



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

(महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण अधिनियम, २००५ चे कलम ३ अन्वये स्थापित वैधानिक प्राधिकरण)

Maharashtra Water Resources Regulatory Authority

(A Statutory Authority Established u/s 3 of Maharashtra Water Resources Regulatory Authority Act, 2005)

File No. MWRA/2018/Legal/ Case No. 4(2019)/467

Date: 11/06/2019

Subject: In the matter of suo - moto action on the representation preferred by the Petitioner - Govind Baba Water Users association, Nimbi Tal. Manglurpir Dist. Washim through its Chairman, Govind Baba Water Users Association, Nimbi Tal. Manglurpir Dist. Washim to release water through canal of Motsawanga Minor Irrigation Project, Motsawanga Taluka Manglurpir District Washim for rabbi season 2018-19

Appended is a copy of order dated 06.05.2019 in the above matter.



(R.M. Chauhan)

Secretary

Copy for information:-

1. The Chairman, Govind Baba Waters Users Association, Nimbi Tal. Manglurpir Dist. Washim - **(Petitioner)**.
2. The Chief Engineer, Specified Project, Water Resources Department, Sinchan Bhavan, Shivaji Nagar, Amravati - 444 602 **(Respondent No.1)**
3. The Superintending Engineer, Washim Irrigation Circle, Civil Line, Washim - 444 505 **(Respondent No. 2)**
4. The Executive Engineer, Washim Irrigation Division (Construction), Civil Line, Washim - 444 505 **(Respondent No. 3)**
5. Tahsildar, Manglurpir, Taluka Manglurpir District Washim
6. The Chairman, Govind Baba Water Users Association, Nimbi Tal. Manglurpir, District Washim



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

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ORDER No. 06/2019

In the matter of suo-motu action on the representation preferred by the
Petitioner – Govind Baba Water Users association, Nimbi Tal.Manglurpir
Dist. Washim through its Chairman, Govind Baba Water Users Association,
Nimbi Tal.Manglurpir Dist. Washim to release water through canal of
Motsawanga Minor Irrigation Project, Motsawanga Taluka Manglurpir
District Washim for rabbi season 2018-19 -- Case No. 4 of 2019

The Chairman,
Govind Baba Water Users Association, Nimbi
Tal.Manglurpir Dist. Washim

.....Petitioner

V /s

1. The Chief Engineer, Specified Project, Water Resources Department,
Sinchan Bhavan, Shivaji Nagar, Amravati – 444 602;
2. The Superintending Engineer, Washim Irrigation Circle, Civil Line,
Washim – 444 505;
3. Executive Engineer, Washim Irrigation Division (Construction), Civil Line,
Washim – 444 505.

.....Respondents



Coram: Shri. V. M. Kulkarni, Presiding Member (WRE),
Shri V.J. Tiwari, Member (Law)
Dr. S. T. Sangle, Member (Economics)

Date: June 11, 2019

BACKGROUND

- 1) Chairman, Govind Baba Water Users Association, Nimbi Taluka Mangrulpir District Washim approached this Authority through its representation dated 02.01.2019 with pray, to give direction to Respondents to release water through canal of Minor Irrigation Project, Motsawanga Taluka Mangrulpir District Washim for rabbi season of the year 2018-19 and to pay compensation for losses made in this season due to non release of water into the Canal.
- 2) The Authority having considered the said representation of the Petitioner and by exercising the power vested in it under Regulation 11 (1) of MWRRA Conduct of Business Regulation, 2013 ("Regulation" for short) has been taken Suo - motu cognizance of the same considering the reason cited in the said representation in the interest of the farmers of the Govind baba Water Users Association ("Petitioner WUA" for short).
- 3) Authority under provision in section 11 (4) of the Regulation, prior to take any decision on the said application, issued notices to all concerned for filling their replies and posted the matter for the hearing.

THE PROCEEDINGS BEFORE THE AUTHORITY

- 4) The Authority has conducted first hearing in this matter on March 7, 2019 and second and final hearing on May 6th, 2019.

BRIEF OF HEARING ON DATED MARCH 7, 2019

- 5) Authority conducted the hearing on March 07, 2019 and ample opportunity of hearing was granted to the Petitioner as well as to the Respondents. This hearing was attended by the following persons;



- i) Shri Atmaram K. Akhare, Chairman, Govind Baba WUA, Nimbi Tal Mangrulpir Dist. Washim ----- **Petitioner**
- ii) Shri Pramod G. Mandade, Suprentending Engineer, Washim Irrigation Circle, Washim ----- **Respondent No.2**
- iii) Shri Prashant V. Borse, Executive Engineer, Washim Irrigation Division (Construction), Washim ---- **Respondent No.3**
- 6) At the outset, of the hearing, the Petitioner argued that, his WUA is a WUA registered under Maharashtra Management of Irrigation System by Farmers Act, 2005 ("MMISF ACT" for short) and is getting water since 2012-13 for irrigation from Motsawanga M.I. Project, Motsawnga. Even prior to formation of WUA, water was being supplied since 1998-99. In the year 2018-19, they have approached Respondents for release of water into the canal. The Respondent No.3, in response, also assured to release water. Based on the assurance of the Respondent No.3, the farmers prepared the lands for sowing. However, the Respondent failed to release the water. The petitioner also stated that some unlawful entities are creating hindrance in release of water into the canal. The Petitioner further submitted that, they have already lost the Kharif season and prayed for release of water for Rabbi Season.
- 7) At the time of hearing, the Executive Engineer, Washim Irrigation Division, Washim, the Respondent No.3 filed affidavit in reply. During the arguments Respondent No.3, agreed that, he is in receipt of the application from the Petitioner dated November 14, 2018, for releases of water into the canal. He also stated that, he had tried to release water through canal, but villagers from upstream side of reservoir strongly opposed for release of water for downstream beneficiaries. He further brought to the notice of this Authority that, he had had taken police protection, but could not succeed in releasing the water. Respondent no.3 also stated that, he had tried to convince upstream side beneficiaries, in best possible way but they were not in position to listen. On contrary, they threatened that, if water is released through canal for the downstream farmers, they will jump in to the reservoir and will commit suicide. Respondent No.3, also tendered the copy of the agreement with the WUA.



- 8) This Authority observed that, the Petitioner is a WUA, registered under MMISF Act, 2005. This Authority also observed that, part of delineated area on upstream side of the reservoir is being irrigated by individual lifts and part of the area on downstream side of the dam is being served by canal. The Respondents under the pressure of villagers on upstream side of the reservoir deprived the downstream beneficiaries from the water rights.

Hence, the Authority expressed that, the Respondents are duty bound to release water into the canal and further directed to register offence in police station against persons causing unlawful hindrance in the legitimate duty of the canal officers.

- 9) Respondent No. 2 and 3 agreed with their responsibility and assured that, they will make available water for canal within 4 - 5 days. The Executive Engineer -Respondent no.3 also brought to the notice of this Authority that, there are large arrears of water charges. Petitioner, during hearing agreed to collect the money from beneficiaries and pay to the Respondent within 4 days after release of water.
- 10) Taking into consideration the pleadings, made by the parties, the documents on record, the Authority issued the following interim directions:
- (i) *Respondents shall release legitimate quota of water into the canal within four days. WUA shall distribute water amongst its members. Respondent to register FIR against those who obstruct the release of water.*
- (ii) *WUA should deposit arrears of water charges in four days after release of water.*

BRIEF OF SECOND AND FINAL HEARING ON 6th of MAY, 2019

- 11) The second and final hearing was conducted by this Authority on 6th of May, 2019 and opportunity of arguments was granted to both the parties. This hearing was attended by the following person;

- i) Shri Atmaram K Akhare, Chairman, Govind Baba WUA, Nimbi Tal Mangrulpir Dist. Washim ----- Petitioner



- ii) Shri Pramod G. Mandade, Suprentending Engineer, Washim Irrigation Circle, Washim ----- ---**Respondent No.2**
- iii) Shri Prashant V. Borse, Executive Engineer, Washim Irrigation Division (Construction), Washim ----**Respondent No.3**
- 12) Executive Engineer, Washim Irrigation Division, Washim – Respondent No.3 filed compliance affidavit dated 06.05.2019 regarding release of water through canal for downstream side benificeris. The copy of affidavit was also served to the Petitioner.
- 13) Respondent no 2 informed that, in view of the direction issued by this Authority during the last hearing i. e. on March 7, 2019, Respondent No.3 approached the Petitioner on March 11, 2019 and arranged meeting of all the benificeris of the project on March 11, 2019, to finalise the program for releasing of water through canal for the downstream side benificeris. But no response was received from benificeris of upstream side of reservoir. Hence police protection was sought. Police staff being engaged in Loksabha election duty, police protection for releasing water through canal was not received. At the same time, the Petitioner WUA vide it's letter dated March 21, 2019 informed to the Respondent to release the water after April 6, 2019. Ultimately, the water was released in to the canal on April 10, 2019. Respondent No.3 also informed that, the Petitioner WUA has not deposited water arears.
- 14) The Petitioner stated that, they have received water through the canal and irrigated 15 Ha of land. The Petitioner further stated that his grievance is now fully resolved and expressed satisfaction over the action taken by the Respondents and this Authority.
- 15) The Authority directed the Petitioner to clean canal in full length, so that water can reach up to tail end and to deposit 100 % water cess of current rotation and some water arrears from pending dues immediately. The Petitioner assured that, they will obey order of this Authority.
- 16) The Respondent stated that, at present 1.30 Mcum of water is available in the reservoir. Out of this 0.68 Mcum of water reserved for Mangrulpir Muncipal Corporation, Mangrulpir for drinking purpose, for remaing period of the year and 0.62 Mcum water available for irrigation. The Respondent No .3 further stated that they have released 0.09 Mcum of



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water for irrigation to WUA in canal and Petitioner irrigated 15 Ha of lands.

FACTUAL MATRIX

17) Having heard the parties to the litigation and perused the documents on record, this Authority observed the facts as under:

- i) Motsawanga minor irrigation project was constructed on Madan River in Mangalurpir tahsil of Washim district during the year 1975 and water is being made available for irrigation since 1976.
- ii) Govindbaba Water User Association, Nimbi was established under the provisions of MMISF Act, 2005 and its rules on October 16, 2008. The delineated area of the WUA is 864 ha out of which 37.60 ha area is under reservoir lifts. The Petitioner WUA has signed an agreement with the Respondent No.3 on November 19, 2011 and since 2012-13 the water management was handed over to the Petitioner WUA.
- iii) The live storage capacity of the Motsawanga reservoir is 4.59 Million Cubic Meter ("MCM" for short) out of which 1.16 MCM of water is reserved to cater for the drinking water need of Mangalurpir city and remaining 3.43 MCM is provided for irrigation and evaporation.
- iv) In the year 2018-19, the project attained its full Reservoir level. Out of this, 1.40 MCM water reserved for Mangrulpir Municipal Council, Mangrulpir for the drinking purposes.
- v) During September, 2018 due to less rains in the project area, 271 ha of Kharif crops were irrigated by the lift irrigation from reservoir. Considering the evaporation losses, water available for Rabbi Irrigation was 3.68 Mcum.
- vi) The Petitioner WUA has requested the Respondent No.3 vide it's written application dated 16.11.2018 to release of water for Rabbi season 2018 through canal.
- vii) After receipt of demand letter from the Petitioner dated November 14, 2018, Respondent No.3 made arrangement to release water into



the canal on November 16, 2018. However, the beneficiaries of the upstream side of the reservoir opposed and obstructed the release of water through the canal. After taking cognizance of situation on the field, the operation of releasing water through the canal was stopped.

- viii) Thereafter, the Respondent No.3 approached to the Police Station for availing protection on site and also to the Tahsildar, Mangrulpir for their cooperation and support. The Police Inspector held meeting with the beneficiaries of villages on dated November 29, 2018 to sort out the issues. But no consensus decision took place to release of water to downstream side beneficiaries.
- ix) The canal officer conducted the meeting of the beneficiaries and discussed the factual position regarding availability of water in the reservoir, non-irrigation reservation, likely evaporation loss and water available for irrigation. However, the beneficiaries from upstream side of the reservoir opposed to release the water into the canal. The beneficiaries on the upstream side further took the extreme step of threatening to the canal officer saying that they will commit suicide if water is released into the canal.
- x) The canal officer also contacted the Tahsildar, Mangalurpir, vide letter dated November 26, 2018 requesting his co-operation for release of water.
- xi) The canal officer also contacted the Asegaon Police Station for police protection. The Police Inspector Asegaon Police Station conducted the meeting with beneficiaries of Motsawanga, Ramgaon, Dudhkheda and Nimbi villages along with the WRD officers; however, consensus for releasing water in canal could not be reached.
- xii) On December 17, 2018, Tahasildar, Mangalurpir, Respondent No.3 and the sub-divisional Police officers along with 15-20 police constables reached the site to sort out the issue. However, farmers continued their protest for releasing water into the canal. Considering large number of protesting farmers, it was jointly decided to suspend the program of releasing water into the canal.



- xiii) The water was finally released into the canal on April 8, 2019. The water was released for 3 days. The total quantity of water released was 0.09 MCM.
- xiv) The Petitioner vide his letter dated April 8, 2019, has agreed that he has got the water from the canal and his complaint is accordingly resolved.
- xv) The Petitioner during the hearing made a statement that his grievance has been resolved satisfactorily and requested to close the matter.
- xvi) Thus, the matter regarding the internal dispute amongst the members of the WUA, which has been resolved satisfactorily due to timely intervention of this Authority.
- xvii) However, it is observed that the farmers on upstream side of the reservoir are illegally using maximum water by individual lifts and farmers on the canal are deprived off their legitimate water rights.
- xviii) It is also observed that both the Respondents as well as the Petitioner WUA are not fully aware of their rights and responsibilities.
- xix) It is observed that outstanding water charges with the Petitioner WUA are about Rs. 64,800.00

FRAMING OF ISSUES

- 18) This Authority, however, having considered the nature of the case, the contentions made in the submission of the parties, the factual matrix based upon the documents placed on record as well as data submitted, felt it prudent to deal with following issues for better consideration:

- (i) Whether the Respondents are responsible for releasing the water into canal for the Petitioner?
- (ii) Whether the Respondents or any field staff has shown negligence in the process of releases of water into the canal?
- (iii) Whether any specific directions are required to be given in light of the issues cropped up as far as smooth release of water to d/s side beneficiaries in the interest of justice to them?



FINDING OF THE AUTHORITY

19) Finding of this Authority on the above issues are as under:

i) Whether the Respondents are responsible for releasing the water into canal for the Petitioner?

The Petitioner's WUA has been registered under the provisions of MMISF Act, 2005 and Rules 2006 made for its implementation. Further, the Respondent No. 3 has signed an agreement with the Petitioner WUA on January 19, 2011. The Section 28 (1) and 53 (d) MMISF Act, 2005, mandates the Respondents to supply water as per the Applicable Water Use Entitlement, which reads as follows

"28. (1) it shall be the responsibility of the Appropriate Authority to supply water as per the Applicable Water Use Entitlement, in the prescribed manner to the Water Users' Associations on a bulk basis measured volumetrically."

"53 (d) to ensure supply of water as per the Applicable Water Entitlement on bulk basis measured volumetrically to Water Users' Associations at all levels at agreed intervals every year;"

Further, as per the provision in Rule 18, of the Maharashtra Management Irrigation by the Farmers Rule, 2006 it is the responsibility of the canal officer to maintain and ensure that every member of the WUA receives the quantum of water as per applicable water entitlement.

Hence, the issue is answered in the affirmative.

ii) Whether the Respondents or any field staffs have shown negligence in the process of releases of water into the canal?

As per the Section 28 (1) of the MMISF Act, 2005 it is the responsibility of the Respondents to supply water as per the applicable water use entitlement.

As mentioned in Para 17 (viii) to 17 (xiv) above of the Factual Matrix, the Respondents and the field officers have made all possible efforts to release the water into the canal.



However, the Respondents should have initiated action against the persons who have restrained them from implementation of the schedule of irrigation under Section 60 of the MMISF Act, 2005. The Respondents have failed to do so. However, this do not seems to be a willful default.

The issue is answered accordingly.

- iii) Whether any specific directions are required to be given in light of the issues cropped up as far as smooth release of water to d/s side beneficiaries in the interest of justice to them?

During the proceedings of the case, this Authority has observed that;

- a) Washim district is the irrigation backlog district; it is also one of the farmers' suicide prone district. The State Government has made considerable investment in creating the irrigation infrastructure in this district. The actual utilization of the created irrigation potential and equitable distribution of the available water by observing various provisions in the Maharashtra Water Resources Regulatory Authority Act, 2005 and Maharashtra Management of Irrigation by Farmers Act, 2005, need to be ensured.

It is also observed that in Motsawanga project, Tal. Mangalurpir, District Washim, some persons without any lawful cause are obstructing the irrigation schedule and distribution of the lawful water rights.

The State Government has made laws to handle such situations. However, it is observed that the Respondents have not invoked these provisions, may be due to ignorance of these legal provisions. The Respondent WRD officers, as well as, the officers in charge, for maintaining law and order situation, in Mangalurpir Taluka, District Washim should have promptly acted for releasing water into the canal as per irrigation schedule to give Petitioner WUA, the water of its legitimate water right.

Respondent should have initiated action against the concerned persons under Section 60 of the MMISF Act, 2005.



- b) The capacity building of the Respondents and the canal officers working under Respondents regarding their powers and function is necessary to achieve the intended objectives of the MMISF Act, 2005.
- c) The Petitioner WUA has failed to perform its functions as mandated by Section 52 of the MMISF Act, 2005, particularly regarding maintenance of canal system before commencement of season, collection of service charges from its member and remit to canal officer and resolving the disputes amongst the members.
- d) The capacity building of the WUA is necessary to enable them to carry out their functions effectively. The canal officer should provide necessary technical and managerial assistance to the Petitioner WUA for its capacity building.
- e) As per the notification - III, issued under Section 5, 6, 7 of the MMISF Act, only 37.60 ha area of reservoir lift is included in the jurisdiction of the Petitioner WUA, whereas, area under the canal is 678.95 ha. However, it is observed from the documents on records that major share of water in the reservoir is being used by the farmers on the submergence by individual reservoir lifts and a very meagre quantity of water is made available for the farmers on the canal.

In the year 2018-19, the respondents, through affidavit has submitted that in Kharif season 271 ha of land on upstream side has been irrigated by individual reservoir lifts whereas water was released into the canal in rabbi season only for 15 ha of land. Thus, delivery of quota of water is not as per the prescribed entitlements. This practice need to be stopped.

In view of the above observations this Authority is of the considered opinion that some specific directions are required to be given to ensure continued justice to the Petitioner - WUA and also to achieve the various mandates of the MMISF Act, 2005 and MWRRA Act, 2005.

Thus, the issue is answered in affirmative.



FINAL ORDER / DIRECTIONS

20) The Petitioner, during the proceeding before this Authority has expressed that he has got the necessary relief and he is satisfied over the justice made to him. In view of the above statement of the Petitioner, the Petition is disposed off with following directions, which are required to be issued in the light of the findings of this Authority as recorded in Para - 19 above for larger interest of the members of the Petitioner WUA and observance of the various provisions in the MMISF Act, 2005.

(A) **Superintending Engineer, Washim Irrigation Circle, Civil Line, Washim - Respondent No.2 as under ;**

Take immediate steps for capacity building of the Respondent No.3 and canal officers working under him.

(B) **Executive Engineer, Washim Irrigation Division, Washim - the Respondent No. 3 as under;**

- i) To ensure that the quota of water delivered to the Petitioner WUA is in commensurate with the prescribed Water Use Entitlement.
- ii) To prohibit the over-extraction or unauthorized utilization of water by the individual lift owners on upstream side of the reservoirs.
- iii) To sensitise the persons who are restraining the Respondents from implementation of the schedule of irrigation about the provision in Section 60 of the MMISF Act, 2005 and thereafter, if required, initiate action under the above said Section of the Act, to deliver legitimate share of water to the beneficiaries of canal.
- iv) To provide all necessary technical and managerial assistance to the Petitioner WUA, as mandated by Section 53 (i) of the MMISF Act, 2005.
- v) To carry out canal repair work in order to restore the design discharge capacity of the canal of the Motsawanga Minor Irrigation Tank so that delivery of legitimate quota of water is ensured to the farmers at the tail end of the canal by convergence of the various Government schemes like MNAREGA, Kalwa Swachhta Abhiyan, etc.



(C) Ld.Tahsildar & Executive Magistrate, Mangalurpir, District Washim;

To give all necessary support to the Executive Engineer, Washim Irrigation Division, Washim and his field officers at taluka level promptly, in the events of unlawful interventions in implementation of the scheduled irrigation and delivery of water to farmers and the Water User Associations, to whom legal water rights have been given under Maharashtra Management of Irrigation by Farmers Act, 2005.

(D) Chairman, Govindbaba Water User Association, Nimbi, Tal. Mangalurpir, District Washim;

To perform the functions as mandated by Section 52 of the MMISF Act, 2005, particularly related to maintainance of canal system before commencement of season and collection of water charges from it's members and remittance to canal officers.

The Petition is accordingly disposed off with no costs.

Schedule for review of compliance on February 11, 2020.

Delivered on June 11, 2019

S. T. Sangle
11/06/19

(Dr. S. T. Sangle)
Member (Economics)

Vinod Tiwari
11-06-2019

(Vinod Tiwari)
Member (Law)

V. M. Kulkarni
11-06-19

(V. M. Kulkarni)
Presiding Member (WRE)

