

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 322 OF 2023

Aarti Hydro Power Pvt Ltd through its ...Petitioner
Authorised Representative

Versus

The State of Maharashtra through Water ...Respondents
Resource Department through its Principal
Secretary & Ors

**Mr Sangramsingh Bhonsle, with A Bhonsle, Siddharth A Mehta, P
Bhonsle, Arti Gaikwad & Nrupal Dingankar, for the Petitioner.**
Ms Chaitrali Deshmukh, for Respondent No. 2.
**Mr GS Hegde, Senior Advocate, with Pinky Bhansali, for the
Respondent-CIDCO.**
Ms SS Bhende, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**
DATED: 1st August 2023

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PC:-

1. Although the Petition raises apparently intricate questions of legitimate expectation and promissory estoppel, none of that may be necessary in view of the Affidavit of the State Government.
2. Shortly stated, the Petitioner complains of diversion of water from its hydroelectric project at Hetawane Dam in Raigad District

by the City and Industrial Development Corporation (“**CIDCO**”), the 3rd Respondent, with or without the assistance and participation of the 2nd Respondent, the Konkan Irrigation Development Corporation (“**KIDC**”). The Affidavit of KIDC says that the proponent of this water diversion was CIDCO. CIDCO’s Affidavit says otherwise.

3. But none of that matters in view of what is stated by the State of Maharashtra through the Water Resource Department.

4. Before we go further, we need to note the complete state of disarray of this record. There are Affidavits in Reply by all three Respondents but the same person, one Prakash Dattatray Jadhav, has filed Affidavits in Reply on behalf of both KIDC and on behalf of the State of Maharashtra. It is nobody’s case that there is more than one Prakash Dattatray Jadhav of the same age involved.

5. The Affidavit that Mr Jadhav filed on behalf of the State Government is the one that is to our mind dispositive.

6. The State Government Affidavit accepts that the Petitioner is constructing and operating the hydropower project at Hetawane Dam. Mr Jadhav says that after the Petitioner utilises the water at that dam to generate power, i.e., hydroelectric power. That very water is then lifted, i.e., after hydel generation, by CIDCO for water supply to Navi Mumbai. In other words, the lifting of water by CIDCO is permitted only after power generation, not before. CIDCO is not permitted to divert water from the source. It cannot

lay a direct pipeline to draw water from the dam before it is used for power generation.

7. That is the heart of the Petition. But paragraphs 4, 5, 6 and 7 of this Affidavit should end the dispute once and for all.

“4. I say that for the reliefs claimed in the present writ petition, the Petitioner could have approached the respondent No.2 and/or its officials. However, the Petitioner inspite of availing the said remedy has directly filed the present writ petition. Hence, the petition is liable to be rejected.

5. I say that in the present writ petition, the Petitioner has challenged Government Resolutions dated 10.8.2020 and 14.6.2021. The said Government Resolutions are issued by Water Resources Department and based on Government Resolution dated 17.11.2016 and Water Policy of Maharashtra State 2019. Hereto annexed and marked **Exhibit 1 Colly.** are the copies of Government Resolution dated 17.11.2016 and Water Policy of Maharashtra State 2019. I say that the said Government Resolution dated 10.8.2020, was issued pursuant to the request made by Respondent No. 3 CIDCO, to cater the demand of water supply to Navi Mumbai.

6. I say that Government Resolution dated 14.6.2021, is a revised water planning due to change in command area, which has occurred due to increase in population, urbanization of area etc. I further say that due to such changes in command area, irrigation area keep on changing. As a result, the State Government has to revise water planning, which is done by issuance of Government Resolution dated 14.6.2021.

7. **At the cost of repetition, I say that pursuant to Government Resolutions dated 10.8.2020 and 14.6.2021,**

water allocated to the Petitioner for Hydro Power Project from Hetawane dam will not be reduced and water allocated to the Petitioner is not of consumptive use.

In view of the above facts and circumstances, I say and submit that the present writ petition may be rejected.”

(Emphasis added)

8. The two Affidavits of Mr Jadhav do not conflict with each other. They are exactly in parallel and paragraph 21 of Mr Jadhav’s Affidavit on behalf of KIDC also says that CIDCO can lift water only after power generation and not before.

9. In view of this, we do not see why the Petition should be kept pending. The Government confirms that the water allocated to the Petitioner for the Hetawane hydropower project will not be reduced. The water allocated to the Petitioner is not for consumptive use, and in any case, there is the statement that CIDCO can lift water only downstream after power generation by the Petitioner. That is more than sufficient for the Writ Petitioner’s purposes. Larger questions need not be addressed in the Writ Petition.

10. Accordingly, the Petition is disposed of by accepting the statements made on behalf of the State Government in the Affidavit in Reply.

(Neela Gokhale, J)

(G. S. Patel, J)