



# 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)

MWRRA/2018/Legal/Case No.12 (2018)/468

Date : 11/06/2019

Case No.12 of 2018 & 15 of 2018

In the matter of petition filed by Gram Panchayat Pimpri Nirmal,  
Tq. Rahata, Dist. Ahmednagar through Ex- Sarpanch, Shri.  
Gnyandev Nana Ghorpade and Miyasaheb Pani Vapar Sanstha  
Takalimiya through Shri. Gnyandev Nimse, Chairman arising out of  
Marathwada Water Grid Pipeline Scheme.

Please find herewith a copy of MWRRA Order No. 07/2019 dated  
11/06/2019 in the above matter.

(Rasik M. Chauhan)  
Secretary, MWRRA

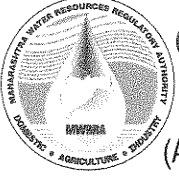
Copy for information and necessary action to:

1. Shri. Dnyandev Ghorpade, Ex-Sarpanch, Grampanchayat Pimpri Nirmal, Tal. Rahata, Dist. Ahmednagar and Grampanchayat Miyasaheb Pani Vapar Sanstha Takalimiya through Chairman Gnyandev Nimse through Adv. Siddharth Karpe, C-11, Cosmos Trade Center, Khatao Building, Near BSE, Fort, Mumbai - 400001 (Petitioner)
2. Principal Secretary, Water Supply & Sanitation Department, Mantralaya, Mumbai - 400 032 (Respondent No 1).
3. Executive Director, Godavari Marathwada Irrigation Development Corporation, 1<sup>st</sup> floor, Sinchan Bhavan, Jalna Road, Aurangabad-431 005 (Respondent No 2).
4. Chief Engineer, Maharashtra Jeevan Pradhikaran, ISP Road, Opp. Nasik Revenue Commissioner Office, Nasik Road, Nasik 422101 (Respondent No 3).





# 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)

COMMON ORDER No. 07/ 2019

In the matter of petition filed by Gram Panchayat Pimpri Nirmal, Tq. Rahata, Dist. Ahmednagar through Ex- Sarpanch, Shri. Gnyandev Nana Ghorpade and Miyasaheb Pani Vapar Sanstha Takalimiya through Shri. Gnyandev Nimse, Chairman arising out of Marathwada Water Grid Pipeline Scheme, as covered under - Case No.12 of 2018 & 15 of 2018

- 1) Gram Panchayat Pimpri Nirmal,  
Through Ex- Sarpanch, Shri. Gnyandev Nana Ghorpade,  
Tq. Rahata Dist. Ahmednagar.

.....Petitioner  
(Case No. 12 of 2018)

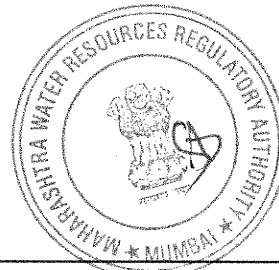
And

- 2) Miyasaheb Pani Vapar Sanstha Takalimiya  
Through Shri. Gnyandev Nimse Chairman  
Tq. Rahuri Dist. Ahmednagar.

.....Petitioner  
(Case No. 15 of 2018)

---Vs---

- 1) Principal Secretary,  
Water Supply and Sanitation Department,  
State of Maharashtra, Mantralaya, Mumbai.
- 2) Executive Director,  
Godavari Marathwada Irrigation Development Corporation,  
Sinchan Bhavan, Jalna Road, Aurangabad.
- 3) Chief Engineer,  
Maharashtra Jeevan Pradhikaran,  
Regional Division, Nashik



.....Respondents

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

Date : June 11, 2019

## BACKGROUND

1. The Marathwada Region of Maharashtra State is repeatedly facing severe drought due to scanty rainfall. To overcome this, State Government has decided to have grid water supply scheme to meet the drinking water needs in the line of Gujarat and Telangana water grid system.
2. Accordingly, the State Government through Maharashtra Jeevan Pradhikaran ("MJP" for short) has entered into a Consultancy Agreement with Mekorot Development & Enterprise Ltd., Israel ("Consultant" for short) on February 21, 2018 to prepare Water Supply Master Plan for averting successive droughts in the severely drought prone Marathwada region of the State with specific terms of reference.
3. Shri. Gnyandev Nana Ghorpade, Ex- Sarpanch, Gram Panchayat Pimpri Nirmal, Taluka Rahata District Ahmednagar vide his Petition dated June 27, 2018 and Shri. Gnyandev Gangaram Nimse, Chairman, Miyasaheb Pani Vapar Sanstha Takalimiya Taluka Rahuri District Ahmednagar vide his Petition dated July 13, 2018 have approached Maharashtra Water Resources Regulatory Authority ("Authority" for short) for relief as prayed in the petitions which came to be preferred through Adv. Siddharth Karpe.
4. The Petitioners are the beneficiaries of the Nilwande Dam in Upper Godavari sub-basin and have concern that they will cause injustice due to the proposed scheme.
5. Contention of the Petitioners is that works pertaining to supply of water from upstream dams in Upper Godavari sub-basin viz. Mula, Pravara and Darna Complexes for drinking, industry and irrigation are included in this agreement, which is not consistent with the orders of Hon'ble High Court at Mumbai dated September 23, 2016 in PIL No. 173/2013.



**महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण**

**Maharashtra Water Resources Regulatory Authority**

9th & 11th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai-400005.

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## GIST OF THE PRAYERS

6. The Petitioners, through their petitions has prayed for following reliefs:
- (i) Necessary action to be taken as per Hon'ble High Court at Mumbai's Order dated September 23, 2016.
  - (ii) Prior to Marathwada Water Grid Pipeline Scheme ("MWGPS" for short), dams to hold 80 TMC water need to be constructed, which otherwise flows westward.
  - (iii) At present, dam complexes in upper region are being monitored in integrated manner as per the orders of the Hon'ble High Court at Bombay and this Authority to prevent water scarcity in Jayakwadi Dam. In light of this fact, construction of water grid pipeline should not be done from these dams and even not needed.
  - (iv) The other directions /orders as may be appropriate in the interest of justice as deemed and proper by this Authority.

## THE PROCEEDINGS BEFORE THE AUTHORITY

7. This Authority has conducted two hearings in this matter i.e. on November 1, 2018 & December 11, 2018.

## BRIEF OF FIRST HEARING ON NOVEMBER 1, 2018

8. The Advocate for Petitioners and representatives of the Respondent No. 1 to 3 attended this hearing. Adv. Siddarth Karpe for the Petitioners submitted an application for grant of adjournment, as he has not received the brief of the matter from the Petitioners who is not well and unable to attend. Hence, he prayed for grant of time.

Shri. Ajay Singh, Superintending Engineer, MJP, Aurangabad for Respondent No. 1 submitted that the MWGPS is still in the planning stage. He raised the query on what basis Petitioner is mentioning that 80 TMC of water is to be transferred from west flowing rivers basin into Godavari basin?



10. Shri. A. H. Chavan, Asst. Engineer -II, GMIDC, Aurangabad appeared on behalf of Respondent No.2, also prayed for grant of time to file reply Affidavit.
11. This Authority, having heard the parties, issued the following directions:
  - (i) The Respondents should file their Affidavits in Reply by November 26, 2018 to this Authority and to serve advance copy to all concerned.
  - (ii) The Petitioner can file Rejoinder, if any, by December 4, 2018 and serve copy to all.
  - (iii) The matter will be heard finally on December 11, 2018 and no more adjournment will be granted.

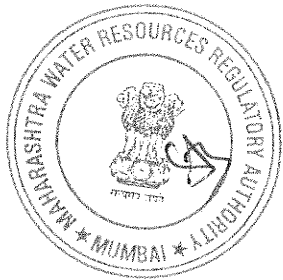
#### BRIEF OF SECOND HEARING ON DECEMBER 11, 2018

12. The Advocate for the Petitioners and representative of the Petitioners & Respondent No. 1 to 3 attended the hearing. As per the directions given in the first hearing, SE MJP, Aurangabad on behalf of Respondent No. 1 submitted the affidavit with copy to Petitioners & Respondents vide his letter dated November 26, 2018.
13. During the hearing, Adv. Karpe for the Petitioners submitted that he has not received the copy of the SE MJP Aurangabad's affidavit. However, SE MJP Aurangabad stated that the copy of affidavit has already sent to Petitioners through Post.
14. Adv. Karpe for the Petitioners quoted the Para 181 & 182 of the Order of the Hon'ble High Court at Bombay dated September 23, 2016, in PIL 173/2013. The Para 181 of the Order is about direct gravity pipeline from upstream to downstream reservoirs in Upper Godavari sub-basin to avoid evaporation losses. Whereas, Para 182 of the Order deals with transfer of 80 TMC water from western side of Sahyadri range to Godavari / Tapi river basins. Adv. Karpe argued that Paragraph 181 of the Order of the Hon'ble High Court should be read with Paragraph 182. He further argued that they are not opposing the proposal of MWGPS, however, as per the Order of the Hon'ble High Court, the Government is



expected to construct storages for 80 TMC of water prior to construction of water grid.

15. Authority, from the agreement between the MJP & the Consultant, made available by the Respondent, observed that the Petitioners have approached this Authority prematurely. The agreement signed between the MJP & the Consultant is only to prepare a sustainable Water Supply Master Plan for Marathwada Region. The works included in the agreement are related to assessment of current water resources condition including site surveys, land runoff, aquifer analysis, evaluation of mid and long term water demand projections and to propose steps towards sustainable water supply master plan including short term measures.
16. The Authority has also observed that through the consultancy agreement, the State Government has engaged the consultant for preparing the detailed project report ("DPR" for short) after necessary study. The State Government is expected to take final decision after completion of the feasibility study and the DPR.
17. The Authority has further observed that the Hon'ble High Court at Bombay's vide Para 197 (j) of its Order dated September 23, 2016 in PIL 173/2013 has directed the State Government to take appropriate decision on proposal of diverting water from west flowing rivers to Godavari & Tapi sub-basin and to provide direct gravity pipelines from upstream reservoirs. These two directions are separate and not inter connected.
18. The Authority during the hearing expressed that the MJP should take into account this Authority's Order dated September 19, 2014 regarding equitable distribution of water in Upper Godavari sub-basin & the criteria issued by this Authority dated September 22, 2017 before finalizing the MWGPS. If Petitioners are aggrieved by the final decision of State Government, then they have liberty to approach this Authority through separate Petition. Adv. Karpe appearing for the petitioners agreed to the Authority's observations and agreed that the perception, with which the petition was filed, was wrong. However, for better



appreciation of the entire issue, the Authority gave an opportunity to all concerned parties to submit their arguments and heard the matter at length.

19. The hearing was closed for the Final Orders.

### FACTUAL MATRIX

20. Maharashtra state has been divided into six regions of which Aurangabad is one of the regions. Marathwada (which coincides with Aurangabad Division of Maharashtra) consists of eight districts in the heart of Maharashtra. Marathwada region is frequently facing severe scarcity of drinking water due to scanty rainfall.
21. The National Disaster Management Guidelines have been issued by the National Disaster Management Authority, Ministry of Home Affairs, Government of India in the 2010. These guidelines recommend that State Governments should take up projects and activities for mitigation of drought. These guidelines further states that the mitigating measures shall include mitigation policies for pre-drought, during drought and post drought phases. These guidelines also recommend pilot studies in drought prone areas for suggesting long-term mitigation measures.
22. On this background, MJP has signed Consultancy Agreement with M/s Mekorot Development & Enterprise Ltd. a fully owned subsidiary of M/s Mekorot, the National water company of Israel on February 21, 2018 to prepare Water Supply Master Plan for averting successive droughts in Marathwada region. The scope of this consultancy agreement is as under:
- (i) To carry out an assessment of the current water resources condition including site survey, land runoff and aquifer analysis and a wise evaluation of the Region's future water resources potential incorporated different level of probability of available water.
  - (ii) To create mid & long term water demand projections with allocation of demand / priorities as was agreed with local technical team of MJP.





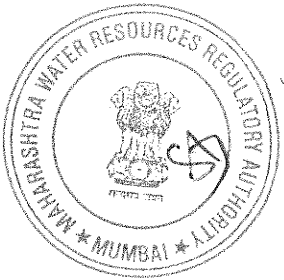
- (iii) To propose step towards future sustainable Water Supply Master Plan ("WSMP" for short) and short-term relief measures.
- (iv) To create Preliminary Design Report based on the options selected by MJP from the WSMP.
23. As per the Agreement placed on record, it is evident that the geographical scope of the work will cover the 8 districts of Marathwada region or as amended mutually in writing by the parties from time to time. However, possibility of supply of water from the dams / reservoirs from the Upper Godavari basin and adjoining regions shall be considered as necessary for preparation of WSMP.

### FRAMING OF ISSUES

24. From the pleadings, the arguments advanced and the replies of the Respondents, following issues have arisen for consideration:
- (i) Whether the Petitioners have a locus to file this Petition?
- (ii) Whether Marathwada Water Grid Pipeline Scheme is any way in contradiction with the Order of the Hon'ble High Court at Bombay dated September 23, 2016 in PIL 173/2013?
- (iii) Whether any specific guidelines or directions are required to be given to protect the concerns expressed by the Petitioners during the adjudication?

### FINDINGS OF THE AUTHORITY

25. Findings of this Authority on the above issues are as under:
- (i) Whether the Petitioners have a locus to file this Petition?
- a) Clause 11(2) of the MWRRA (Conduct of Business) Regulations, 2013 ("Regulation" for short) reads as:
- (2) *The following categories of Bulk Water Users only are eligible to petition the Authority: –*
- (a) *Water User Associations at minor level, distributary level, canal level, project level, natural flow system;*



- (b) Domestic Water User Utilities such as the Maharashtra Jivan Pradhikaran, Maharashtra Industrial Development Corporation, Municipal Corporations, Urban Local Bodies, Gram Panchayats;
- (c) Industrial Users such as Maharashtra Industrial Development Corporation privately owned industrial estates;
- (d) Other individual Bulk Water users having an agreement with the Water Resource Department;
- (e) Any registered organisation representing officially the interests of any of the above.
- b) In Case No. 12 of 2018, Gram Panchayat Pimpri Nirmal, Taluka Rahata, District Ahmednagar is the Petitioner and in Case No. 15 of 2018, Miyasaheb Pani Vapar Sanstha Takalimiya, Taluka Rahuri, District Ahmednagar is the Petitioner.
- c) In view of provisions in clause 11(2) (a) and 11(2) (e) of the Regulation, both Petitioners in Case No. 12 of 2018 and 15 of 2018, being eligible to file Petition, have locus to file this Petition.

The issue is therefore, answered in affirmative.

**(ii) Whether Marathwada Water Grid Pipeline Scheme is any way in contradiction with the Order of the Hon'ble High Court at Bombay dated September 23, 2016 in PIL 173/2013?**

- a) The Petitioners have quoted Paragraphs 195 (xii), 181 & 182 of the Order of the Hon'ble High Court at Bombay dated September 23, 2016 in PIL 173/2013 and argued that the proposal of MWGPS is in contradiction to the above referred order of Hon'ble High Court at Bombay.
- b) The relevant paragraph 195 (xii) of the above Order is:

*“(xii) The State Government will have to consider the prayer made for providing direct gravity pipelines from upstream to downstream reservoirs in the light of the observations made in Paragraph 181 above;”*

Further, the Paragraph 181 of the said Order is:



"181. Before we deal with the prayers in the Petitions, we need to deal with the prayer made by Shri Rajendra H. Jadhav for directing the Government to provide direct gravity pipelines from upstream to downstream reservoirs. Though it is not possible for us to issue a writ as prayed, the said issue needs to be considered by the State Government as it is contended that that is the only method for avoiding evaporation losses. Nonetheless, we do not feel that it may not be an impossible task. The distance is not too much. We are in an era that has seen pipelines of hundreds of kilometers in our own country carrying natural gases, which are more prone to evaporation. Here we are concerned with water, which is the basic requirement for human survival and development. The requirement of petroleum may be secondary to that of water. In this situation, we do not see as to why provision for such water transportation from areas which receive sufficient rainfall, and when water is seen to be rendered lasting utility being drained into, the sea cannot be "caught" and transported by pipelines to areas like Marathwada and other such areas where there is a situation of absolute scarcity year after year. We are sure that the State Government would not feel lacking in any means to achieve this object in the large welfare of the people of the State. This is more so when sometime back, it was very much a proposed plan of action, however, subsequently derailed for no reason, much less justifiable. It is thus imperative for the State to suitably consider these issues reaping advantage of the high technological advancement;"

- c) The Petitioners have further referred to Paragraph 182 of the above Order, which is:

"182. Another issue raised in the Public Interest Litigation No.170 of 2013 is based on a report submitted by the Committee appointed by the State Government in the year 2001, which is at Page 124 of the said PIL. The said report provides for a scheme to divert quantity of 80 TMC of water, which goes waste on the western side of Sahyadri range of Nashik and Thane districts. The said water from various rivers flows to the Arabian Sea. The scheme in the report is for diverting the said water to Godavari / Tapi river sub-basins. It is submitted that though the State Government is



*prepared to spend huge amount on preparation of Monuments in sea by spending a sum of Rs.400/crores and though the huge amount of more than Rs.3,700/crores is spent on drought relief work in the year 2014-2015, the State Government is not willing to consider the suggestions in the said report. In our view, even this suggestion needs to be considered by the State Government by taking appropriate decision thereon. The State Government can always take benefit of High Technological advancement. Though it is submitted that the said scheme is submitted to the Central Government, there is no material on record to substantiate the said case. In the written submissions of the State Government, there is a reference to the said report. It is stated therein that only 23 gravity flow schemes have been sanctioned out of which 6 have been implemented. It is stated that after all 23 schemes are completed, it will divert only 2.24 TMC water to Godavari basin."*

- d) Referring to the above Paragraphs at 195 (xii), 181 & 182 of the Orders of the Hon'ble High Court at Bombay, the Petitioners have argued that as per the Hon'ble High Court's Order, water for Marathwada need to be given through pipeline, only after construction of necessary storages to retain 80 TMC water, which is flowing westward at present.
- e) This Authority does not agree with the contention of the Petitioners that MWGPS is in contradiction to the above stated Hon'ble High Court Order. This Authority also do not agree with the contention of the Petitioner that as per the Order of the Hon'ble High Court at Bombay, MWGPS has to be implemented only after diversion of 80 TMC water from west flowing rivers to the Upper Godavari sub-basin as Hon'ble High Court has not given any such particular directions. Hon'ble High Court, in Paragraph 181 of the above Order, has expressed that the State Government needs to consider prayer of Shri. Rajendra Jadhav to provide direct gravity pipeline from upstream reservoirs to downstream reservoirs, as it is the only method for avoiding the evaporation losses as contended by the Petitioners. These directions of the Hon'ble High Court at Bombay are with reference to water which is being released from upstream dams in Upper Godavari sub-basin for Jayakwadi dam as per the



principle of equitable distribution and as per Order of this Authority dated September 19, 2014 in Case No. 1/2014. The Respondent No - 1 through MJP has taken necessary steps to prepare a Sustainable Water Supply Master Plan after assessing water availability and demand projections. In view of this Authority, preparation of such Master Plan no way contradicts the Orders of the Hon'ble High Court at Bombay.

Thus, the issue is answered in negative.

(iii) Whether any specific guidelines or directions are required to be given to protect the concerns expressed by the Petitioners during the adjudication?

a) The Petitioners are the beneficiaries of the Nilwande Dam complex. Through the Petitions and during the adjudication, they have expressed the concern that the beneficiaries of the Nilwande Dam complex will cause injustice due to proposed MWGPS.

b) This Authority is of the considered opinion that following Statutory Orders and Judgments are relevant to the subject matter and are binding to the Respondents. The Respondents are expected to consider these Orders and Judgments while finalizing the MWGPS. If these Orders and Judgments are observed, the concerns of the Petitioners can be protected.

b1) Directions issued by this Authority regarding equitable distribution of water in Upper Godavari sub-basin on September 19, 2014 in Case No. 1/2014 and subsequent directions dated 18 November 2014, 10 March 2015 and 26 July 2018, which are available on the website of this Authority. Planning of the MWGPS is not expected to impose any constrain on equitable distribution of water in Upper Godavari sub-basin.

b2) The reasonable water use criteria issued by this Authority on September 22, 2017 which is also available on the website of the Authority. The Respondents are expected to follow these Criteria.



b3) State Government in exercise of its power under Section 16 A of the Maharashtra Water Resources Regulatory Authority (Amendment & Continuance) Act, 2011 has made Sectoral Allocation of water in the water resources projects vide G.R. of Water Resources Department MISC 2015/(44/15)/IM(P) dated November 17, 2016. The Respondents are expected to consider these Sectoral Allocations while finalizing the MWGPS.

b4) Directions given by the State Government vide G. R. of Water Resources Department MISC/2018/(511/18)/IM(P) dated December 1, 2018

b5) Further, part of Marathwada Region lies in Krishna Basin. There are specific directions in Krishna Water Dispute Tribunal (KWDT) Award - I pertaining to augmentation of water in river Krishna from any other river. The relevant clause No. XIV (B) of the final Order passed by the KWDT - I reads as follow:

*“Clause (XIV)(B) :- In the event of augmentation of the water of the river Krishna by the diversion of waters of any other river, no State shall be debarred from claiming before any authority or Tribunal even before the 31<sup>st</sup> May, 2000 that it is entitled to greater share in the waters of the river Krishna on account of such augmentation nor shall any State be debarred from disputing such claim.”*

The Respondents is expected to consider these provisions while finalizing the MWGPS.

In light of above, the issue is answered accordingly.

## 26. FINAL ORDER / DIRECTIONS :

Having heard the parties to the litigation, perusing documents as well as data on record, submissions made by the parties and after the due appreciation of the issues stated herein above, this Authority is of the opinion that the both Petitions are liable to be disposed off, as they are premature at this stage.

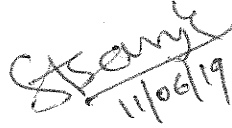
However, following directions are being issued in the lager public interest;



- (i) The Respondent No. 1 & 3 shall ensure that planning of the MWGPS shall be in consistent with;
- a) Sectoral Allocation done by the State Government vide G. R. dated November 17, 2016
  - b) Directions given by the State Government vide G. R. dated December 1, 2018.
  - c) Directions given by Krishna Water Dispute Tribunal Award - I in clause (XIV)(B) of its final order.
- (ii) The Respondent No. 1, 2 & 3 shall ensure that the MWGPS shall not impose any constraint on implementation of the Orders of this Authority dated September 19, 2014 in Case No. 1/2014 and subsequent directions regarding equitable distribution of water in the Upper Godavari Sub-basin.
- (iii) The Respondent No. 3 shall keep the finalised MWGPS in public domain. The Petitioners, if aggrieved by the MWGPS finalised by the State Government, will have liberty to approach this Authority through separate petition.

In the facts & circumstances, there shall not be any direction as to the costs.

Delivered on June 11, 2019.

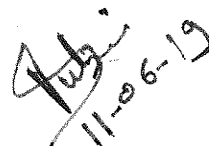
  
11/06/19

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

  
11/06/2019

(Vinod J. Tiwari)  
Member (Law)



  
11-06-19

(V. M. Kulkarni)  
Presiding Member (W.R. E.)

