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IN THE HIGH COURT OF BOMBAY

Writ Petition No. 757 of 2011

Decided On: 02.03.2013

Appellants: **Society for Backlog Removal & Development & Ors.**
Vs.

Respondent: **The State of Maharashtra & Ors.**

[Alongwith Writ Petition No. 758 of 2011 and Public Interest Litigation (L) Nos. 20 and 19 of 2011]

Hon'ble Judges/Coram:

M.S. Shah, C.J. & Anoop V. Mohta, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Mr. S.G. Aney, Sr. Advocate with Mr. Ashutosh Dharmadhikari i/by Mr. Abhijit Rane in Writ Petition No. 757/2011, Mr. Mukul Rohatgi & Mr. Vineet Naik, Sr. Advocate i/by Kartikeya & Associates in Writ Petition No. 758/2011 and Mr. Vishwajit Sawant in PIL (L) No. 19 of 2011

For Respondents/Defendant: Mr. D.J. Khambatta, Advocate General with Mr. P.G. Lad, AGP and Ms. Nina R. Nariman for Respondent No. 1 & 3 State, Mr. S.G. Jagtap, for Respondent No. 2 in Writ Petition No. 757 & 758 of 2011, Ms. Shyamali Gadre i/by Little & Co., for Respondent No. 5 in Writ Petition No. 758/2011, Mr. Mukul Rohatgi & Mr. Vineet Naik, Sr. Advocate i/by Kartikeya & Associates and for Respondent No. 5 in W.P. No. 757/2011 and Mr. Aspi Chinoy, Sr. Advocate with Mr. Madhav Jamdar, for Respondent No. 6 in WP No. 757/2011

Subject: Trusts and Societies

Acts/Rules/Orders:

Constitution Of India - Article 154, Constitution Of India - Article 163, Constitution Of India - Article 163 (1), Constitution Of India - Article 200, Constitution Of India - Article 202(2), Constitution Of India - Article 202(3) (f), Constitution Of India - Article 213, Constitution Of India - Article 239(2), Constitution Of India - Article 371, Constitution Of India - Article 371(2), Constitution Of India - Article 371(2) (b), Constitution Of India - Article 371(2)(b), Constitution Of India - Article 371(2)(c), Constitution Of India - Article 371-A(1)(a), Constitution Of India - Article 371-A(1)(b), Constitution Of India - Article 371-A(2) (b), Constitution Of India - Article 371-A(2)(f), Constitution Of India - Article 371-F(f), Constitution Of India - Article 371A, Constitution Of India - Article 371F; Maharashtra Water Resources Regulatory Authority Act 2005 - Section 11, Maharashtra Water Resources Regulatory Authority Act 2005 - Section 11(1), Maharashtra Water Resources Regulatory Authority Act 2005 - Section 11(9), Maharashtra Water Resources Regulatory Authority Act 2005 - Section 11(a), Maharashtra Water Resources Regulatory Authority Act 2005 - Section 11(f), Maharashtra Water Resources Regulatory Authority Act 2005 - Section 12, Maharashtra Water Resources Regulatory Authority Act 2005 - Section 12(9), Maharashtra Water Resources Regulatory Authority Act 2005 - Section 14, Maharashtra Water Resources Regulatory Authority Act 2005 - Section 15, Maharashtra Water Resources Regulatory Authority Act 2005 - Section 2 (u-1), Maharashtra Water Resources Regulatory Authority Act 2005 - Section 20, Maharashtra Water Resources Regulatory Authority Act 2005 - Section 21, Maharashtra Water Resources Regulatory Authority Act 2005 - Section 21(1), Maharashtra Water Resources Regulatory Authority Act 2005 - Section 26, Maharashtra Water Resources Regulatory Authority Act 2005 - Section 5

Cases Referred:

State of Gujarat and Anr. vs. Hon'ble Mr. Justice R.A. Mehta (Retd.) and Ors. MANU/SC/0001/2013

Citing Reference:

Discussed

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Case Note:

Power and Energy - Validity of claims -Article 371(2) of Constitution of India, 1949; Sections

16A, 11(a), 12 of Maharashtra Resources Regulatory Authority Act, 2005 - Petition was filed challenging claims of agriculture and industry over water - Whether, there was violation of any directives of Governor under Article 371(2) of Constitution - Held, allocation of water was made in favour of Respondent No. 5 on basis of State Water Policy of 2003 - Respondent No. 5 had already taken irreversible steps for setting up power plant on basis of water allocation made in its favour as far back in February 2008 - Thus, impugned decision of State Government and Vidharbha Irrigation Development Corporation in February 2008 to allocate 87.60 MCM of water to power plant of Respondent No. 5 was not contrary to law or arbitrary or violative of Governor's directives under Article 371(2) of Constitution - Petitioners claimed that farmers in Amravati and Wardha districts were entitled to get same quantity of water for irrigation which they were getting in past - It was not based on any legal right, but it was open to Petitioners to approach State Government, Maharashtra Water Resources Regulatory Authority and other authorities under Maharashtra Water Resources Regulatory Authority Act, 2005 for any increase in allocation of water for irrigation - This Court had no jurisdiction to express view on quantity of water, which should be supplied for irrigation of lands in Amravati and Wardha districts from Upper Wardha Dam. - Directives given by Governor under Article 371(2) of Constitution in respect of physical backlog of irrigation facilities in Vidharbha regions were binding on State Government in accordance with Development Boards for Vidharbha, Marathwada and Rest of Maharashtra order, 1994 issued by Governor of Maharashtra, and accordance with Act - Writ Petition no. 757 of 2011 disposed of - PIL Writ Petition No. 19 of 2011 disposed of.

JUDGMENT

M.S. Shah, C.J.

1. Competing claims of agriculture and industry over the water in Upper Wardha Dam in Amravati district in Vidharbha region of Maharashtra have given rise to this group of petitions, which also raise important questions about interpretation of Article 371(2) of the Constitution of India, under which the President of India has made an order with respect to the State of Maharashtra providing for special responsibility of the Governor of Maharashtra for removal of regional imbalance amongst areas of Vidharbha, Marathwada and rest of Maharashtra. Petitions have been filed in the background of following facts.

In the year 2007, MOU was executed between Government of India and Government of Maharashtra specifying that the Upper Wardha Project in Amravati District approved by the Planning Commission in the year 1996 was to irrigate 75,080 hectare annually. The Government of India agreed to fund the project partially. From the water stored in Upper Wardha Dam, water was being supplied for drinking purpose, for irrigation purpose and for industrial purpose.

In the year 2002 the Government of India announced National Water Policy, giving priority to irrigation over industries. In the year 2003 the Government of Maharashtra announced State Water Policy giving priority to industry over agriculture.

On 21 February 2008, the High Power Committee of Government of Maharashtra headed by the Minister for Agriculture and 11 other members including the Minister of State for Irrigation, Government of Maharashtra (hailing from Vidharbha region) and Minister of State for Water Supply, after considering the scarcity of electricity in the State, decided to provide 87.6 Million Cubic Meter (MCM) to respondent No. 5 - M/s. Sofia Power Company Ltd. (now Indiabulls Power Ltd.) for its thermal power project for generation of 2640 MW of electricity, 1350 MW in the first phase. Vidharbha Irrigation Development Corporation-respondent No. 2 herein also informed respondent No. 5-company on 22 February 2008 that water allocation to the tune of 87.6 MCM for the proposed thermal power station of respondent No. 5 for 2640 MW capacity in Amaravati through Upper Wardha Project was approved.

2. In March 2010 the Society for Backlog Removal & Development, Amravati (hereinafter referred to as the petitioners) filed Writ Petition No. 1038 of 2010 before the Nagpur Bench of this Court for the following substantive reliefs:-

(a) challenging the aforesaid decision dated 21 February 2008 of the State of Maharashtra and the decision dated 22 February 2008 of the Vidharbha Irrigation Development Corporation for allocation of water to Thermal Power Project of respondent No. 5-industry and also

(b) for a direction to the State of Maharashtra in the Department of Water Resources, Vidharbha Irrigation Development Corporation, Maharashtra Industrial Development Corporation and the Maharashtra Water Resources Regulatory Authority not to allocate any

quantity of water from the live reservoir of the Upper Wardha Irrigation project of Amravati to any new industry unless and until the physical backlog of Amravati district in irrigation sector is completely eradicated and also until the created irrigation potential of 75,080 hectares therefrom is fully utilized for irrigation purposes.

The petitioners heavily rely upon the Directives of the Governor of Maharashtra under Article 371(2) of the Constitution as the grounds for the above prayers.

3. Respondent No. 5 - M/s. Sofia Power Company Ltd. (Now Indiabulls Power Ltd.) filed Writ Petition No. 1089 of 2010 before the Nagpur Bench of this Court challenging the constitutional validity of Article 371 (2) of the Constitution on the ground that it is violative of the Basic Structure of the Constitution.

4. Following two PILs came to be filed before the Principal Seat:-

PIL (L) No. 19 of 2011 is filed by a society registered under the Societies Registration Act, 1860 purported to be involved in the activities for the betterment of livelihood of mankind. The petitioner claims to be representing cause of people in Maharashtra, other than Vidarbha and Marathwada region. The petitioner-society has challenged the constitutional validity of Article 371(2) of the Constitution, orders issued by the President and the Governor under Article 371(2) of the Constitution and the Rules made thereunder and the directives issued by the Governor from time to time under the aforesaid constitutional provision.

PIL (L) No. 20 of 2011 is filed by another society registered under the Societies Registration Act, 1860. This petitioner also claims to be representing the cause of people in western Maharashtra. This petitioner has prayed for a declaration that the directives issued by the Governor under Article 371(2) are not binding on the State Government and/or the Legislature. The petitioner has also challenged the directives of the Governor issued on 27 May 2009 and 19 March 2010.

5. By order dated 30 March 2011, both the writ petitions pending before the Nagpur Bench came to be transferred to the Principal Seat and were ordered to be heard alongwith the two PILs filed before the Principal Seat. The parties requested not to assign reasons for the transfer. That is how all the four cases have been heard together and are being disposed of by this common judgment.

6. It is the case of respondent No. 5-industry that after the State Government and the Vidarbha Irrigation Development Corporation communicated their decision to allocate 87.60 MCM of water to respondent No. 5-industry for its power plant at Amaravati in Vidarbha region, respondent No. 5 has taken several steps for the purpose of setting up its thermal power plant. MIDC handed over the physical possession of land admeasuring 1350 acres on payment of premium of Rs. 96 crores on 19 September 2008 and in compliance with the condition for allotment of the said land, respondent No. 5-industry has also planted 1 lac trees on the said land. Respondent No. 5-industry also obtained Environmental Clearance from the Ministry of Environment and Forests on 27 February 2009 and the letter of assurance for coal linkage from two coal companies in June 2009. The total project cost for first phase has been estimated at Rs. 6888 crores with debt equity ratio of 75: 25 and an amount of Rs. 5488 crores has already been spent on phase one of the project with borrowing of Rs. 4069 crores. By November 2009, respondent No. 5 also raised funds of Rs. 1600 crores through initial public offering (IPO). Respondent No. 5 has already placed an order with the Bharat Heavy Electrical Ltd. (BHEL) for supply, erection and commissioning of boiler, turbine and generator for the power plant at Amaravati at the cost of Rs. 2870 crores. Thus, after obtaining permissions from all authorities, respondent No. 5 has already set up the Power Plant for generating 1350 MW of electricity in the first phase. Respondent No. 5 and the State Government have also entered into a detailed Water Supply Agreement dated 22 May 2012.

7. At the hearing of these petitions on 4 October 2012, in response to a query from the Court, learned counsel for State Government and learned counsel for Vidarbha Irrigation Development Corporation had stated that even after supplying 328.031 MCM of water for irrigation (which was the quantity utilized for irrigation last year i.e. in the year 2011-12 ending on 31 May 2012), 77.329 MCM for drinking purpose and 10 MCM for industrial use, the State Government and the Vidarbha Irrigation Development Corporation are in a position to supply 87.60 MCM water from the Upper Wardha Dam to the Thermal Power Project of respondent No. 5-industry in the current year 2012-13, ending on 31 May 2013. It was stated that this position is for the current year on account of adequate rainfall this year.

In view of the above, with the consent of learned counsel for parties, State of Maharashtra and Vidarbha Irrigation Development Corporation were directed to supply water to the power plant of respondent No. 5 at Amravati as per the Water Agreement dated 22 May 2012 upto maximum 87.60 MCM, in the current

year 2012-13 ending on 31 May 2013. Learned counsel for respondent No. 5 states that in view of commencement of water supply, respondent No. 5 will start generating electricity from this month i.e. in March 2013.

8. Controversy between the parties has, therefore, not survived for the current year 2012-13. But for determination of the following issues, learned counsel for the parties have argued at length on several important questions of law and Constitution:

(i) Whether the decision of the State Government and the Vidarbha Irrigation Development Corporation in February 2008 to allocate 87.60 MCM of water to respondent No. 5 was illegal or arbitrary and whether it was in violation of any directives of the Governor under Article 371(2) of the Constitution.

(ii) Whether the petitioners are entitled to challenge in these proceedings the decision of the State Government and the Vidarbha Irrigation Development Corporation that for irrigating 70,000 hectares of land in Vidarbha (50000 in Amaravati district and 20000 in Wardha District), the required quantity of water will be 200.203 MCM.

(iii) If the quantity of live stock of water in the Upper Wardha dam is not sufficient in future, which authority will take decision about reallocation of water from the Upper Wardha dam? Whether this allocation is to be made by the Governor of Maharashtra in exercise of powers under Article 371(2) of the Constitution as contended by the petitioners or whether it is to be made by the State Government and the authorities under the Maharashtra Water Resources Regulatory Authority Act, 2005, as contended on behalf of the State Government;

(iv) Whether the directives given by the Governor under Article 371(2) in respect of physical backlog of irrigation facilities in Vidarbha region are binding on the State Government and its agencies.

Issues (i) and (ii)

9. We may first deal with the petitioners' contention challenging reduction in the allocation of water for irrigation purpose. Learned counsel for petitioners submitted that respondents are relying on the decision of the High Power Committee at its meeting held on 21 February 2008 for allocation of 87.60 MCM water in favour of respondent No. 5, but the same decision also indicated that on account of this decision, 23,219 hectares of the land will be deprived of irrigation. It is submitted that this was a clear admission on the part of respondent-State that the impugned decision to allocate water to respondent No. 5 was at the cost of irrigation.

Secondly, it is submitted that when the Third Revised Estimate was prepared in the year 2006, the need for irrigating same area of land was assessed at 302.78 MCM. and in the year 2011-12, 328 MCM of water was supplied for irrigation. Hence respondent-authorities are not justified in reducing quantity of water for irrigation purpose to 202.203 MCM while preparing Fourth Revised Estimate in the year 2009.

10. As regards the first ground based on the minutes of the High Power Committee meeting held on 21 February 2008, learned Advocate General as well as learned counsel for respondent No. 5 have submitted that the State Government had at that time decided to recover irrigation restoration charges from respondent No. 5 for supply of 87.60 MCM of water from Upper Wardha Dam and it was for that limited purpose that it was indicated in the minutes of the meeting that 23,219 hectares of land will be deprived of irrigation and on that basis irrigation restoration charges were to be paid by respondent No. 5, apart from paying water bills on the basis of actual quantity of water. Whether the said charges should be paid by respondent No. 5 at the rate of Rs. 50,000 per hectare, which was the rate previously applied to others or whether it should be Rs. 1 lac per hectare as levied by the State Government on respondent no. 5 is the subject matter of a writ petition pending before another Division Bench of this Court.

11. As regards the aforesaid second ground urged by the petitioners, Mr. Khambatta, learned Advocate General has invited our attention to the affidavit dated 26 July 2010 of Mr. H.Y. Kolwale, the Executive Director, Vidarbha Irrigation Development Corporation stating that upto the sanction of 3rd revised project report (in the year 2006), the canals were not fully lined. As a result, water distribution efficiency of 37% was taken, considering the unlined canal for deriving at the figure of 302.780 MCM as required for irrigation. In the year 2009, at the time of the fourth revised project report, it was observed that the canal lining work of the Upper Wardha canals was at an advanced stage of completion. Due to improvement in the canal efficiency by way of lining, the same areas of land which earlier required 302.780 MCM of water, could now be irrigated by 202.203 MCM of water. This estimate as regards

making available 202.203 MCM of water for the potential of 75080 hectares was also accepted by the Central Water Commission, New Delhi, which is the highest body in the country dealing with interstate water planning and technical clearance of major and medium projects all over India.

It is pointed out at the hearing that the area of 75,080 hectares to be cultivated has now been reduced to 70,169 hectares.

Reliance is also placed by learned Advocate General on letter dated 8 April 2009 of the Director, Project Appraisal, Central Water Commission forwarding the following comments of the Central Water Commission:-

Crop water Requirements

Gross irrigation requirements: Annual crop water requirements for area of 70,169 hectares have been computed as 202.203 MCM. The computation seem to be in order. No further comments.

Drinking/Industrial Water requirements

Total drinking water and industrial water requirements have been mentioned as 73.099 MCM and 24.735 MCM on the working tables. The same seem to be in order. No further comments.

It is pointed out at the hearing that the request for industrial purposes is now assessed at 10 MCM for industrial use (other than the requirement of power plant of respondent no. 5 industry).

12. Before proceeding further we may also note that besides allocation of 87.60 MCM of water for the Thermal Power Station of respondent No. 5, the State Government had earlier decided to allocate 35.92 MCM of water to another company M/s. Amravati Thermal Power. However, at the hearing, the learned Advocate General has stated, under instructions, that no such water is to be allocated to the said company and that the power plant of the said company has also not come up.

13. It is also pointed out on behalf of respondent No. 5 that even after supply of water from Upper Wardha Dam for irrigation, drinking and industrial purposes, the storage of Upper Wardha Project on 31 May o

Date	Live storage (mm ³)
31/5/2003	127.4
31/5/2004	250.79
31/5/2005	135.67
31/5/2006	280.72
31/5/2007	188.65
31/5/2008	157.37
31/5/2009	133.46
31/5/2010	167.58
31/5/2011	245.96
31/5/2012	152.23

It is therefore, submitted on behalf of respondent No. 5 that when adequate quantity of water is available in Upper Wardha Dam, even on 31 May every year, as indicated above, the petitioners are not justified in making any grievance or in challenging allocation of 87.60 MCM of water to the power plant of

respondent No. 5-industry.

14. The learned Advocate General has submitted that the entire balance quantity on 31 May every year is not to be released, as a part thereof is also required to be carried forward to the next year i.e. beyond 31 May. The State Government has placed on record the power deficit in the State of Maharashtra. In the year 2011-12, against the peak demand of 21,009 MW of power, generation of power was only to the extent of 16,417 MW with a huge deficit of 4256 MW. Similarly, as against the energy requirement of 1,41,382 million units, the availability was only 1,17,722 i.e. deficit of 16.7%. It is, therefore, submitted on behalf of the State Government, Vidarbha Irrigation Development Corporation and also respondent No. 5-industry that there is no illegality or unreasonableness in the decision of the State Government and Vidarbha Irrigation Development Corporation in sanctioning allocation of 87.60 MCM of water from Upper Wardha Dam for the power plant of respondent No. 5 company.

15. Learned counsel for the petitioners, thereupon, submitted that availability of water in the Upper Wardha Dam may not be at the same level in future, as it is in the current year and at that time again the question of allocation/reallocation will arise.

16. Learned Advocate General has placed on record statement dated 2 March 2013 of Mr. W.P. Jadhav, Superintending Engineer, Water Resources of Government of Maharashtra stating as under:-

The State of Maharashtra (Respondent No. 1) states that, in Normal (Average) rainfall years, 200.203 MCM of water will be supplied for Irrigation, 77.329 MCM for domestic use and 10.000 MCM for Industrial uses from Upper Wardha Project and in the event of bad rainfall years, the shortfall in these supplies will be made good from conjunctive use of ground water available in the first instance and then to the extent possible from the 87.60 MCM sanctioned to Respondent No. 5 (M/s. Sophia Power Company Ltd.). In the event that there is adequate rainfall and further quantity of water is available from the Upper Wardha Project, Respondent No. 1 undertakes to supply such surplus water as is necessary for domestic and Irrigation uses before permitting the use of such surplus water for other purposes in accordance with the State Water Policy.

17. Learned Advocate General hastens to add that the statement would apply in normal rainfall years, as indicated at the outset, and that this statement is meant to be acted upon in the near future and not for all time to come and subject to any directions of Maharashtra Water Resources Regulatory Authority, established under the Maharashtra Water Resources Regulatory Authority Act, 2005 or as per the directions issued by the other competent authorities in accordance with the provisions of the said Act.

18. Learned Advocate General has also relied upon the following reply dated 15 December 2009 from the Secretary to Governor in reply to State Government's letter dated 10 December 2009

With regard to the query regarding whether allocation of water from the irrigation dams in the State for drinking, industrial, irrigation and other purposes as per the State Water Policy violates in any manner the directives issued by the Governor under Article 371(2). I am directed to clarify that policies of the State Government in this regard do not conflict with the allocations made by the Governor in the irrigation sector.

It is, therefore, submitted that since the Governor himself is of the view that policies of the State Government in the matter of allocation of water from irrigation dams in the State for drinking, industrial, irrigation and other purposes as per the State Water Policy, do not violate in any manner directives issued by the Governor under Article 371(2) of the Constitution, the petitioners have no cause of action.

19. We may now refer to National and State Water Policies. In the year 2002, the Government of India announced National Water Policy laying down following in planning and water allocation priorities:-

In the planning and operation of systems, water allocation priorities should be broadly as follows:-

- Drinking water
- Irrigation
- Hydro-power

- Ecology
- Agro-industries and non-agricultural industries
- Navigation and other uses.

However, the priorities could be modified or added if warranted by the area/region specific consideration.

20. The State Water Policy of the Government of Maharashtra announced in 2003 indicated that "increasing conflict among the competing uses of the water for various purposes (such as irrigation, urban water supplies and industries etc.) and poor operation and maintenance of the created facilities in the water sector has resulted in poor service delivery and large gap in the irrigation potential created and utilized. A careful planning, development and management of the water resources in the State is, therefore called for."

The State Water Policy, then, referred to the link for rural and urban water supply, industrial, hydro-power generation etc. and also for commerce and industry on which the growth in employment to meet the needs of a growing population will depend.

Paragraph 4 of the State Water Policy 2003 also laid down the following priorities:-

Water resources shall be allocated in accordance with the following general principles:-

- (a) Domestic use for drinking, cooling, hygiene and sanitation needs including livestock.
- (b) Industrial, commercial use and agro-based industrial use.
- (c) Agriculture and hydropower.
- (d) Environment and recreation uses
- (e) All other uses.

21. Subsequently, there has been change in the State Water Policy and by Circular dated 18 May 2011, the State Government has redetermined the Water Policy to conform to the National Water Policy and now the priorities are laid down as under:-

- (1) Water for drinking purpose
- (2) Water for irrigation purpose
- (3) Water for hydro-power purpose
- (4) Water for environmental purpose
- (5) Water for agro based industries and other industries
- (6) Navigation and for other purpose

22. Minutes of the High Power Committee held on 21 February 2008 reads as under:-

Decision taken in Meeting:

Out of 548.14 MCM water of the Dam, 89.72 MCM is reserved for non-irrigation. Due to it till now, 108.69 means 19% of live stock has been reserved. Now, Sofia Power Company Ltd. Mumbai's demand of 87.60 MCM for the Power Project is taken 31.93% will be reserved for non-irrigation purpose. By this demand, 23,219 hectares will be deprived of the irrigation.

Considering the scarcity of electricity in the State, the deficiency of electricity can

be reduced to some extent by this Power Project. According to the Policy of the State of Maharashtra in the matter of Water management, 2nd priority is for industrial purpose and 3rd priority is for Irrigation and as such, it is decided that the company will have to bear the entire expenditure of capital and re-establishment of the irrigation capacity and deposited with the Government and subject to this condition, the decision is taken.

The Managing Committee, Vidarbha Irrigation Development Corporation should verify and see if dams/barrages of minimum of 87.60 MCM stocks could be possible so that the irrigation area should not be affected by these projects.

It appears that the statement in the minutes of the meeting of the High Power Committee held on 21 February 2008 that 23219 hectares of land will be deprived of irrigation was made for the purpose of calculating the charges payable by respondent No. 5 for taking allocation of 87.60 MCM of water from Upper Wardha Dam on the basis of the Third Revised Estimate prepared in the year 2006 that for irrigating 75,000 hectares of land in Amravati & Wardha districts, the need for water was assessed at 302 MCM, which need is now assessed at 200 MCM as per the fourth Revised Estimate prepared in the year 2009.

23. It also needs to be noted that when the decision was taken in the year 2008 for allocating 87.60 MCM of water from Upper Wardha Dam to the power plant to be set up by respondent No. 5-company, the State Water Policy was to give preference to industry over irrigation. On the basis of the above decision of September 2008 to allocate 87.60 MCM of water from Upper Wardha Dam, respondent No. 5-company has made investment of Rs. 5488 crores on phase-I of the project with borrowing of Rs. 4069 crores. The power plant of respondent No. 5-company is about to start generating electricity for the benefit of the State of Maharashtra as per the agreement, under which respondent No. 5 has agreed to supply 1200 MW of electricity to the State of Maharashtra under a 25 years long term agreement at the rate of Rs. 3.26 per unit, which (according to respondent No. 5) is the cheapest rate and in any case much lower than the current average price of Rs. 4.50 per unit, at which the State Government procures the power. The difference in the tariff shall result in a gain of approximately Rs. 1000 crores per annum to the State of Maharashtra. (As stated in para 4(vi) of affidavit-in-reply of respondent No. 5, internal page 10).

24. Since allocation of water was made in favour of respondent No. 5 on the basis of the State Water Policy of 2003, we do not find that the impugned decision of respondents Nos. 1 & 2 allocating 87.6 MCM water for the power plant of respondent No. 5 at Amaravati was illegal. Moreover, since respondent No. 5 has already taken irreversible steps for setting up power plant on the basis of water allocation made in its favour as far back in February 2008, the impugned decision does not call for any interference. We may also note that the present stand of the State Government for allocation of water is as per the statement produced by the learned Advocate General at the hearing today, (signed by the Superintending Engineer), is in conformity with the present State Water Policy as contained in the State Government Resolution dated 18 May 2011.

25. In the above view of the matter, it is not possible to hold that the impugned decision taken by the State Government and Vidarbha Irrigation Development Corporation in February 2008 for allocating 87.60 MCM of water to respondent No. 5-company was contrary to law or was in any manner arbitrary, irrational, or unreasonable. It was not even contrary to any directives of the Governor under Article 371 (2) of the Constitution as supported by the letter dated 15 December 2009 from the Secretary to the Governor in reply to the letter dated 10 December 2009 of the State Government. (Quoted in paragraph 19 hereinabove) indicating that the policies of the State Government regarding allocation of water from irrigation dams in the State did not conflict with the allocations made by the Governor in the Irrigation Sector.

26. We are unable to accept the petitioners' contention that atleast 328 MCM water must be supplied from Upper Wardha Dam before releasing any water in favour of power plant of respondent No. 5. As already referred to hereinabove, the stand of the State Government in the Water Resources Department, which is accepted by the Central Water Commission, that 202.203 MCM of water is sufficient for irrigating 75,000 hectares of land as per the following calculations contained in the note of the Water Resources Department:-

The water requirement and area of each season as per Fourth Revised Project Report is as under.

(This crop water requirement is calculated as per Modified Penman's method as per current practice of CWC.)

Crop	Irrigation potential (ha.)	Water Requirement (Mm ³)
Kharif	45609	25.681
Two Seasonal	14034	26.207(In Kharif) 42.664(In Rabbi)
Rabbi	15637	105.651
Total	75080 ha.	200.203 Mm ³

(Mm3 = Millennium Cubic Meter = MCM)

27. It is not within the province of this Court in exercise of writ jurisdiction to go into such technical issues. Secondly, the dispute raised by the petitioners is regarding allocation of water from the Upper Wardha Dam in Amravati District to a thermal power plant of respondent No. 5 set up in Amravati District itself and not to any industry outside Vidarbha region. If at all the petitioners have any grievance on this score, the petitioners may approach the State Government and the competent authorities under the Water Resources Regulatory Act, 2005 referred to hereinafter.

Issues (iii) & (iv)

28. Mr. Aney has submitted that in his directives under Article 371(2) from 2001 onwards, the Governor has been pointing out that in providing irrigation facilities in Vidarbha region, though the State Government has been making financial allocations, there is physical backlog to such an extent that even after 12 years the State Government has not provided the irrigation canals for distributing water to the entire 70,000 hectares of land to be irrigated with the water from the Upper Wardha Dam. Learned counsel for parties have, therefore, addressed us at length on the question of interpretation of Article 371 (2).

29. We may now refer to the history of Article 371(2) and the developments thereunder as noticed in the judgment dated 6 May 2008 of this Court in Balasaheb Dhondiram Jagdale v/s. State of Maharashtra & ors (Writ Petition No. 2751 of 2006 and connected cases).

The present area of Vidharbha was earlier included in the erstwhile state of Madhya Pradesh. The demand for the separate state of Vidharbha was duly endorsed by the then Madhya Pradesh Legislature. This was seen as a conflict with the demand made by the Sanyukta Maharashtra Movement in the erstwhile area of Bombay for the creation of a Marathi speaking state.

In furtherance of the proposal of a Linguistic Marathi speaking province, the then leaders of Vidharbha and Western Maharashtra entered into an agreement known as the Akola pact for formation of a federal state. Vidharbha still remained part of the erstwhile Madhya Pradesh. After India gained Independence, a State Reorganization Commission was formed under Mr. Justice Fazal Ali. The leaders of the Sanyukta Maharashtra movement solemnly assured the leaders of the then Vidharbha region and other prominent Marathi speaking regions like Marathwada that if a Marathi state was formed, they would ensure the equitable distribution of the state resources. This assurance was reduced in writing as the "Nagpur Pact" in 1953.

The Fazal Ali commission recommended a separate state of Vidharbha in 1955. However, the report also recommended that constitutional recognition could be given to the Nagpur agreement. The members from the other areas of Maharashtra gave full support to this proposal. A new clause was thereafter added to Article 371 of the Constitution of India with the consent of the elected members of the State Legislature.

Thus, w.e.f. 1-11-1956 the erstwhile State of Bombay was formed which included the Vidharbha area. The seventh amendment to the Constitution of India was adopted and passed including Article 371(2) in the Constitution of India in the year 1956.

Agitations for a separate State for Gujarat and Vidharbha arose in the period between 1956-1960. The then Chief Minister of the State of Bombay promised to honour the Nagpur agreement before the Legislative Assembly, Vidharbha was given reassurance for implementation of the Nagpur agreement and Article 371(2) of the Constitution of India.

30. Article 371(2) of the Constitution reads as under:-

371. Special provision with respect to the States of Maharashtra and Gujarat.-

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Maharashtra, provide for any special responsibility of the Governor for -

(a) the establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;

(b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in service under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.

31. There can be no dispute about the fact that Article 371 was inserted by the Seventh Constitutional Amendment in 1956 for the purpose of addressing the issue or apprehension of regional imbalance in development. The report of the Dandekar Committee dated 30 June 1982 highlighted the issue of regional imbalance in development and its identification and quantification. In view of the above, on 26 July 1984 a unanimous resolution was passed by the Maharashtra Legislature requesting the President of India to constitute Development Boards envisaged under Article 371(2) of the Constitution. The President, thereafter, by order dated 9 March 1994 directed the Governor of Maharashtra to constitute Development Boards for Vidarbha, Marathwada and rest of Maharashtra. Accordingly, by Order dated 30 April 1994, the Governor constituted Development Boards for the three areas as the State of Maharashtra and appointed the Indicators and Backlog Committee to report on the regional imbalance and development and quantify the backlog.

32. The Governor has made Order called "The Development Boards for Vidarbha, Marathwada and the Rest of Maharashtra Order, 1994. Various clauses of the above Order dated 30 April 1994 of the Governor of Maharashtra need to be noticed.

33. Clause (4) of the said Order provides that each Development Board shall consist of members not exceeding 7 including the Chairman, all of whom will be appointed by the Governor. The Constitution of the Board as provided in sub-clause (1) of Clause (4) is as under:-

(a) One member of the Maharashtra State Legislature, from the area of the respective Development Board.

(b) One member of a local authority from the area of the respective Development Board.

(c) Three experts from amongst persons who-

(i) have special knowledge of the planning process, finance and accounts of Government or

(ii) have had a wide experience in financial matters and administration or

(iii) have special knowledge in different fields, like irrigation, public health, public works industries, agriculture, education or employment.

(d) A Commissioner of Revenue Division from the area of respective Development Board.

(e) An Officer of the State Government not below the rank of an Additional Commissioner of a Revenue Division from the respective Development Board.

Clause (6) of the order specifies following as functions of the Board:-

The Development Board shall from time to time:-

(a) Ascertain relative levels of development in different sectors in relation to it's area on the basis of appropriate indicators, having regard to the levels of development in the State as a whole.

(b) assess the impact of various development efforts in removing backlog and in achieving over all development within it's area.

(c) suggest the levels of development expenditure over of the area of the Development Board during a plan period including the annual plan, and

(d) prepare an annual report on it's working and send it, as far as practicable within three months after 5 the end of every financial year to the Governor for placing it before the Maharashtra State Legislature.

Clause (7) reads as under:-

Allocation of funds for development expenditure. The Governor of Maharashtra shall ensure equitable allocation of funds, for developmental expenditure over the areas of Development Board, subject to the requirements of the State as a whole.

(2) *In ensuring equitable allocation of funds, the Governor may:-*

(a) take into consideration the recommendations, if any, made by the Development Board, and

(b) Where he considers it necessary and appropriate seek advice from any person or body of persons in the matter of the allocation of funds.

Clauses (8), (9) & 10 contain the following provisions empowering the Governor to issue necessary directions:-

8. Allocation of funds to be reflected in annual financial statement. The allocation of funds or outlays made by the Governor shall be reflected in the Annual Financial Statement to be placed before the State Legislature, and the development activities with regard to the outlays as aforesaid shall be carried out or caused to be carried out by the State Government and the funds so allocated shall be non divertible from the area of one Board to that of another Board.

(a) Reappropriation may be made in conformity with the budgetary rules and procedure on the development activities undertaken as aforesaid within the area of a Board.

(b) In the implementation of the development activities, the prevailing norms shall be adhered to and

(c) the respective administrative departments shall continue to implement and exercise administrative and technical supervision and control over the developmental activities.

9. *Directions by the Governor:- The Governor may be order, from to time give directions to a Development Board in the matter of it's functioning.*

10. *Suitable arrangement for education, training and employment:- The Governor shall ensure equitable arrangement providing adequate facilities for technical education and*

vocational training and for adequate opportunities for employment in service under the control of the State Government in respect of the area of each Development Board, subject to the requirements of the State as a whole and for that purpose, the Governor shall give suitable directions to the State Government from time to time and while doing so, the Governor may where he considers it necessary and appropriate, seek advice from any person or body of persons.

(emphasis supplied)

Clause (11) of the order also provides for making of rules by the Governor for effective implementation of the provisions of the order.

34. It appears from the Governor's Directives dated 17 March 2012 that the Governor has recently issued the Development Board for Vidarbha, Marathwada and Rest of Maharashtra Order, 2011, with a view to making Development Boards more effective as think tanks for balanced regional development. In the Directives dated 17 March 2012 of the Governor under Article 371(2) of the Constitution, the Governor has specifically set up the mechanism which is in consonance with the aforesaid provisions of the Act of 2005. Paras 40, 41 & 42 in the Government's Directives dated 17 March 2012 for the Annual Plan 2012-13 provide for such mechanism. The Governor has also issued Order dated 5 September 2011 redefining the functions of the Development Boards to make them more effective as think tanks for balanced regional development, expecting them to accord priority to districts with a low Human Development Index.

35. Clause (4) of the Governor's Order dated 5 September 2011 provides for composition of the Development Boards as under:-

(a) Executive Chairman of the State Planning Board shall be an ex-officio member of all the three Development Boards.

(b) One member of the Maharashtra State Legislature from the concerned regions.

(c) One member each, from an urban local authority and a rural local authority, from the area of the respective Development Board by rotation for a term of two and a half year.

(d) Five experts, including representatives of NGOs and institutions of national/State level reputation, engaged in socio-economic development. At least one expert shall be from each Revenue Division. The experts shall have special knowledge of the development administration, planning process, finances and accounts of Government or in various socio-economic fields.

(e) Commissioners of Revenue Divisions from the respective areas.

(f) A officer of the State Government not below the rank of Additional Commissioner of the Revenue Division, who shall be Member-Secretary of each respective Development Boards.

As far as the functions of the Development Boards are concerned, while the functions enumerated by Clauses (b) to (d) of the Order of 1994 remain the same, functions indicated in sub-clause (a) of Clause (6) have been amplified as under:-

(a) ascertain potential of socio-economic development in relation to its area considering its resources, needs and opportunities having regard to the development of the State as a whole;

(b) identify areas, sectors, population groups within the area of the Development Boards which require special attention;

(c) prepare regional/district development reports and update the same periodically. The regional/district development reports may contain:-

(i) an analysis of assessment of local human and natural resources and potential of socio-economic development;

(ii) the development status of important population groups in terms of

development indicators of areas of socio-economic concern;

(iii) computation of development status of indicators of Human Development such as health, education and livelihood issues.

(iv) an outline of regional development plan based on resources and potential of the regions;

(v) impact on assessment and evaluation of plan programme and overall regional development;

As far as Clause (8) of the Governor's Order dated 5 September 2011 is concerned, it is substantially the same, as that of Clause (8) of Governor's Order 30 April 1994, except for addition of obligation on the State Government to prepare a statement of Region-wise and category-wise outlays and actual expenditure for development expenditure for all the sectors giving details of actual disbursement.

36. In its first report the Indicator and Backlog Committee appointed by the Governor by the Order dated 30 April 1994 recorded a finding that the backlog in irrigation in Amravati District was Rs. 1095 crores. Thereafter, from 2001 onwards, in discharge of special responsibility to ensure equitable allocation of funds for developmental expenditure, the Governor issued every year annual directives for removal of physical backlog.

37. On the one hand, Mr. Aney, learned senior counsel for the petitioners in Writ Petition No. 757 of 2001 filed by Society for Backlog Removal & Development, Amravati and ors, as well as Mr. Khambatta, learned Advocate General appearing for the State Government are ad idem on the proposition that the directives of the Governor under Article 371(2) of the Constitution are binding on the State Government.

38. On the other hand, Mr. Mukul Rohatgi, learned counsel for respondent No. 5 has submitted that the Governor while exercising powers under Article 371(2), merely acts as an elder statesman and that the Governor cannot issue directives, as Article 371(2) does not contemplate issuance of any directive by the Governor. It is submitted that if it is held that the Governor has any such power under Article 371(2) of the Constitution to issue directive to the State Government, it would amount to Article 371(2) conferring upon the Governor vide executive powers, which are otherwise to be exercised only by the Council of Ministers accountable to the elected representatives of the people. It is, therefore, submitted that the interpretation canvassed on behalf of the petitioners on the provisions of Article 371(2) would destroy the basic structure of the Constitution and, therefore, Article 371(2) would be unconstitutional.

39. There is also serious difference of opinion between views of the learned Advocate General appearing for the State Government on the one hand and Mr. Aney, learned senior counsel for the petitioners on the question of scope of powers of the Governor under Article 371(2) of the Constitution.

40. Learned counsel for petitioners has invited our attention to the directives in various years indicating that though the financial backlog was getting reduced, the physical backlog still continued and that the Governor had expressed concern about various governance issues and bottlenecks which resulted into non-removal of physical backlog.

41. Learned counsel for petitioners has relied upon observations made in the above reports and submitted that they are directives. Learned counsel for petitioners has pressed for prayers (iii), (iv) and (vii) to the effect that man power available with Water Resources Department of the Government of Maharashtra must be used for survey, planning and detailed designs in Amravati district and the Government must provide construction of new project for removal of backlog of 232.69 thousand hectares of the district, as identified by respondent No. 6 - Maharashtra Water Resources Regulatory Authority in its annual report of 2007-08 and that the respondent-authorities must be directed not to allocate any quantity of water from the live reservoir of the Upper Wardha Project to any new industry unless and until the backlog in irrigation is completely eradicated and also until the created irrigation potential of 75,080 hectares therefrom is fully utilized for irrigation purpose. The petitioners have also prayed for a direction to the respondent-authorities to give preference to irrigation over industry in the application of the State Water Policy to the backward regions of the State till the backlog in irrigation sector is not removed totally.

42. On the other hand, learned Advocate General has submitted that as held by Division Bench of this Court in Writ Petition No. 5872 of 2003, directives of Governor under Article 371(2)(b) are binding in the matter of allocation of financial resources, but Article 371(2) does not contemplate that the Governor would select the project and supervise or monitor implementation of the project. It is submitted that that

task has been clearly assigned to the elected legislature and the executive responsible to the elected legislature. Learned Advocate General, has however, added that in any event observations in the report of the Governor, if not pertaining to financial allocation, but dealing with issue of physical backlog or governance issues about proper implementation of projects are entitled to highest respect.

43. Learned Advocate General has also invited our attention to the observations in the report dated 27 May 2009 of the Governor under Article 371(2) and particularly the observation indicating that the Governor had noted with satisfaction some of the measures taken by the State Government to address the bottlenecks indicated by the Governor. Our attention has also been, particularly, invited to the statement made in paragraph 5 of the Governor's report dated 19 March 2010 for the year 2010-11 indicating that "the issue of financial backlog as on 1 April 2010 has been taken care of.". Again in paragraph 18 of the report the Governor observed:-

The Governor has noted with satisfaction some of the measures taken by the State Government to address the above-mentioned bottlenecks.

Further in the Governor's report dated 10 March 2011 for the year 2011-12 it is stated in paragraph 5 as under:-

The issue of financial backlog in irrigation sector has now been taken care of.

44. Learned Advocate General has also invited our attention to paragraph 31 of the judgment of the Division Bench in Writ Petition No. 5872 of 2003 (supra), where the Court recorded the following statement of Mr. Aney, the learned senior counsel for Vidarbha and Marathwada areas:-

The State is fairly implementing the directives of the Governor of Maharashtra and presently the petitioners have no grievance in that behalf.

45. Before we express our opinion on the above controversies, it is necessary refer to certain statutory developments.

46. The State Legislature enacted the Maharashtra Water Resources Regulatory Authority Act, 2005 establishing the Maharashtra Water Resources Regulatory Authority. The Authority is to consist of Chairperson and two other members. The Chairperson is a person, who is or who was of the rank of Chief Secretary or equivalent thereto. One member is an expert from the field of water resources engineering. One member is an expert from the field of water resources economy. Five special invitees, one from each river Basin Agency area having adequate knowledge, experience or proved capacity in dealing with the problems relating to engineering, agricultural, drinking water, industry, law, economics, commerce, finance or management for assisting the authority in taking policy decisions. The Chairperson and members of this Authority are full time members and are not to hold any other office. For selection of the Chairperson and members of the Authority, Section 5 of the Act has provided for a Selection Committee consisting of the Chief Secretary of the State and Secretaries of eight different departments in the State administration, including four departments dealing with Water Resources, Water Conservation and Water Supply and also Secretaries of Agricultural Department and Energy and Environment Department and Planning Department. Powers, functions and duties of Maharashtra State Water Resources Authority are laid down in Section 11 of the Act and the same are as under:-

11. The Authority shall exercise the following powers and perform the following functions, namely:-

(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 16A.

(b) to enforce the decision or orders issued under this Act;

(c) to determine the priority of equitable distribution of water available at the water resource project, sub-basin and river basin levels during periods of scarcity;

(d) to establish a water tariff system, and to fix the criteria for water charges at sub-basin, river basin and State level after ascertaining the views of the beneficiary public, based on the principle that the water charges shall reflect the full recovery of the cost of the irrigation management, administration, operation

and maintenance of water resources project;

(e) to administer and manage interstate water resources apportionment on river systems, of the State;

(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 interstate 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.

(g) to lay down the criteria and monitor the issuance of Entitlements

(emphasis supplied)

Section 12 provides for general policies of the Authority including the Authority shall work according to the framework of the State Water Policy. Sub-section (9) of Section 12 specifically provides as under:-

The Authority shall while framing policy, give preference to the projects so that, the physical backlog forming the basis of the financial backlog be eradicated in accordance with the Governor's directive.

(emphasis supplied)

Sections 20 & 21 of the Act read as under:-

20. (1) (a) The Authority shall prepare once every year in such form, and at such time as may be prescribed, an annual report, giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

(b) Such annual report shall include an Annexure containing irrigation backlog of each district based on the State average Rabbi equivalent irrigation potential District wise sown area, standard Rabbi equivalent irrigation potential from State sector and local sector schemes, percentage of irrigation potential to the sown area, percentage less than the State average, backlog in Hectare for the latest year for which the data is available, and every year thereafter, physical backlog worked out on the basis of State average and financial backlog based on the latest schedule of rates.

(c) Such report shall also include Annexure showing District wise and Region wise yearly expenditure incurred on the Irrigation Sector and cumulative figures upto latest year for which data is available and every year thereafter.

(d) The details of Annexures at clauses (b) and (c) may be modified in accordance with the Governor's directives, from time to time.

(2) A copy of the report received under sub-section (1) shall be laid, within six months, after it is received, before the State Legislature.

21 (1) The Authority shall carry out a special responsibility in regard to the Districts and Regions, affected by backlog, in irrigation sector as per Governor's directives.

(2) For implementing the Governor's directives the Authority shall ensure that the manpower available with Water Resources Department of the Government is used for survey, planning

and detailed design of the projects in backlog affected areas and new projects are available for construction in time, for removal of backlog.

47. Apart from establishing Water Resources Authority at the apex level as aforesaid, the Act also provides for constitution of River Basin Development Corporations for different regions, one of being Vidarbha Irrigation Development Corporation, as already established under Vidarbha Irrigation Development Corporation Act 1997. These River Basin Agencies are entrusted with functions of granting permission called "entitlement for using any water resource", provided that no such entitlement is required in case of any bore well, tube well or other wells which are used for domestic purpose and tanks, small reservoirs etc. and also provides for constitution of State Water Board under Section 15 of the Act for preparing a draft Integrated State Water Plan on the basis of basin and sub-basin wise water plans prepared and submitted by the River Basin Agencies. The Act further provides for establishment of State Water Council headed by the Chief Minister and with the Deputy Chief Minister as one Vice-President and Minister for Water Resources as the other Vice-President. The Council is to approve with such modifications as deemed necessary, the draft of the Integrated State Water Plan submitted by the Board keeping in view the directives given by the Governor for removal of regional imbalance. The water plan so approved by the Committee is become "Integrated State Water Plan", which may be reviewed after every five years from the date of approval by the Council.

48. In the year 2010, provisions of the Act came to be amended by Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2010, which made following important amendments with effect from 17 September 2010:-

(i) The Committee constituted by the State Government under the Government Resolution, Irrigation Department dated 21 January 2003 is called "High Power Committee".

(ii) Under Section 11(1) Power and duty of the State Water Regulatory Authority includes-

(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 16A.

(o) to establish a system of enforcement of the Entitlements issued by the concerned River Basin Agency to various categories of Use and its regulation, through measurement and monitoring with a view to ensure that the actual use of water, both in quantity and type of use, are in compliance with the Entitlements issued.

(emphasis supplied)

(iii) Section 14 has been amended to provide that the Entitlement as per River Basin Agencies under Section 14 shall be required only after distribution of Entitlement has been determined and the criteria for issuance of Entitlement has been laid down under Section 11.

(iv) The most important amendment is by insertion of Section 16A, which reads as under:-

16A. (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 determined shall ordinarily be reviewed at such intervals of not less than three years.

(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.

(emphasis supplied)

(v) Sections 31A to 31C are also inserted in the principal Act of 2005 and Sections 31B and 31C read as under:-

31A. Notwithstanding anything contained in this Act or in any other law for the

time being in force, or in any order, judgment or decree of any court, tribunal or authority, any person or Entity to whom a permission, allocation, sanction, authorization or Entitlement of water has been granted by the High Power Committee or the River Basin Agency or the State Government, prior to the date of commencement of the Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2011, shall be deemed to have been granted, in accordance with the provisions of this Act and accordingly the same shall continue and no such Water User Entity shall be required to obtain fresh permission, allocation, sanction, authorization or Entitlement to draw water.

31C. Notwithstanding anything contained in this Act or in any other law for the time being in force, a permission, allocation, sanction, authorization or Entitlement of water, granted by the High Power Committee or the River Basin Agency or the State Government prior to the 17th September 2010, being the date of commencement of the Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2010 shall be valid and shall be deemed always to have been valid and accordingly no suit, prosecution or any other legal proceedings shall lie, challenging such permission, allocation, sanction, authorization or Entitlement to draw water, before any court, tribunal or other authority and no such suit, prosecution or other legal proceedings shall lie or continue on the ground that, any permission, allocation, sanction, authorization or Entitlement, as required under this Act, has not been obtained.

(emphasis supplied)

49. Maharashtra Ordinance No. 11 of 2010 was subsequently followed by Ordinance No. 2 of 2011. The said Ordinance No. 2 of 2011, has thereafter been followed by Maharashtra Act 21 of 2011 called Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Act, 2011 bringing the aforesaid amendments into force with effect from 8 June 2005, that is the date on which the Maharashtra Water Resources Regulatory Authority Act, 2005 came into force.

50. Petitioners have challenged the constitutional validity of the aforesaid amendments on the ground that amendments are contrary to the directives issued by the Governor under Article 371(2) of the Constitution and also on the ground that the amendments were made to protect and validate the allocation of water made in the year 2008 in favour of respondent No. 5 for its thermal power plant.

51. We will consider the question of the alleged conflict between provisions of the Act and the directives of the Governor a little later.

52. The Act provides for different authorities, such as the State Government Water Resources Regulatory Authority u/s. 11A, River Basin Agencies u/s. 14, State Water Council u/s. 26, State Government u/s. 16A, which act as per the procedure laid down in the Act. The High Power Committee was constituted as far back in the year 2003 under the Government resolution dated 21 January 2003 headed by the Minister for Irrigation of the State Government. The said High Power Committee had accordingly made allocation for as many as 41 different projects for non-irrigation use at 46 meetings between 2005 and 2010. (Paras 25 & 48 of the affidavit dated 15 March 2010 of Mr. S.D. Giri, the Superintending Engineer on behalf of the State Government and Vidarbha Irrigation Development Corporation). Ordinance No. XI of 2010, Ordinance of II of 2011 and the Amendment Act of 2011 have validated all three allocations.

53. We also find considerable force in the submission of learned Advocate General that amendments to the Maharashtra Water Resources Regulatory Authority Act, 2005 made in the year 2010 were pursuant to the Ordinance issued by the Governor under Article 213 of the Constitution. Power conferred by Article 213 of the Constitution on the Governor to promulgate Ordinance is considered as a discretionary power. It would, therefore, be odd even to argue that the amendments made by the Ordinance promulgated by the Governor are contrary to the Directives issued by the Governor under Article 371(2) of the Constitution.

54. In view of the above factual aspects and submissions made by learned Advocate General, we do not find any substance in the allegation made by the learned counsel for petitioners that amendments to the Act of 2005 were made in 2010 only in order to protect and validate the allocation of water in favour of respondent No. 5-industry in February 2008.

55. Coming back to the question of interpretation of provisions of Article 371(2) of the Constitution, we may note the interpretation placed by the Governor on the above provision, as reflected in the letter

dated 15 December 2009, which was in response to the State Government's letter dated 10 December 2009 raising following query:-

This is with reference to the Directives issued by the Hon'ble governor from time to time under Clause (7) of the Development Board for Vidarbha, Marathwada and the rest of Maharashtra Order 1994 and more particularly with respect to the Directives issued by the Hon'ble Governor on 6 March 2008 and 27 May 2009. In this regard we would like to seek clarification/confirmation on the following points:

1. Whether the powers of the Governor under Article 371(2) pertain only to make equitable allocation of financial resources among the three regions of the State and it is left to the State Government which has been vested with the executive power to decide how best these allocations are to be utilized?
2. Whether the allocation of water from the Irrigation Dams in the State for drinking, industrial, irrigation and other purposes as per the State Water Policy, violates in any manner the Directives issued by the Governor under Article 371 (2).

56. In reply to the above communication, the Secretary to the Governor gave the following reply:-

With reference to your above mentioned letter, I am directed to communicate the following clarification.

(1) According to Article 371(2) of the Constitution, the Governor has been assigned special responsibility towards establishing separate Development Boards for Vidarbha, Marathwada and Rest of Maharashtra and for equitable allocation of funds for development expenditure over the areas of Development Boards subject to the requirement of the State as a whole. Further, the governor has been giving Directives under Article 371(2) for ensuring equitable allocation which are binding on the State Government. The Governor has also been giving Directives relating to issues of governance etc. apart from making region-wise allocations to ensure that the allocations so made are optimally utilized for effective discharge of his special responsibility under the Constitution.

(2) With regard to the query regarding whether allocation of water from the irrigation dams in the State for drinking, industrial, irrigation and other purposes as per the State Water Policy violates in any manner the directives issued by the Governor under Article 371(2). I am directed to clarify that policies of the State Government in this regard do not conflict with the allocations made by the Governor in the irrigation sector.

(emphasis supplied)

57. At this stage, we may also refer to the judgment of the Division Bench of this Court, to which one of us (Anoop V. Mohta, J.) was a party. Public interest litigation was filed in the year 2004 and some writ petitions were filed in the year 2006 raising the question of interpretation of Article 371(2), which came to be filed in the background of the following facts:-

After the Governor of Maharashtra issued directives in the year 2003, in 2004 the Governor issued further directives for providing for funds in 2004-05 Annual Plan and same was tabled before the House of the Legislature. Directives of Governor were for an outlay of Rs. 4685 crores for distribution in the irrigation sector in the Annual Plan 2005-06. When the State Government pointed out non-availability of funds, the Governor reviewed his directives and made fresh outlay of Rs. 1942 crores. On the availability of advanced funds, the State Government proposed to re-appropriate the budgetary allocations, which was introduced without the consent of the Governor of Maharashtra. The Governor opined that the Government should have sought his approval for the proposed re-appropriation. Learned Advocate General opined that the Governor's approval should have been taken for re-appropriation of supplementary demands for 2005-06. The Governor then issued fresh directives for the year 2006-07, after taking into consideration previous directives, mis-match of directives, non-implementation of directives etc., and ordered to release Rs. 2480 crores.

58. It was in the background of this controversy that the Division Bench of this Court was called upon to consider the question of interpretation of Article 371(2) of the Constitution. In the said judgment the Court recorded following conclusions:-

25. From the above, the first main objection raised was that conferring such financial powers on the Governor of Maharashtra, through Article 371(2) of the Constitution of India, would be violative of the "Basic Structure Doctrine".

26. In that behalf, after considering all the judgments referred to hereinabove cited by Mr. Aney, the learned senior counsel and Mr. Ravi Kadam, the learned Advocate General, we are clearly of the view that there is no violation of the "Basic Structure Doctrine" for the following reasons:

(a) Almost an identical provision under Article 371-F(f), protecting Sikkim was upheld by the Supreme Court in R.C. Poudyal V/s. Union of India, as not violative basic structure doctrine.

(b) "The Legislature has always the power to make special laws to attain particular objects and for that purpose has authority to select or classify persons, objects or transactions upon which the law is intended to operate. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute..... Where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld."

(c) While interpreting a Constitutional provision, one has to adopt "purposive construction" largest and wide meaning will have to be given to give full effect to Article 371(2).

(d) Court must resort to historical, contextual and purposive interpretation, leaving textual interpretation aside.

(e) Court must always adopt "Ut margis valveat guam periat" to make the law effective and operative.

27. The second objection was that the Governor could not allocate any funds, as it cannot be treated as expenditure charged on the consolidated fund of the State under Article 202(2). In that behalf, after deep consideration, we are of the view that the allocation of funds under Article 371(2) is not a charge on expenditure under Article 202(3) (f). We are also of the considered view that the directive issued by the Governor under Article 371(2) is in exercise of the executive power of the State under Article 154 of the Constitution of India and to give full effect to Article 371(2) of the Constitution of India. It should be noted here that Article 371 is not the "usual executive power" of the State available to the Governor under Article 154. Under Article 371, there is a "special responsibility" imposed on the Governor to ensure that there is no backwardness in Vidarbha and Marathwada regions and the same was a constitutional obligation imposed on the Governor, which cannot be frustrated.

28. With regard to the third objection and Clause 8 of Order the words "outlays made" and "allocation of funds" will have to be construed broadly to give full effect to the "special responsibility" imposed upon the Governor under Article 371(2) of the Constitution of India, hence the Governor is fully empowered to make necessary allocation of funds to improve the backward areas like "Marathwada and Vidarbha". The directives of the Governor are binding on the State.

29. Regarding the fourth objection that the Governor has to take into account "State as a whole" does not mean the Governor can ignore the special needs of Marathwada and Vidarbha and in the facts and circumstances of the case, we do not find anything wrong in the allocations made.

30. Regarding the fifth objection that the Governor has not taken into account Rule 7(5) of the Development Board Rules, also has no substance and the Governor has equitably allocated funds, based need and backwardness. The Governor has also taken into account need of Krishna Valley Water Project, while allocating funds.

59. It is, thus, clear that while holding that directives of the Governor under Article 371(2) are binding on the State, the Division Bench was only concerned with the question of financial allocation of resources as contemplated by clause (b) of Article 371(2) of the Constitution.

60. We may first deal with the submission of Mr. Rohtagi, learned counsel for respondent No. 5 that while exercising powers under Article 371(2) of the Constitution, the Governor is not to exercise his own discretion. In support of this contention, Mr. Rohtagi has referred to the provisions of Article 163(1) and Article 371A for the State of Nagaland and Article 371F for the State of Sikkim. Learned counsel has submitted that wherever the Constitution expected the Governor to act in his own discretion, the Constitution has specifically provided so and that is why Clause (1) of Article 163 of the Constitution also provides that the Council of Ministers with a Chief Justice as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of in his discretion. In support of this contention, learned counsel has also relied upon the decision of the Supreme Court in State of Gujarat & Anr. v/s. Mr. Justice R.A. Mehta (Retd.) & Ors., MANU/SC/0001/2013 : JT 2013 (1) SC 276 and particularly paragraph 17.1 thereof, which reads as under:-

17.1 Whenever the Constitution intends to confer discretionary powers upon the Governor, or to permit him to exercise his individual judgment, it has done so expressly. For this purpose, the provisions of Articles 200, 239(2), 371-A(1)(b), 371-A(1)(a), 371-A(2)(b) and 371-A(2)(f), VI Schedule, Para 9(2) (and VI Schedule Para 18(3) until omitted with effect from January 21, 1972), may be referred to. Thus, discretionary powers exist only where they are expressly spelt out.

(emphasis supplied)

It is submitted that absence of any reference to Article 371(2) in the above paragraph also makes it clear that the Governor is not to exercise his discretionary power under Article 371(2). Learned counsel has relied upon underlined words in the above paragraph that discretionary powers exist only where they are expressly spelt out.

61. Mr. Aney, learned senior counsel for the petitioners has submitted that the very expression "special responsibility" in Article 371(2) indicates that special power was conferred upon the Governor, which he would exercise in his discretion, in case he finds a regional imbalance. It is submitted that special power has been conferred upon the Governor as he is the Head of the State and since at the time of reorganization of the State, people of Vidarbha had some reservations about joining the State of Maharashtra, it was for addressing the perception or apprehension of regional imbalance that such special responsibility has been cast upon the Governor and, therefore, he is to exercise this power in his discretion.

62. On the above issue, learned Advocate General does not differ from Mr. Aney, learned counsel for petitioners.

63. We find considerable force in the above submission of Mr. Aney and learned Advocate General. Merely because Article 371(2) of the Constitution is not referred to in paragraph 17.1 of the judgment in State of Gujarat & Anr. v/s. Mr. Justice R.A. Mehta (Retd.) & Ors., (supra), it would not mean that the Governor is not to exercise his power in his discretion. As per the settled legal position, judgments of the Court are not to be read as statutes. Moreover, the Supreme Court has referred to the provisions of Article 200 of the Constitution, which confers discretionary power upon the Governor to assent to bill passed by both Houses of the Legislature of the State or to withhold his assent therefrom or to reserve bill for consideration of the President. Looking to the very nature of this power, it necessarily implies that the Governor is to exercise his power in his discretion. Similarly, Article 213 of the Constitution also confers discretionary powers upon the Governor to promulgate ordinances during recess of Legislature.

We, therefore, do not find any substance in the submission of Mr. Rohatgi, learned senior counsel for petitioners in Writ Petition No. 758 of 2011 that the Governor is not to exercise powers under Article 371 (2) in his discretion.

64. Coming to the second aspect of the controversy about scope of the power under Article 371(2), Mr. Aney, learned senior counsel for petitioners, has submitted that the interpretation being placed by the learned Advocate General is not the correct interpretation, as the financial allocations are not to be made by the Governor in vacuum or in abstract. It is submitted that the question of financial allocations under Article 371(2)(b) arises only when the Governor finds that there is a regional imbalance and the question of regional imbalance would necessarily be decided on the basis of physical advantages or disadvantages available to one area of the State and not available to another area of the State. Learned Counsel has relied upon directives of the Governor issued from time to time from 2001 onwards in support of the contention that the financial allocations have been worked out by the Governor only after referring to the physical backlog. Reference is also made to the provisions of Section 11(9) of the Maharashtra Water

Resources Regulatory Act, 2005, which reads as under:-

The Authority shall while framing policy, give preference to the project so that, the physical backlog forming the basis of the financial backlog be eradicated in accordance with the Governor's directives.

It is submitted that in view of the fact that physical backlog and the financial backlog are interrelated, provisions of Article 371(2) (b) cannot be given such restricted meaning as submitted by the learned Advocate General.

65. Mr. Aney, has further relied upon the State Government's resolution dated 5 September 2001 in support of his contention that the State Government itself has also been considering the powers of the Governor under Article 371(2) as applicable both for determination of financial backlog as well as the physical backlog. Resolution reads as under:-

By this Government Resolution approval of the Government to the Report of the Indicators & Backlog Committee is being granted in principle. It will be decided every year as to how much planned outlay be reserved for removing the backlog under the said Report. This planned outlay shall include the budgetary funds as well as funds raised from Bonds, Concerned departments/corporations shall determine such works/projects/plans with reference to the balance works to be included in funds raised from Bonds and shall earmark the provisions for the same and shall take care to incur the expenditure on backlog works. Concerned departments shall prepare a time bound program for removing the backlog assessed by the indicators and Backlog Committee and shall implement the same accordingly.

The physical backlog as on Dt. _____ shall be determined after taking into consideration opinions of different departments and upon getting the valuation of the physical backlog from the Indicators and Backlog Committee.

It is necessary to take care that new Backlog shall not be created while making efforts for removing the Backlog. In view of that it shall be necessary for the secretaries of the concerned departments to issue certificate that no new backlog shall be created by undertaking the said plans, whenever new plans/projects are placed before cabinet for approval.

66. On the other hand, Learned Advocate General submits that merely because the Governor has to refer to data concerning physical backlog, efficiency of implementation of the previous years spending, needs of region in physical terms, it does not mean that the Governor is to decide as to which project in a particular region is to be taken up or is to be given priority or to set deadline for completion of a particular project. It is submitted that any reference to such target, deadlines or objectives of the physical work or elimination of physical backlog or comments on any aspect of governance are always given highest respect by the State Government and they will be taken into consideration, but they cannot be treated as binding directives under Article 371(2) of the Constitution.

67. We find considerable force in the submission of the learned Advocate General that the Governor is not to take over the administration of the entire State while addressing the issue of regional imbalance, which is to be taken into consideration while making equitable allocation of funds under Article 371(2). Clause 8(c) of the Governor's Order dated 30 April 1994 also makes it abundantly clear:

8. Allocation of funds to be reflected in annual financial statement. The allocation of funds or outlays made by the Governor shall be reflected in the Annual Financial Statement to be placed before the State Legislature, and the development activities with regard to the outlays as aforesaid shall be carried out or caused to be carried out by the State Government and the funds so allocated shall be non divertible from the area of one Board to that of another Board.

(a) ...

(b) ...

(c) the respective administrative departments shall continue to implement and exercise administrative and technical supervision and control over the developmental activities

(emphasis supplied)

68. At the same time, it cannot be said that observations being made by the Governor in his reports or Directives are not germane to the scope of Article 371(2) of the Constitution. In this connection, it is necessary to refer to the powers, functions and special responsibilities of Maharashtra Water Resources Regulatory Authority Act, 2005. Sections 11(f), section 12(9), Section 20 and Section 21 of the said Act need to be noticed:

11. The Authority shall exercise the following powers and perform the following functions, namely:-

(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....

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.

12(9) The Authority shall while framing policy, give preference to the projects so that, the physical backlog forming the basis of the financial backlog be eradicated in accordance with the Governor's directives.

Section 20 of the Act requires the Authority to submit annual report giving a summary of its activities during the previous year, including annexures containing irrigation backlog of each district based on the parameters referred to in the section, i.e. physical backlog as well as financial backlog. The Authority also requires to provide in such annual report an annexure showing Districtwise and Regionwise yearly expenditure incurred on the Irrigation Sector and cumulative figures. Such annual report is required to be laid before the State Legislature.

Section 21 of the Act also cast a special responsibility on the Authority and needs to be quoted even at the cost of repetition.

21 (1) The Authority shall carry out a special responsibility in regard to the Districts and Regions, affected by backlog, in irrigation sector as per Governor's directives.

(2) For implementing the Governor's directives the Authority shall ensure that the manpower available with Water Resources Department of the Government is used for survey, planning and detailed design of the projects in backlog affected areas and new projects are available for construction in time, for removal of backlog.

(emphasis supplied)

69. It is also necessary at this stage to refer to paragraphs 40, 41 and 42 of the Governor's Directives dated 17 March 2012, which read as under:-

Expert Committee

40. The Governor has noted the setting up of an expert committee under the Chairmanship of Dr. Vijay Kelkar to study the issue of balanced regional development. The Governor expects that the recommendations of the Committee would provide useful inputs for the Directives to be issued for FY 2013-14. The State Government should provide all necessary assistance to the Committee towards this end.

Mechanism for Compliance of Directives

41. As per the provisions of section 11(f) and section 21(1) & (2) of the Maharashtra Water

Resources Regulatory Authority Act, 2005, the Maharashtra Water Resources Regulatory Authority (MWRRA) has been entrusted with the responsibility of monitoring the implementation of the Governor's Directives. Accordingly, MWRRA should take periodic reviews of the implementation of the Directives relating to the irrigation sector and submit quarterly reports for the information of the Governor.

42. The Governor feels that it is necessary to set up a mechanism to closely monitor the progress of the works related to liquidation of backlog. The Governor has directed that the Divisional commissioners shall review the implementation of these directives on a quarterly basis and submit reports about the same to the Governor. Similarly, the Chief Secretary should take periodical review of the implementation of these Directives and address policy issues, if any, at the level of the State Government. The Chief Secretary should submit quarterly reports to the Governor for information.

70. Thus, apart from making region-wise financial allocations, the Governor may invite the attention of the State Government for optimal utilization of the equitable financial allocation made by the State Government under Article 371(2). This is not to say that the Governor is to appoint a particular agency for execution of a particular project. That would be in the realm of administration entrusted to the Council of Ministers under Article 163 of the Constitution as recognised by Clause (8) of the Governor's Order dated 30 April 1994 and recent Order dated 5 September 2011, both of which provide that the developmental activities with regard to the outlays made by the Governor in the directives under Article 371(2) shall be carried out by the State Government and in respective administrative departments shall continue to implement and exercise administrative and technical supervision and control over the developmental activities. Accordingly, observations made in the Governor's report, titled as "Directives" under Article 371(2) of the Constitution expecting the State Government to do certain things for the removal of physical backlog within a particular time limit may not be treated as deadlines conferring rights upon people in the area concerned to get them enforced as legal rights in a civil suit. But, nevertheless, they are to be considered as targets set by the Governor under Article 371(2). The issues of governance being highlighted by the Governor have to be considered as arising from "special responsibility" of the Governor under Article 371(2) of the Constitution. They can certainly be referred to by the people in the concerned area for seeking redressal of their grievances in proceedings such as public interest litigation.

71. Since, we are considering the question of interpretation of Article 371(2), it would not be out of place to refer to provisions of sub-clause (c) of clause (2) of Article 371. While sub-clause (b) only deals with equitable allocation of funds for developmental expenditure, sub-clause (c) reads as under:-

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in service under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.

72. Sub-clause (c) does not speak about allocation of funds, but actually "providing adequate facilities for technical education and vocational training". Hence, if the Governor were to direct under Article 371(2) (c) after survey of facilities for technical education in backward areas, that a backward area not receiving adequate health care is able to get doctors in the area, where the doctors trained in the medical colleges in the State are not ready to go, the Governor may direct the State Government to provide for reservation of reasonable percentage of seats for students, who have studied in those backward districts or in the nearby districts in the Vidarbha/Marathwada region, as the case may be. The State Government cannot ignore such directives by stating that they are not binding directives under Article 371(2) of the Constitution. We are constrained to make this observation, because in other public interest litigations we have come across cases where in backward areas like Melghat, where a large number of children are suffering because of malnutrition, doctors or project officers are not easily available or are not ready and willing to go and render their services, and the Division Bench of this Court has had occasions to express its concern about such state of affairs. (vide Writ Petition No. 3278 of 2010, Purnima Upadhyaya vs. State of Maharashtra). In the order dated 26 March 2012, following grievances were referred to:-

1. Ms. Purnima Upadhyay, Petitioner in person, has pointed out that during the financial year 2011-12, out of a total of 10500 children in Melghat area, only 114 children have been treated at the Child Treatment Centres (CTCs). Between April and November 2011, it has been pointed out, 729 deaths of children took place in Amravati district, out of which 296 were in two blocks of Melghat. It has also been stated before the Court that no specialists are available and only one specialist doctor has been recruited, as a result of which though there are 2 Rural Hospitals, 11 Primary Health Centres and one Special District Hospital, there is a grave dearth of Paediatricians, Gynaecologists and Anaesthetists. Even in critical cases,

pregnant women are required to travel between 100 to 150 kms. to receive treatment at the District Hospitals either at Dharni or Amravati. The Court has been informed that no ventilators are available nor is there even a single ambulance with a ventilator.

2. If the situation, as it has been placed before the Court, is true, and the learned AGP is not in a position to dispute what has been stated, it is a matter of serious concern. In the absence of specialized doctors, Paediatricians, Gynaecologists and Anaesthetists, it is evident that there is a denial of the basic right to public health. We are of the view that this situation must receive the remedial attention of the State Government on a war footing.

And in order dated 27 February 2013, this Court had to again make observations about the manner in which the State Government is treating the post of the project Officer, Integrated Tribal Development project and the serious consequence of leaving the said post unattended for a long period of time.

73. Coming to the question of allocation of water resources to different sectors, the submission made by Mr. Aney, learned senior counsel for Backlog Committee that it is for the Governor to decide the allocation of water amongst different sectors deserves to be rejected, for more than one reason.

In the first place, the Governor's directives under Article 371(2), while referring to sectors refer to irrigation or water resources as one sector. None of the directives issued by the Governor has ever directed that the State shall not allocate any water from irrigation dam for drinking purposes or industrial purposes. In fact, nobody has ever contended that irrigation for agriculture will have priority over water for drinking purpose. We do not find anything in the reports of the Governor, whether termed as directives or otherwise, that the Governor has indicated any such priorities for allocation of water amongst different groups. In fact, reply dated 15 December 2009 of the Secretary to the Governor (quoted in para 19 hereinabove) supports the case of the State Government. At the time when allocation was made in favour of respondent No. 5 in 2008, the State Water Policy of 2003 required the State Government to give priority to industry above agriculture. That policy has undergone change on 18 May 2011 and, therefore, the statement made by the learned Advocate General today is in accordance with the present policy. Sectoral allocation is defined in Section 2(u-1), as the allocation made in the water resources project by the State Government to the various categories of use.

74. Secondly, section 16A of the Maharashtra Water Resources Regulatory Authority Act, 2005 specifically provides that notwithstanding anything contained in the Act or in any other law for the time being in force, the State Government shall make the sectoral allocation and it is thereafter that the State Regulatory Authority will determine the criteria for the distribution of entitlements under section 11(a). Sectoral Allocation is defined in Section 2(U-1) as the allocation made in the water resources project by the State Government to the various categories of use.

CONCLUSIONS

75. To sum up, then, our conclusions are as under:-

(i) The impugned decision of the State Government and Vidharbha Irrigation Development Corporation in February 2008 to allocate 87.60 MCM of water to the power plant of respondent No. 5-Sofia Power Company Ltd. (Now Indiabulls Power Limited) was not contrary to law or arbitrary or violative of the Governor's directives under Article 371(2) of the Constitution.

(ii) Petitioners' claim that farmers in Amravati and Wardha districts are entitled to get same quantity of water for irrigation which they were getting in the past, is not based on any legal right, but it is open to the petitioners to approach the State Government, the Maharashtra Water Resources Regulatory Authority and other authorities under the Maharashtra Water Resources Regulatory Authority Act, 2005 for any increase in allocation of water for irrigation.

- This Court may not be treated to have expressed any opinion on the quantity of water, which should be supplied for irrigation of lands in Amravati and Wardha districts from the Upper Wardha Dam.

(iii) The competent authority for taking decision about sectoral allocation of water from irrigation dams is the State Government under Section 16A read with Section 2(u-1) of the Maharashtra Resources Regulatory Authority Act of 2005, (the Act for brevity) read with Section 11(a) thereof requiring the State Water Resources Regulatory Authority to determine the criteria for distribution of entitlements by the concerned River Basin Agency within each

category of use, on such terms and conditions as may be prescribed.

(iv) The directives given by the Governor under Article 371(2) of the Constitution in respect of the physical backlog of irrigation facilities in Vidharbha regions are binding on the State Government in accordance with the Development Boards for Vidharbha, Marathwada and the Rest of Maharashtra order, 1994 and (now, the Development Boards for Vidharbha, Marathwada and Rest of Maharashtra Order, 2011) issued by the Governor of Maharashtra, and also in accordance with the Maharashtra Water Resources Regulatory Authority Act, 2005:

(a) The State Water Resources Regulatory Authority shall while framing policy, give preference to the projects so that the physical backlog forming the basis of the financial backlog be eradicated in accordance with the Governor's directives.

(Section 12 of the Act)

(b) While clearing new water resources projects, the said Authority shall ensure that Governor's directives issued from time to time relating to investment priority for removal of regional imbalance are strictly observed. (first proviso to Section 11 of the Act);

(c) The said Authority is required to prepare annual report to give a summary of its activities during the previous year with Annexure containing irrigation backlog of each district including physical backlog and financial backlog and another Annexure showing Districtwise and Regionwise yearly expenditure incurred on the irrigation sectors and other data required by Section 20 of the Act.

(d) Special responsibility is cast upon the said Authority in regard to districts and regions, affected by backlog in irrigation sector as per the Governor's Directives. For implementing the Governor's Directives. The said authority shall ensure that the manpower available with the Water Resources Department of the Government is used for survey, planning and detailed design of the projects in backlog affected area and new projects are available for construction in time for removal of backlog. (Section 21 of the Act.)

(e) In respect of projects situate in Marathwada and Vidharbha regions, the powers to accord administrative approval or revised administrative approval under Section 11(f), shall in accordance with the Governor's directives, be exercised by the concerned River Basin Agency.

(second proviso to Section 11 of the Act)

(f) The developmental activities with regard to the outlays made by the Governor in the directives under Article 371(2) shall be carried out by the State Government and its respective administrative departments shall continue to implement and exercise administrative and technical supervision and control over the developmental activities.

(Clause (8) of the Governor's Orders dated 30 April 1994 and 5 September 2011)

(v) The Maharashtra State Water Policy in force from 18 May 2011 as per the Government Circular of even date is as under:-

- (1) Water for drinking purpose
- (2) Water for irrigation purpose
- (3) Water for hydro-power purpose
- (4) Water for environmental purpose
- (5) Water for agro based industries and other industries

(6) Navigation and for other purpose

ORDER

76. Writ Petition no. 757 of 2011 is disposed of in the following terms:-

(A) Petitioners' prayers (ii) and (v) challenging the decision dated 21 February 2008 of the State Government and the decision/communication dated 22 February 2008 of respondent No. 2-Vidarbha Irrigation Development Corporation for allocation of 87.6 MCM from Upper Wardha Dam Project's live reservoir for the thermal power project of respondent No. 5, are rejected.

(B) Prayer (iv)-to restrain the respondent-authorities from allocating any quantity of water from the live reservoir of the Upper Wardha Project of Amravati to any new industry, unless and until removal of the physical backlog of Amravati district - is also rejected.

(C) The statement made by the learned Advocate General is reproduced again for the sake of convenience.

Learned Advocate General has placed on record statement dated 2 March 2013 of Mr. W.P. Jadhav, Superintending Engineer, Water Resources of Government of Maharashtra stating as under:-

The State of Maharashtra (Respondent No. 1) states that, in Normal (Average) rainfall years, 200.203 MCM of water will be supplied for Irrigation, 77,329 MCM for domestic use and 10,000 MCM for Industrial uses from Upper Wardha Project and in the event that of bad rainfall years, the shortfall in these supplies will be made good from conjunctive use of ground water available in the first instance and then to the extent possible from the 87.60 MCM sanctioned to Respondent No. 5 (M/s. Sophia Power Company Ltd.). In the event that there is adequate rainfall and further quantity of water is available from the Upper Wardha Project, Respondent No. 1 undertakes to supply such surplus water as is necessary for domestic and Irrigation uses before permitting the use of such surplus water for other purposes in accordance with the State Water Policy.

Learned Advocate General hastens to add that the statement would apply in normal rainfall years, as indicated at the outset, and that this statement is meant to be acted upon in the near future and not for all time to come and subject to any directions of the State Government and Maharashtra Water Resources Regulatory Authority, established under the Maharashtra Water Resources Regulatory Authority Act, 2005 and the directions issued by the other competent authorities in accordance with the provisions of the said Act.

(D) As regards prayers (i) and (iii) of the petition, it will be open to the petitioners to make representation to the State Government in the Water Resources Department and also to the authorities under the Maharashtra Water Resources Regulatory Act, 2005 (the Act). Therefore, nothing further is required to be done as regards the said prayers (i) and (iii) in this petition which is filed for enforcement of the petitioners' rights under Article 371(2) of the Constitution. It will be open to petitioners to pursue their remedies before the aforesaid fora and, if necessary, to file any further proceeding.

(E) Prayer (vi) was interim prayer, which does not survive.

(F) As far as prayer (vii) is concerned, in view of the change in the State Water Policy as per Government Circular dated 18 May, 2011, this prayer does not survive. But we may not be treated to have expressed any opinion on the petitioners' claim regarding removal of development backlog in the irrigation sector for which, as aforesaid, the petitioners may take up the matters with the State Government or the authorities under the Act.

(G) As regards prayers (vii-a) and (vii-b) we do not find any merit in the challenge to the constitutional validity of the impugned Ordinance No. XI of 2010 and particularly inserting Sections 16A, 31A and 31F in the Maharashtra Water Resources Regulatory Authority Act, which was subsequently followed by Ordinance No. II of 2011 and replaced by Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Act, 2011. Accordingly, prayers (vii-a) and (vii-b) are rejected.

(H) Prayer (viii) is for interim relief, which does not survive in view of disposal of writ petition.

(I) Since the petition is disposed of, the statement made by learned Advocate for the State Government on 4 October 2012 and 4 January 2013 do not survive and respondent No. 2 - Vidarbha Irrigation Development Corporation shall remain bound only by the statement contained in the above quoted note dated 2 March 2013 submitted by the learned Advocate General and signed by the Superintending Engineer of respondent No. 2 - Corporation. However, as far as year 2012-13 (ending on 31 May 2013) is concerned, the statement that 328 MCM of water will be allocated for irrigation purpose is not disturbed.

77. Writ Petition No. 758 of 2011 filed by Indiabulls Power Limited is disposed of in terms the above conclusions about the scope of power of the Governor under Article 371(2).

78. PIL Writ Petition No. 19 of 2011.

(i) In view of conclusions recorded hereinabove, the prayers in PIL No. 19 of 2011 also do not survive. We repel the challenge to constitutional validity of Article 371(2), the State of Maharashtra (Special Responsibility of Governor for Vidarbha, Marathwada and rest of Maharashtra) Order dated 9 March 1994 and the Rules of 1994 and directives issued by the Governor from time to time (at Exh. D colly). They are all to be read in light of the observations made in this judgment and, therefore, the challenge does not survive.

(ii) PIL No. 19 of 2011 is accordingly disposed of.

As regards PIL No. 20 of 2011, in view of the conclusions recorded hereinabove, prayers (a) and (c) do not survive.

As far as prayer (b) is concerned, we repel the challenge to the directives issued by the Governor on 27 May 2009 and 19 March 2010 (Exh. C & D to the petition) with a clarification that they are to be read in light of the conclusion recorded hereinabove and the observations made in this judgment.

PIL is accordingly disposed of.