of water.
5. The DPR of Dhom provides 2.64 TMC water for drinking and 0.23 TMC for industrial use. As per GR (WRD) dated 7 March 2001, during drought situation, the Government has power to reserve water for drinking. This quota can be utilized anywhere in the district as per the recommendation of the CAC. The Appellants are using the said drinking water quota for irrigation in Rabi & Hot Weather. As such they are exceeding their irrigation use. In fact they should not be allowed use of water in excess of their seasonal quota. Hence there is no cause of grievance to them.
6. As per the above GR, Kharif irrigation can only be practiced only when reservoir attains 33% of its live storage capacity. Rabi & Hot Weather irrigation is planned on the basis of storages available on 15th October and 1st March respectively. This is as per the recommendation of CAC.
7. He denied the preferential right of Appellants over the water stored in Dhom-Balkawadi. Both the projects are separate for which lands were acquired in talukas of Bhor, Khandala & Phaltan for rehabilitation of PAPs of Dhom project. When there is excess water after fulfilling irrigation and drinking needs of the Dhom project, the said excess water can be utilized in drought prone talukas of Bhor, Khandala & Phaltan. This really satisfied the need of drinking water of people and livestock. He concluded his submission stating that there is absolutely no injustice caused to the Appellants. As such there is no cause of action for the

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Appellants whose interests have adequately been protected. Hence the present appeal deserves to be dismissed.

(E) **Shri. R. G. Tambe, Sahyadri Sahakari Sakhar Karkharna, Yashvantnagar;**

He submitted that 42 villages affected by construction of Dhom project have been rehabilitated in Wai, Koragaon & Satara talukas. However, the tail end farmers of DRBC very rarely get the benefit of water from that canal. He therefore stressed that the water allocation should be carried out as per original DPR of Dhom-Balkawadi project.

(F) **Shri. S. N. Bolbhat, EE, Neera-Deoghar Project Division, Sangvai (Bhatghar);**

1. He submitted a letter from SE, PIPC, Pune in compliance with the direction given by the Authority vide Rojnama of Hearing dated April 26, 2017. The Appellant No. 1 during his submission on April 26, 2017 presented a letter, asking for certain information pertaining to Neera-Deoghar project.
2. It revealed that revised water planning of Neera-Deoghar project is principally approved by MKVDC's letter dated April 25, 2000. Accordingly, the revised project report of Dhom-Balkawadi project has been prepared and approval was sought from MKVDC vide its office order dated July 4, 2002. The MKVDC approved the second revised project report of Neera-Deoghar project vide MKVDC Resolution dated October 16, 2002. The letter is also attached with note on Water Planning of Neera-Deoghar project.
3. The proposal of diverting 0.93 TMC water meant for Dhom-Balkawadi for making the project 8 - monthly from the Neera-Deoghar project is principally approved by MKVDC. Accordingly, revised project report of Dhom-Balkawadi was submitted for approval which provided 0.93 TMC. However, the second revised project report of Neera-Deoghar inadvertently did not provide for this proposal

Issues:

1. The Interveners filed the Intervention Application during the earlier round of litigation i.e. proceedings of Case No. 15 of 2015. The same was disposed of vide MWRRA's order dated December 21, 2015. The case is remanded to CE (WR) Pune in his capacity as PDRO. During the

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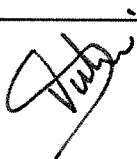


proceedings before PDRO, no notice was given to Interveners whose Intervention Application had been allowed by MWRRA as the necessary parties in the matter. The act of PDRO amounts to injustice to the Interveners. Thus the primary issue is whether the case is required to be remanded back to PDRO allowing the Intervener to put forth his view?

2. Whether it is proper to remand this case to PDRO again as his order in earlier case (Order dated April 5, 2016) is devoid of clarity as contended by the Appellants and failed to address the key issues in the Petition?
3. Whether the proposal of SE, SIPC, Satara dated April 03, 2017 needs to be quashed and set aside as requested by Interveners?
4. Whether there exists a cause of action for the Appellants?

Observations:

1. The principle of natural justice calls for equal opportunities to approach the Courts of Law and get redressal in respect of issues under dispute. The Intervention Application of the Interveners had been allowed by the MWRRA in its Order dated December 21, 2015. During the proceeding in the PDRO's office, Interveners' party should have been called for hearing. This has not been done by the PDRO which is a lapse on PDRO's part.
2. The PDRO in his order dated April 05, 2017 has allowed the application. However, his order does not address all issues raised in the application. The order of the PDRO is devoid of clarity and proper reasoning. The PDRO should have given clear directions on issues posed to him which would have been served as operating guidelines to the field staff.
3. The S.E.,S.I.P.C., Satara vide his letter dated April 3, 2017 has given a certain commitment to the Chairman Chandragiri WUA, Raitmatpur. The interveners have raised an objection to this proposal on the ground that it has no authorization from higher authorities. If the PDRO would have addressed all the grievances of the petitioners by a speaking order, a proposal of April 3, 2017 would not be required.
4. It appears from the yearwise water utilization data submitted by the S.E. SIC, Satara that except during the year 2014-15 (which was a drought year) the legitimate share of Dhom Project beneficiaries was made available from Dhom reservoir. However, the Appellant and WUAs which are at the tail end of the canal could not get their due share.



Order :

After having weighed the various issues framed as above and having examined the matter, the Authority gives following Order :

1. The Interveners are required to be given rightful opportunity for hearing to enable them to submit their contention in view of their Application in the initial case. The matter is, therefore, sent back to the PDRO to conduct a fresh hearing by issuing due notice to all parties involved. The PDRO shall conduct a fresh hearing within 30 days from the date of issuance of this order.
2. PDRO is further directed to deliver self - explanatory order addressing all relevant issues posed in the petition and also those issues which will be argued before him. The order is expected to serve as operating guidelines to the field staff and shall also convey relevant and meaningful information to various stakeholders regarding their water rights. The PDRO shall issue order within a month after the hearing is over.
3. PDRO shall also assess whether the Petitioner WUAs are getting their entitled quota of water, and if not (after assessing the reasons thereof) shall issue necessary directions so that Petitioners' right will be protected.
4. The proposal presented by SE, SIPC, Satara dated April 3, 2017 is hereby quashed & set aside. However, it is open to PDRO to cover relevant contents of the said proposal in his direction after due verification.

With the above findings and directions, the Appeal stands disposed.

Sd/-

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

Sd/-

(K. P. Bakshi)
Chairman



(Dr. Suresh Kulkarni)
Secretary

