



महाराष्ट्र शासन राजपत्र असाधारण भाग आठ

वर्ष २, अंक ५३] मंगळवार, जानेवारी ११, २०११/पौष २१, शके १९३२ [पृष्ठे ७, किंमत : रुपये १९.००

असाधारण क्रमांक २ अधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधी व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Ordinance, 2011 (Mah. Ord. II of 2011), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

H. B. PATEL,
Secretary to Government,
Law and Judiciary Department.

[Translation in English of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Ordinance, 2011 (Mah. Ord. II of 2011), published under the authority of the Governor.].

WATER RESOURCES DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 11th January 2011.

MAHARASHTRA ORDINANCE No. II OF 2011.

AN ORDINANCE

to amend the Maharashtra Water Resources Regulatory Authority Act, 2005.

Mah. XXXVIII of 1976. WHEREAS the Maharashtra Irrigation Act, 1976 regulates the supply of water for irrigation and non-irrigation purposes ;

Mah. XVIII of 2005. AND WHEREAS the State has, in the year 2005 enacted two separate Acts, viz. the Maharashtra Water Resources Regulatory Authority Act, 2005 and the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 ;

भाग आठ—२-१

(१)

महाराष्ट्र शासन राजपत्र असाधारण भाग आठ, जानेवारी ११, २०११/पौष २१, शके १९३२

AND WHEREAS the Maharashtra Water Resources Regulatory Authority Act, 2005, and also the Maharashtra Irrigation Act, 1976, provide for the regulation of water resources and determination of tariff by the authorities thereunder;

Mah.
XVIII
of
2005.
Mah.
XXXVIII
of
1976.

AND WHEREAS the said Maharashtra Water Resources Regulatory Authority Act, 2005, does not repeal the Maharashtra Irrigation Act, 1976;

Mah.
XVIII
of
2005.
Mah.
XXXVIII
of 1976.

AND WHEREAS the Government of Maharashtra has, in exercise of the powers conferred by section 3 of the Maharashtra Water Resources Regulatory Authority Act, 2005, established, with effect from the 8th June 2005, the Maharashtra Water Resources Regulatory Authority;

Mah.
XVIII
of
2005.

AND WHEREAS it was expedient to clarify the roles of the State Government and the Maharashtra Water Resources Regulatory Authority, in relation to the allocation of water;

AND WHEREAS the Governor of Maharashtra promulgated the Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2010, on the 17th September 2010 (hereinafter referred to as "the said Ordinance");

Mah.
Ord.
XI of
2010.

AND WHEREAS upon the re-assembly of the State Legislature on the 1st December 2010, a Bill for converting the said Ordinance into an Act of the State Legislature was introduced in the Maharashtra Legislative Assembly as L. A. Bill No. LXXV of 2010, on the 1st December 2010;

AND WHEREAS the said Bill could not be passed by the State Legislature, as the session of the State Legislature was prorogued on the 16th December 2010;

AND WHEREAS as provided by article 213 (2) (a) of the Constitution of India, the said Ordinance shall cease to operate after the 11th January 2011, the date on which the period of six weeks from the date of re-assembly of the State Legislature expires;

AND WHEREAS it is considered expedient to continue the operation of the provisions of the said Ordinance;

AND WHEREAS both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action to continue the operation of the provisions of the said Ordinance, for the purposes hereinafter appearing;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely:—

Short title
and
commence-
ment.

1. (1) This Ordinance may be called the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Ordinance, 2011.

(2) This section shall be deemed to have come into force on the 17th September 2010 and sections 2 to 6 shall be deemed to have come into force on the 8th June 2005.

Mah.
XVIII
of
2005.

2. In section 2 of the Maharashtra Water Resources Regulatory Authority Act, 2005 (hereinafter referred to as " the principal Act "),—

Amendment
of section 2
of Mah.
XVIII of
2005.

(i) after clause (k), the following clause shall be inserted, namely :—

" (k-1) " High Power Committee " means the committee constituted by the State Government under the Government Resolution, Irrigation Department, No. Misc. 1001/(154-01)VI.M.-(P), dated the 21st January 2003 ; "

(ii) after clause (u), the following clause shall be inserted, namely :—

" (u-1) " sectoral allocation " means the allocation made in a water resources project by the State Government to the various Categories of Use ; "

3. In section 11 of the principal Act,—

Amendment
of section
11 of Mah.
XVIII of
2005.

(1) for clause (a), the following clause shall be substituted, 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 ; "

(2) clause (n) shall be deleted ;

(3) for clause (o), the following clause shall be substituted, namely :—

" (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 ; "

4. In section 14 of the principal Act, in sub-section (1), after the existing proviso, the following proviso shall be added, namely :—

Amendment
of section
14 of Mah.
XVIII of
2005.

" Provided further that, the Entitlement under this section shall be required only after the distribution of Entitlement has been determined and the criteria for issuance of Entitlement has been laid under section 11."

5. After section 16 of the principal Act, the following section shall be inserted, namely :—

Insertion of
section 16A
in Mah.
XVIII of
2005.

" 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 :

Sectoral
allocation by
State
Government.

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. "

Insertion of sections 31A, 31B and 31C in Mah. XVIII of 2005.

6. After section 31 of the principal Act, the following sections shall be inserted, namely :—

Entitlement to apply only after delineation.

“31A. Notwithstanding anything contained in this Act or any other law for the time being in force, the term “Entitlement” shall apply only to such areas where compliance of all relevant provisions including delineation under the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 is made.

Mah. XXIII of 2005.

Explanation.—In respect of the areas where the Maharashtra Management of Irrigation Systems by Farmers Act, 2005, has not become applicable, section 78 of that Act shall apply and be effective.

Mah. XXIII of 2005.

Permission, allocation, etc., to continue.

31B. Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any order, judgement or decree of any court, tribunal or authority, any person or Water User 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 17th September 2010, being the date of commencement of section 1 of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) 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 person or Water User Entity shall be required to obtain fresh permission, allocation, sanction, authorization or Entitlement to draw water.

Mah. Ord. II of 2011.

Bar of certain suits or proceedings, etc.

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 section 1 of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Ordinance, 2011, 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.”

Mah. Ord. II of 2011.

Repeal of Mah. Ord. XI of 2010 by withdrawal and saving.

7. (1) The Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2010, is hereby withdrawn.

Mah. Ord. XI of 2010.

(2) Notwithstanding such withdrawal, anything done or any action taken (including any notification or order issued) under the principal Act, as amended by the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of the principal Act, as amended by this Ordinance.

STATEMENT

The Maharashtra Irrigation Act, 1976 (Mah. XXXVIII of 1976) regulates the supply of water for irrigation and non-irrigation purposes. In the year 2005, the State has enacted two separate Acts, *viz.* the Maharashtra Water Resources Regulatory Authority Act, 2005 (Mah. XVIII of 2005) and the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 (Mah. XXIII of 2005). The Maharashtra Water Resources Regulatory Authority Act, 2005 (hereinafter referred to as "the MWRRA Act") and also the Maharashtra Irrigation Act, 1976, provide for the regulation of water resources and determination of tariff by the authorities thereunder. The State Government, in exercise of the powers conferred by section 3 of the Maharashtra Water Resources Regulatory Authority Act, 2005, established, with effect from the 8th June 2005, the Maharashtra Water Resources Regulatory Authority.

2. The Maharashtra Management of Irrigation Systems by Farmers Act, 2005 (hereinafter referred to as "the MMISF Act") provides for management of irrigation systems by farmers and matters connected therewith or incidental thereto. Section 77 of the MMISF Act provides that, on commencement of the MMISF Act, in relation to the areas under that Act, certain provisions of the Maharashtra Irrigation Act, 1976, relating to supply of water for irrigation and non-irrigation purposes shall be deemed to have been repealed. Section 78 of the MMISF Act provides that, the provisions of the Maharashtra Irrigation Act, 1976, which has not been specifically repealed shall remain in force and apply to the areas under the Management of Irrigation Systems by Farmers. Section 79 of the MMISF Act provides for overriding effect over the provisions of any other law for the time being in force, in respect of the areas under the Management of Irrigation Systems by Farmers. Section 65 of the MMISF Act provides that the provisions of sections 11 to 14 and section 22 of the MWRRA Act shall apply in implementing the provisions of the MMISF Act and the rules made thereunder.

3. A harmonious construction of the MWRRA Act and the MMISF Act makes it apparent that until the delineation of the areas under section 5 of the MMISF Act has been effected and various steps have been undertaken, the provisions of the Maharashtra Irrigation Act, 1976 and various Government Resolutions would continue to apply and after delineation of the areas and taking of various steps, the provisions of the MWRRA Act become applicable. It is in this background, the State Government and the High Power Committee and the River Basin Agencies have granted permissions, allocations, sanctions, authorizations or

Entitlements of water. However, in view of the fact that, the MWRRA Act does not repeal the Maharashtra Irrigation Act, 1976, certain doubts were raised regarding the roles of the State Government and the Maharashtra Water Resources Regulatory Authority, in relation to the allocation of water. The interpretation that, irrespective of whether the necessary pre-requisites under the MMISF Act have been complied with, the provisions of the MWRRA Act will apply simultaneously, would lead to destructive conflict of both the said laws and would make allocation of water chaotic and impossible.

4. The sectoral allocation of water between different categories of users such as drinking, industrial and irrigation was always intended to be within the purview of the State Government and only after such allocation, the Maharashtra Water Resources Regulatory Authority would determine the criteria for the distribution of the Entitlements within each category. In view of this, it was necessary to clarify that, the MWRRA Act, would have prospective effect and it is only after the various steps including delineation of the areas under section 5 of the MMISF Act have been taken, the provisions of the MWRRA Act would apply to those areas. It was also necessary to clarify that where the 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 to a Water Users Entity, before the MWRRA Act becoming applicable, such Entity would not be required to obtain the permission, allocation, sanction, authorization or Entitlement of water afresh, unless the same is altered by following the process under all relevant laws. It was, therefore, expedient to clarify the position immediately by amending the MWRRA Act, by promulgating an Ordinance in this matter. The Governor of Maharashtra therefore, promulgated the Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2010 (Mah.Ord. XI of 2010), on the 17th September 2010.

5. Thereafter, a Bill for converting the said Ordinance into an Act of the State Legislature was introduced in the Winter session of the Maharashtra Legislative Assembly as L. A. Bill No. LXXV of 2010, on the 1st December 2010. However, the said Bill could not be passed by the State Legislature, as the session of the State Legislature was prorogued on the 16th December 2010. As provided by article 213 (2) (a) of the Constitution of India, the said Ordinance would cease to operate after the 11th January 2011, being the expiry of six weeks from the re-assembly of the State Legislature.

6. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action to continue the operation of the provisions of the Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2010 (Mah. Ord. XI of 2010), for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,
Dated the 11th January 2011.

K. SANKARANARAYANAN,
Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

E. B. PATIL,
Secretary to Government.