

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.11664 OF 2015

Mr.T.D.Deshmukh a/w Mr.Samrat Shinde for the
Petitioner
Mr.A.B.Vagyani, GP a/w Ms M.P.Thakur, AGP for the
respondent No.1
Ms Swati Sawant i/b S.K.Legal Associates for
respondent No.2
Mr.Vijay D. Patil for respondent Nos.3 and 5
Mr.N.V.Walawalkar, Senior Advocate a/w
Mr.S.R.Nargolkar i/b Mr.Swapnil Mohite for
respondent Nos.6 and 7.

P.C.:

1 The learned counsel for the petitioner seeks permission to withdraw this petition with liberty to apply for review of the order dated 27th October 2015 passed by the Maharashtra Water Resources Regulatory Authority (for short `Regulatory Authority'). The learned counsel for the third respondent pointed out that the application for review made by the third respondent was not entertained by the Regulatory Authority only on the ground that the present petition has been filed in which ad-interim relief has been granted.

2 The learned counsel for the third respondent submits that if the petitioner is to apply for review, even the review petition already filed by the third respondent be ordered to be entertained as the same was not entertained only on the hypertechnical ground.

3 We must record here that the request was made by the learned counsel for the petitioner only after substantially arguing the writ petition. We have carefully perused the order dated 27th October 2015 passed by the Regulatory Authority. The determination made by the Regulatory Authority is in accordance with clause(c) of sub-section 6 of section 12 read with clause(c) of section 11 of the Maharashtra Water Resources Regulatory Authority Act, 2005 (for short 'the said Act'). We have perused the paragraph 6 of the said order. We have considered the directions contained in the said order on the basis of the reasons recorded by the Regulatory Authority.

4 The Regulatory Authority is a body of experts. The Regulatory Authority has decided the issues of equitable sharing of distress in the Ghod sub-basin as well as equitable distribution of water. We are of the view that when the body of experts like Regulatory Authority decides the issue of equitable distribution of the water in accordance with clause(c) of sub-section (6) of section 12 of the said Act, there are limitations on the writ Court interfering with such adjudication. A Writ Court can

examine only the decision making process. Interference can be made provided the Court is satisfied that the order of such Authority is perverse or patently illegal or is in breach of the principles of natural justice. We must note here that when a request was made by the learned counsel for the petitioner, we had expressed a view that the issues of equitable distribution of water and the sharing of distress in the basin or sub-basin should be best left to the decision of the body of experts like Regulatory Authority. If according to the case of the petitioner or the third respondent, there are some errors committed by the Authority, it is for the Regulatory Authority to consider the same. Therefore, we are inclined to accept the request of the petitioner.

5 It is true that the application made by the third respondent has been rejected only on the technical ground of pendency of this petition and grant of ad-interim relief. As this petition is being disposed of by granting liberty to the petitioner to approach the Regulatory Authority, it will be appropriate if the Regulatory Authority deals with the application being made by the third respondent on merits.

6 The learned counsel for the petitioner seeks continuation of ad-interim relief. The said prayer is opposed by the learned senior counsel for the sixth and seventh respondents. His submission is that if this Court is not interfering with the

impugned order, ad-interim relief should not be extended.

7 The learned counsel for the third respondent states that several arrangements are required to be made before the water is actually released from upstream reservoir towards lower stream reservoir. He states that the help of police machinery as well as Electricity Companies is required and normally it takes 8 to 10 days to actually release water from the date on which a decision is taken to release the water from upstream reservoirs. The learned counsel for the Regulatory Authority states that the Regulatory Authority will decide the application for review which may be made by the petitioner within a period of one week from the date on which the application is made by the petitioner. The learned counsel for the petitioner states that the application will be made on or before 4th December 2015.

8 The application for review which may be made by the petitioner and the application for review which is already made by the third respondent shall be decided on or before 11th December 2015. In view of the statement made by the learned counsel for the third respondent, it is not necessary to continue the ad-interim relief.

9 Subject to observations made above, we dispose of the petition by granting liberty to the petitioner to apply for review or recall of the

impugned order dated 27th October 2015, the ad-interim relief cannot be extended. We accept the statement made by the learned counsel for the petitioner that such application will be made on or before 4th December 2015.

10 Hence, we pass the following order:

- (i) We direct the parties to the petition to remain present before the Regulatory Authority on 4th December 2015 at 11.00 a.m.;
- (ii) The Regulatory Authority shall dispose of the application which may be filed by the petitioner as well as the review petition which is already filed by the third respondent as expeditiously as possible and in any event on or before 11th December 2015;
- (iii) In view of the statement made by the learned counsel for the third respondent regarding the time required for effecting actual release of water, it is not necessary to consider the prayer for extension of ad-interim relief;
- (iv) We, however, make it clear that if the third respondent proposes to actually release the water from upstream reservoir before 14th December 2015, the third respondent shall do so after taking leave of this Court by making an application in this disposed of petition;
- (v) All contentions of all the parties including the fifth and sixth respondents are kept open;

(vi) Writ petition is disposed of.

(G.S.PATEL,J.)

(A.S.OKA,J.)