

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1798 OF 2018

Anandrao Namdev Dhighe & Ors. .. Petitioners

Vs.

The State of Maharashtra & Ors. .. Respondents

WITH
WRIT PETITION NO. 2101 OF 2018

Arvind Gulabrao Sondkar .. Petitioner

Vs

The State of Maharashtra & Ors. .. Respondents

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- Mr. Anil Anturkar, Sr. Advocate a/w Mr. Abhijit Kulkarni, Mr. Sachin Hande, Mr. Sailesh Chavan i/by D.D. & Abhijit Associates for the Petitioners
- Ms. Kavita Solunke, AGP for Respondents - State
- Mr. R. Dada, Sr. Advocate i/by Mr. Nitin P. Deshpande for Respondent No. 7 in WP 2101/18 and for Respondent No. 9 in WP 1798/18

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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

Reserved on : SEPTEMBER 16, 2019.
Pronounced on : OCTOBER 1, 2019.

JUDGMENT (Per Akil Kureshi, J.)

1. The issues involved in these petitions overlap. They have been heard together and would be disposed of by this common judgment.

2. Brief facts are as under:-

The petitioners in Writ Petition No. 1798 of 2018 are agriculturists of cluster of villages in Bhore and Velha Talukas of Pune district. They have challenged changes in the crop pattern approved by the Government within the command area of Gunjawani Irrigation Project. The petitioners contend that changes in the crop pattern are made without collection of proper data and analysis. According to the petitioners, the respondents – authorities who are the State of Maharashtra and its various authorities under the Irrigation Department have made major changes in the irrigation project which is under construction, based on recommendation of the State Level Technical Assessment Committee (SLTAC-II) without scientific basis. The petitioners point out that the approval was granted by the Finance Department to the Gunjawani Irrigation Project in Velha

Taluka in the year 2016. The petitioners' main grievance is that this irrigation scheme would provide water to the agriculturists through pipelines in place of previous system of drawing water from small reservoirs created by the construction of check dams or bandhara. In order to achieve this, the authorities also changed the crop pattern which would force the agriculturists to switch over from their additional robust crops to more modern and unsustainable crops. In this context, the main issues raised by the petitioners are whether it is open for the authorities to implement the said irrigation project by forcing the certain crop pattern on the agriculturists which in the opinion of the petitioners would be in violation of their fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. The petitioners have therefore challenged the modifications in the Irrigation Project as well as the changes in the crop pattern.

3. On behalf of respondent No. 9 – The Maharashtra Krushna Valley Development Corporation, Mr. Digambar Mahadeo Dubal, the Executive Engineer of Nira Deoghar

Project Division, Sangvi (Bhatghar), Tal. Bhore, Dist. Pune has filed a detailed affidavit in reply dated 7.3.2018 and denied the allegations made in the petition particularly that the changes in the irrigation project were made at the instance of respondent No. 10 - Ministry of State for Irrigation Department. It is pointed out that administrative approval for the said irrigation project was given on 16.10.1993. It was revised in the year 2002 during which the area to be benefited by the irrigation was increased from 15000 hectares to 16500 hectares. Second revision was necessary to increase the area under irrigation from 16500 hectares to 21392 hectares. The Government, therefore, resolved that the proposal be first scrutinized by SLTAC. The SLTAC took into account various issues such as water availability, crop pattern, environmental clearance, CWC clearance, status of land acquisition, rehabilitation and resettlement of project affected persons, execution status of various components of the project, expenditure incurred and the funds required to complete the balance work etc. The SLTCA submitted its report dated 21.7.2017. It is further pointed out that the crop pattern has to be approved by the Directorate of

Agriculture. The Government has adopted a policy of supplying water through closed pipes in order to decrease the loss of water due to evaporation and thereby increase field application efficiency from 75% to 95%. Taking into account all these aspects, the Directorate of Agriculture granted approval to the revised crop pattern under letter dated 29.3.2017 which is also part of the report of SLTAC-II.

It is further pointed out that the report of SLTAC-II was forwarded to the Maharashtra Water Resources Regulatory Authority ("**MWRRA**" for short) under the provisions of Section 11(f) of the Maharashtra Water Resources Regulatory Authority Act, 2005 (hereinafter referred to as the "**MWRRA Act of 2005**"). Persons interested have raised objections against such report. These objections were considered by the authorities in detail. After hearing all the parties, the authority rejected the objections by an order dated 30.11.2017.

4. The Divisional Joint Director of Agriculture has filed affidavit in reply dated 28.2.2019 on behalf of respondent No. 7 in which it is stated that there is no

compulsion by the Government on the farmers to cultivate any particular kind of crop and the agriculturists are free to choose the type of crop they wish to grow. The Government only collects the data in respect of various crops cultivated by them, the yield obtained by them, other relevant factors and based on such data, the Government formulates its various policies in the interest of the farmers in order to increase their yield of crop and productivity. He has stated that the crop pattern contained in communication dated 29.3.2017 was only suggestive and it is not mandatory for any farmer to follow the said cropping pattern. It is mainly used for the purpose of deciding cost benefit ratio of planned irrigation project. He has outlined the steps taken before deciding such crop pattern which went through several layers of scrutiny. In relation to the modified irrigation scheme, he has stated as under:-

“13. I say that under the Gunjawani Project at Dhanep, Taluka Velha, District Pune, a dam on Kanadi river of the capacity of 3.69 million cubit feet is proposed. The said project, besides other things, includes distribution of water through closed pipes in 98 villages in Pune district, admeasuring 21,302 Hectare. I say that out of the said area of 11,107 Hectare in Purandar taluka is drought prone. I say that the Gunjawani project will have following benefits:-

- a) Irrigation Supply through closed pipes will avoid water losses due to evaporation and enhance Irrigation potential.
- b) Cost of water lifting to the farmers will be reduced.
- c) Use of electricity for water supply will be reduced.
- d) Use of Micro Irrigation will enhance water use efficiency and thereby Irrigation would be provided to more area as compared to traditional method of canal irrigation.”

5. Yet another affidavit dated 4.4.2019 came to be filed on behalf of respondent No. 7 in which it is pointed out that the Integrated State Water Plan was ready by 11.2.2019. It is further stated as under:-

“5. I further state that MWRRA Act 2005 advocates the concept of preparing Integrated State Water Plan as understood u/s. 2(1)(m) of the MWRRA Act 2005. This plan is prepared to develop and manage water resources in the State in a systematic and river basin wise manner by setting up River Basin Agencies (RBA), State Water Board and State Water Council, (SWC) for its implementation.

6. I state that Maharashtra Krishna Valley Development Corporation established under The Maharashtra Krishna Valley Development Corporation Act, 1996 is one of the five River Basin Agencies as understood u/S. 2(1)(u) of the MWRRA Act. There are total six basins (viz. Godavari, Krishna, Tapi, Narmada, Mahanadi and West flowing rivers) that cover the entire geographical area of Maharashtra. There are 69 sub-basins. The River Basin Agencies (Corporations) have prepared River Basin Plans and considering all such basin wise plans, integrated State Water Plan has been compiled. MKVDC has prepared River Basin Plan for Krishna Basin. Gunjawani falls in sub-basin K5.

7. I state that as explained herein above the planned annual utilization of projects contemplated in Krishna Basin by Maharashtra out of en bloc 599 TMC use during any water year permitted by the Krishna Water Disputes Tribunal decision was ready on 20.10.2001. The very same water utilization plan constituted the River Basin Plan for Krishna Basin. It may be noted that the said plan is part and parcel of the Integrated State Water Plan. Given the mandate of the Krishna Water Disputes Tribunal in its award, the said River Basin Plan was not going to be changed under any circumstances for Gunjawani Project. Therefore, it was as good as Integrated State Water Plan to develop and manage water resources from Gunjawani Project.”

6. In Writ Petition No. 2101 of 2018, the sole petitioner has made following substantive prayers:-

- “c. The Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ / order / directions in the nature of Mandamus, thereby the Respondent No. 7 be restrained from acting upon the clearance granted by Respondent No. 10 Authority dated 5th of December, 2017 till the Integrated State Water Plan is prepared after getting confirmation that the project which is subject of clearance dated 5th of December 2017 is in conformity with the Integrated State Water Plan as contemplated in Section 11(f) of MWRR Act;
- d. The Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ / order / directions in the nature of Mandamus, thereby direct to Respondent No. 1 to 7 and thereby directed the Respondent No. 1 to 7 to complete the process of Integrated State Water Plan within a specific time bound manner and such time limit kindly be set to complete

the process of Integrated State Water Plan..

- e. The Hon'ble Court be pleased to issue writ of Certiorari or any other appropriate writ / order in the nature of Certiorari, thereby, after verifying the legality and validity of the impugned order dated 30th of November, 2017 passed by Respondent No. 10 herein; the impugned order dated 30th of November, 2017 may kindly be quashed and set aside."

7. Main grievance of the petitioner in this petition thus is that the modifications in the irrigation scheme are approved in absence of Integrated State Water Plan. Consequently, the petitioner desires that such Water Plan be formulated. The petitioner points out that he is an agriculturist cultivating land situated in Taluka Bhor. Till now, he has been lifting water from Kolhapur Type weirs (check dam) which receives water from Gunjawani Irrigation project. The State authorities are in the process of modifying the irrigation scheme for which the Department of Finance has granted approval on 13.4.2016. As per the modification, the agriculturists would be supplied water for irrigation in closed pipes and through drip irrigation system. In other words, the supply of water would be without allowing the water to flow in the basin of the river. For such purpose, the crop pattern is also ordered to be changed drastically without collection of

data and scientific analysis. It is pointed out that the petitioner had raised objections before the MWRRA, however, the same came to be rejected. The petitioner has further contended that Section 11(f) of the Act of 2005 specifically requires the authorities to review and clear water resources projects proposed on the sub basin and river basin level in conformity with Integrated State Water Plan. In the present case, there is no Integrated State Water Plan and therefore, the modification in the existing irrigation scheme could not have been made. In this context, the petitioner has prayed for restraining the authorities till Integrated State Water Plan is prepared and till verifying that the project in question is in conformity with such Integrated State Water Plan. This in nut shell, is the grievance of the petitioner raised in the said petition.

8. The Executive Engineer, Nira Deoghar Project Division, Pune (Maharashtra Krishna Valley Development Corporation) filed affidavit dated 7.3.2018 on behalf of respondent No. 7. He has opposed the petitioner's contention that till the Integrated State Water Plan is

prepared, no modification to the existing irrigation project can be made. He has stated that respondent No. 7 had taken into account various aspects and submitted an exhaustive proposal to MWRRA. The authority considered the report, heard the objectors as well, including the petitioner and passed an order rejecting such objections.

9. Yet another affidavit in reply dated 26.8.2019 came to be filed on behalf of respondent No. 7 in which it is pointed out that in the present form, the Gunjawani Project will irrigate 21392 hectares of land. The project envisaged use of water through public distribution network which would result in saving in capital and maintenance cost as well as enable the farmers to use micro-irrigation. As per the Government policy, piped distribution network and micro-irrigation is subject of priority. Much of the supply would be with the use of gravitational force, thus saving of electricity cost. Distribution of water through pipes would also save substantial amount of water. It is also pointed out that the conventional canal system would require 1474 hectares of land which for the purpose of piped distribution network

would be reduced to 140 hectares. Thus, there would be saving of 1334 hectares of land required for canal network. This would save approximately Rs. 453 crores of acquisition cost.

10. During the pendency of the present petitions, MWRRA has passed a fresh order dated 14.8.2019. In the said order, the authority after referring to the clearance of the irrigation project under letter dated 6.12.2017, observed as under:-

“5. Now, the State Water Council has approved the Integrated State Water Plan (ISWP) in its meeting dated February 11, 2019 and has also approved the amendments in parameters of the said Gunjavani Project in light of Second Revised Administrative Approval in its meeting dated July 24, 2019.

Authority has confirmed that the said Gunjavani Project with its modified scope is consistent with ISWP.

Hence, Authority's clearance Order No. 16/2017 dated December 5, 2017 is now hereby confirmed. The terms and conditions as stated in the said Order shall remain in force.”

11. Based on such materials on record, learned counsel for the petitioners submitted that the authorities approved the changes in the crop pattern without sufficient data or scientific analysis of the data. He submitted that

under the fresh crop pattern, cultivation of traditional crops such as bajra, jawar, paddy etc has been discarded. Referring to Section 47 of the Maharashtra Irrigation Act, 1976 (hereinafter referred to as the **“Act of 1976”**), learned counsel submitted that the crop pattern so laid down would be binding on the agriculturists. Learned counsel further submitted that on the basis of such crop pattern, the entire irrigation scheme has been modified. Providing water through pipelines would discourage the traditional crops cultivated since generations. He further submitted that the changes in the irrigation scheme were approved without even the existence of Integrated State Water Plan. Such water plan came into existence much later and would not cure the defect of clearance of the changes in the irrigation scheme. He, therefore, submitted that MWRRA committed grave error in approving such changes. Learned counsel has also submitted that as per the order dated 5.12.2017 passed by the MWRRA, necessary compliance of environmental clearance had to be obtained. In the present case, the same has not been done.

12. On the other hand, learned Senior Advocate Mr. Dada appearing for respondent No. 7 opposed the petition submitting that after detailed scientific analysis, the crop pattern was prepared which went through several layers of scrutiny before it was accepted by the concerned authority. In any case, such crop pattern is not meant to restrict growing of any crop by the farmers. They are always free to grow the crops of their choice. The crop pattern is primarily meant for assessment of the effect of the irrigation scheme. He submitted that the changes in the irrigation project would lead to more efficient utilization of water, saving of cost and greater output of agricultural produce. All these aspects were examined by MWRRA in a detailed order which was passed after considering the objections of the petitioners and other objectors. Learned counsel further submitted that the Integrated State Water Plan has now been cleared by the Government, however, the same cannot be linked with the validity of the impugned order passed by MWRRA. The modified irrigation scheme is even otherwise in consonance with the State Water Plan. He submitted that after inviting tenders, one of the agencies is shortlisted for awarding

tender. One of the conditions of the tender would be that no work would be commenced or carried out without obtaining necessary environmental clearance. He stated that no work of the irrigation project would be carried out without such clearance.

13. In these petitions, thus in nutshell, the petitioners' challenges revolve around the legality of the revised crop pattern and the modifications made in the irrigation scheme. Both these issues overlap but also have independent elements of challenge. We may first take up the petitioners' challenge to the revised crop pattern. Briefly, the crop pattern is criticized on the ground that the same was adopted without collecting sufficient data and scientific analysis thereof. It was also argued that this crop pattern would bind the agriculturists and they would be under obligation to grow the crops as per this pattern.

14. In the context of criticizing the crop pattern on the ground of advisability, the petitioners have placed little material on record. It was only orally argued before us that

such crop pattern was hastily prepared, arbitrarily adopted and seeks to replace robust traditional crops cultivated by the agriculturists since generations such as bajra, jawar, paddy etc by modern fancy crops such as fruits orchards which are unknown to the region. On the other hand, as noted, the respondents have filed detailed replies inter alia contending that the Directorate of Agriculture took into account the existing crop pattern and after taking into account total requirement of water in the changed scenario and better utilization of water from the project revised the crop pattern. This new pattern would enable the agriculturists to cultivate more cash crops due to more availability of water. Taking into account all these factors, the Directorate of Agriculture approved the revised crop pattern.

15. It is well settled that in the field of scientific or technical areas, the Courts would be slow in interfering with the decision taken by the Government authorities duly aided and assisted by the experts in the field. In absence of any material whatsoever produced by the petitioners to

demonstrate that the revised crop pattern is totally arbitrary, bereft of any material on record, based on malafide considerations, the Court would not interfere with the same. The petitioners may have element of truth in canvassing the case of conventional crops against untested crops which may be susceptible to pests and diseases. However, these general assertions and allegations are not backed by any evidence on record. Even otherwise, essentially the said issues would be within the realm of the policy making and thus within the purview of policy makers.

16. There is yet another reason why we would not disturb the revised crop pattern which brings us to the petitioners' second challenge to the same. According to the petitioners, the new crop pattern would oblige the agriculturists in the region to cultivate the crops according to the mandate contained therein. The Government denies this contention. Learned counsel for the petitioners had placed heavy reliance on Section 47 of the Act of 1976 in connection with this contention. The said Act of 1976 was enacted to unify and amend the law relating to irrigation in

the State, to provide for charging water rates on lands under the irrigable command of canals and to provide for matters connected therewith. Part III of the Act pertains to construction and maintenance of canals. Part IV pertains to construction of field channels. Part VI pertains to general provisions for supply of water. Section 45 which is contained in Chapter I of Part VI provides that the provisions of the said Chapter shall apply in respect of water from a canal supplied under Chapters II, III, IV and V of this Part. Section 46 of the Act pertains to modes of supply of canal water, power to charge charge minimum rate. Section 47 pertains to power of Appropriate Authority to regulate sowing, planting or growing of crops during specified period on lands under irrigable command of canal and reads as under:-

“(1) Where the Appropriate Authority is satisfied that, for the better cultivation of lands, and production of crops and due preservation and proper utilisation of water resources of any canal, it is expedient in the public interest to regulate the kind of crops that should be sown, planted or grown on lands under the irrigable command of a canal or any part thereof (not being lands irrigated on wells within such irrigable command), and the period during which such crops should be sown, planted or grown on such lands, the Appropriate Authority may, having regard to the soil characteristics, climate, rainfall and water available, by order in writing make a declaration to that effect. Such order shall be given wide publicity in such manner

as the Appropriate Authority may think fit.

(2) On making such declaration, the Canal Officer, with the previous approval of the superior officer authorised by the Appropriate Authority, may specify by notice published in such manner as may be determined by him, the kind of crops that shall be sown, planted or grown on the lands under the irrigable command of the canal or any part thereof, specified in such notice, and the period or periods during which such crops shall be sown, planted and grown. The Canal Officer shall, subject to the provisions of Section 50 and of sub-section (3) of this section, thereupon by order regulate the supply of water from the canal for sowing, planting and growing such crops during the period or periods specified in the order.

(3) The State Government may, in consultation with the Company and the Zilla Parishads concerned by notification in the Official Gazette, make rules for determining the crops, and the period or periods during which such crops may be sown, planted and grown and for regulating supply of water for the purpose. Such rules may provide for fixing the extent of irrigation and for sowing, planting or growing different crops on the lands under the irrigable command of a canal and the facts which may be considered for fixing such extent, for giving publicity to such scheme and for inviting objections and suggestions including provision for calling a meeting of the persons affected by the scheme, and all matters incidental or supplemental as may be necessary for giving effect to the provisions of this section.

(4) On the publication of the notice under sub-section (2) of this section, no person shall sow, plant or grow or allow any crop (other than the crop or crops specified in such notice) to be sown, planted or grown on any land under the irrigable command of the canal or any part thereof, specified in such notice and during the period specified therein.

(5) Any person aggrieved by any notice given under sub-section (2) of this section may, within thirty days from the date of publication of such notice, file an appeal before such officer not below the rank of Superintending Engineer (or such officer of the Company or Zilla Parishad declared to be of equivalent rank) as the appropriate Authority may appoint. The appellate officer may on hearing the parties pass such order as he thinks fit; and thereupon, the notice shall stand unmodified or modified to such extent as may be specified in the order.”

On the basis of this section, learned counsel for the petitioners submitted that the revised crop pattern would oblige the agriculturists to grow crops in terms thereof. Learned counsel for the respondents refuted this contention submitting that the revised crop pattern is only for the purpose of assessing the benefits of irrigation scheme and utilization of water and the farmers are at all points free to grow the crops of their choice. Our attention was drawn to Sections 24 and 77 of **The Maharashtra Management of Irrigation Systems by Farmers Act, 2005** (hereinafter referred to as the “**Act of 2005**”). The said Act was enacted to provide for management of irrigation systems by farmers and matters connected therein. The Act makes detailed provisions for formulation of Water Users’ Association in the command areas of the irrigation schemes

to lay down powers and functions of Water Users' Association etc. Section 24 of the Act of 2005 provides that the Water Users' Association shall have the freedom of growing different crops within applicable water entitlement or water allowance, as the case may be, subject to any restriction mentioned in Agreement. Section 77 of the Act of 2005 is repeal provision and provides that on the commencement of the Act, in relation to the areas under the management of irrigation systems by farmers, Sections 46 to 48, Section 55, Sections 57, 58, 60 and 61 to 74 of the Act of 1976 shall be deemed to have been repealed. On the basis of these provisions, learned counsel submitted that in any case, by virtue of the Act of 2005, Section 47 of the Act of 1976 relied upon by the learned counsel for the petitioners would not be applicable.

17. It prima facie appears that by virtue of Section 77 of the Act of 2005, Section 47 of the Act of 1976 would not apply in relation to areas under management of irrigation scheme by the farmers. Quiet apart from this contention, we are of the opinion that Section 47 of the Act of 1976 does not

cover the present situation in so far as the binding nature of the crop pattern is concerned. Section 47 of the Act of 1976 may be analyzed. As per sub-section (1) of Section 47, the appropriate authority if so satisfied, for better cultivation of lands, production of crops and preservation and utilization of water from canal, may provide for the kind of crops that should be sown under the irrigable command of the canal. He may do so by making a declaration in this respect. As per sub-section (2) of Section 47, upon making such declaration, the Canal Officer would regulate the supply of water from the canal for sowing, planting and growing such crops during the period specified in the order. As per sub-section (4) of Section 47, on the publication of the notice under sub-section (2), no person is allowed to sow, plant or grow any crop other than the one specified in such notice on the land under the irrigable command area. Under sub-section (5) of Section 47, any person aggrieved by a notice under sub-section (2) can file appeal within 30 days to the specified officer.

18. Section 47 of the Act of 1976 thus operates in entirely different field. Through this provision, the appropriate authority would be in a position to regulate sowing, planting or growing of the crops during specified period on land under the irrigable command of the canal. He would make a declaration in this respect which would be published by the canal officer, thereupon he would regulate the supply of water from the canal for sowing, planting and growing such crops during the period specified in the order. As per sub-section (4) of Section 47, the agriculturists would be under obligation to sow, plant or grow only such crops on the land under the irrigable command of the canal. The crop pattern approved by the Directorate of Agriculture in the present case is not the one referred to in sub-section (1) of Section 47 of the Act and has an entirely different purpose and object. As pointed out by the respondents in the multiple affidavits, such crop pattern is only suggestive, not binding on the agriculturists in any manner and is meant to guide the policy decisions framed by the Government regarding the irrigation scheme. The petitioners cannot confuse the order that the appropriate authority may pass

under sub-section (4) of Section 47 of the Act of 1976 that the crop pattern approved by the Directorate of Agriculture. In any case, the respondents have more than once in their affidavits clarified that such crop pattern does not mandate the agriculturists to grow only certain kind of crops and that they are free to grow the crops of their choice.

19. This brings us to the petitioner's challenge in Writ Petition No. 2101 of 2018 which is primarily directed against the modification in Gunjawani Irrigation Project. The basic contentions are that the same is based on unscientific, untested crop pattern; which contention we have already rejected, that the same preceded the Integrated Irrigation Policy of the Government and his otherwise also opposed to Section 11(f) of the Act of 2005. We have already taken note of the contents of the affidavits filed by the official respondents pointing out the reasons for modification in the irrigation scheme. Through these affidavits, it is canvassed that for better utilization of the water for irrigation, it was decided to supply water to the agriculturists in the command areas through pipelines and drip irrigation systems instead of

open canals. The respondents point out that in the process, there would be saving of water, thereby increase in the area cultivable through such irrigation, saving of electricity in supply of water through conventional modes as against pipe water being transported with the aid of gravity. It is also pointed out that the land needed for pipelines would be much lesser than needed for canals and sub-canals. On one hand, the agriculturists would be benefited since the lesser area of their land would be needed for laying down the network and this method would also save sizable amount needed for acquisition of the land. The petitioners have not laid any foundation to argue that the changes proposed in the irrigation scheme are in any manner detrimental to the general interest of the agriculturists or environment. Mere oral arguments of the learned counsel for the petitioners that such changes would replace the age old conventional crops grown by the farmers in the region by more modern crops requiring much greater investment and looking after, cannot be entertained so as to overrule the public interest pointed out by the respondents.

20. These issues have been examined by the Regulatory Authority under the Act of 2005 also. The MWRRA Act of 2005 was enacted to provide for the establishment of the Maharashtra Water Resources Regulatory Authority to regulate water resources within the State, to facilitate and ensure judicious, equitable and sustainable management, allocation and utilization of water resources, fix the rates for use of water for agriculture, industrial, drinking and other purposes, and matters connected therewith or incidental thereto. With these objects in mind, the said Act was enacted. Section 2(m) of the Act defines the term “Integrated State Water Plan” as to mean a water plan approved by the State Water Council. Chapter II of the MWRRA Act of 2005 pertains to Maharashtra Water Resources Regulatory Authority. Under sub-section (1) of Section 3, the State Government would establish an Authority known as Maharashtra Water Resources Regulatory Authority to exercise the powers and perform the functions and duties assigned under the Act. Chapter III of the Act pertains to powers, functions and duties of the Authority. Section 11 contained in the said Chapter lists the powers

that the authority shall exercise and functions that the said authority would perform. Clause (f) of Section 11 which is relevant for our purpose reads as under:-

“(f) to review and clear water resources projects proposed at the sub-basin and river basin level to ensure that a proposal is in conformity with integrated State Water Plan and also with regard to the economic, hydrologic and environmental viability and where relevant, on the State's obligations under Tribunals, Agreements, or Decrees involving inter-state Entitlements:

Provided that, while clearing the new water resources projects by the concerned for construction proposed by River Basin Agencies, the Authority shall ensure that Governor's Directives issued from time to time, relating to investment priority for removal of regional imbalance are strictly observed:

Provided further that, in respect of the projects situated in Marathwada and Vidarbha Regions, the powers to accord administrative approval, or revised administrative approval under this clause, shall in accordance with the Governor's directives, be exercised by the concerned River Basin Agency;”

Referring to this provision, learned counsel for the petitioners had vehemently argued before us that the authority had to review and clear the water resources projects ensuring that they are in conformity with Integrated State Water Plan. It was in this context, he had pointed out that in the present case, the authority had given clearance

for the changes in the revised scheme even before the Integrated State Water Plan was framed by the Government. He had argued that the fact that subsequently, the Government had adopted the Integrated State Water Plan would not cure the defect even if the irrigation project in question is not found to be inconsistent with such water plan.

21. As noted, Section 11 of the MWRRA Act of 2005 pertains the powers and functions of the authority. Clause (f) enjoins the said authority to review and clear water resources projects proposed at the sub-basin and river basin level to ensure that the proposal is in conformity with Integrated State Water Plan and also with regard to the economic, hydrologic and environmental viability and where relevant, on the State's obligation. Accordingly, therefore, while reviewing or clearing the water resources projects, the authority has to ensure that the same is in conformity with the Integrated State Water Plan; as also with regard to economic, hydrologic and environmental viability. This, however, does not imply that if there is no Integrated State

Water Plan in existence, the authority is deprived of its power and function to review and clear the water resources projects. Its function of reviewing and clearing the water resources projects has to be performed having regard to the economic, hydrologic and environmental viability and would also ensure that the same is in conformity with the Integrated State Water Plan if in existence. As we shall see hereafter, the MWRRA had bestowed detail consideration to the relevant aspects of the matter including considering at length various objections received from different quarters including from the petitioners. Merely because at the time when such objections were disposed of and the modified irrigation project was approved, the State Government had not adopted the Integrated State Water Plan, would not mean that the decision of the MWRRA was defective. In any view of the matter, presently such Integrated State Water Plan is approved and MWRRA having taken into consideration the same has given its opinion in the above noted communication dated 14.8.2019 that the modified irrigation project is in consonance with the State Water Plan.

22. In the order dated 30.11.2017, the MWRRA had examined the grievances of the various objectors. It was noted that the objectors were lifting water from the weirs of Gunjawani river, had the permission to draw water only for Kharif and Rabbi seasons and not for perennial crops. It was noted that Gunjawani project was sanctioned in October 1993, the gorge filling of the dam could not be completed till April 2017. Now that the dam is completed, the canal distribution network is still not completed. Therefore, the objectors are enjoying the water available from Gunjawani reservoir through the years. Revision of the project is planned for more efficient water conveyance system and therefore, more efficient water usage. The water would be distributed through pipelines instead of open canal system previously envisaged. On account of saving of water in the process, the authorities have planned to extend the irrigation facility for additional 5400 hectares of land of Purander Taluka which is a drought prone area. The said authority took into account the detailed objections raised by the petitioners and other objectors. The arguments of the intervenors who are the farmers of Purander Taluka were

also taken into account. Opposition of the Government authorities to the objections were also recorded. Various issues were framed and findings on such issues were rendered. It was held that none of the legitimate rights of the objectors were adversely affected. Reference was also made to Section 11(f) of MWRRA Act of 2005. It was held that the proposed changes in the distribution system are more meritorious, would result into greater water efficiency which in turn would enlarge areas of the land under irrigation benefiting drought prone areas of Purandar Taluka. With these observations, all the objections were disposed of still making it clear that before granting clearance under Section 11(f) of the MWRRA Act of 2005, separate consideration would be undertaken. This was done in the subsequent order dated 5.12.2017. In such order, the additional benefits of the project were noted. It was observed that the hydrology of the project is approved by Central Design Organization Nashik. Ministry of Environment and Forest had granted environmental clearance to Gunjawan project. Under these circumstances, subject to certain conditions, clearance to the modified project was granted. One of the

conditions was that necessary compliance of condition No. 6 of the Environmental clearance accorded under letter dated 29.4.2005 for modified scope shall be ensured. Said Condition No. 6 in the said letter reads as under:-

“6. In case of change in the scope of the project, project would require a fresh appraisal.”

23. Learned counsel for the petitioners is correct in pointing out that so far such clearance has not been granted. However, this would not vitiate the order of MWRRA passed under Section 11(f) of the MWRRA Act of 2005. The said order is conditional and requires the authorities to obtain fresh environmental clearance before implementing the modifications in the irrigation project. We have already recorded that the respondents also agreed that before commencing of any work, such clearance would be needed and obtained and only if the same is granted, the work would start. At this stage, the anxiety is that the agency for carrying out said work has been selected and the work order could not be issued on account of interim orders passed by this Court.

24. The MWRRA has passed a fresh order dated 14.8.2019, copy of which has been produced by respondent No. 7 along with an affidavit dated 25.8.2019. This order records that the Gunjawani Project with its modifications is consistent with the Integrated State Water Plan approved by the Government in its meeting dated 11.2.2019. This order is separately challenged by the petitioners in a Writ Petition which is not before us. No interim orders are passed by the Court. We have therefore examined the issues raised by the petitioners in these two petitions.

25. In the result, we do not find any merits in the petitions. Both the petitions are therefore, dismissed. Interim orders stand vacated.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]

At this stage, learned Counsel for the petitioners requested that the interim arrangement prevailing during pendency of the petitions may be continued. We note that the Court had not passed any interim order, but the

petitioners were protected by a statement made by the Counsel for respondent No.7 to the effect that the tender process may continue, however, the work order shall not be issued without leave of the Court. For one, we cannot compel the said respondent to continue the said statement more so when the petition is dismissed. We also do not find any reason to grant any interim relief. The request is therefore, refused.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]