

# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण Maharashtra Water Resources Regulatory Authority

No. MWRRRA/2018/Legal / Case No. 14 (2018)/929

Date: December 17, 2018

Subject: Appeal filed by Pune Municipal Corporation in the matter of Appeal against Judgment and Order of the Primary Dispute Resolution Officer dt. 23/10/2017 - Case No.14 of 2018

Please find enclosed herewith a copy of Order No. 19 / 2018 dated December 13, 2018 in the above subject matter.

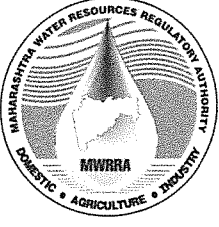
Encl.:As above

( Naseema Shaikh)

Registrar

**Copy for information & necessary action to :-**

1. Pune Municipal Corporation, through its Commissioner / Chief Engineer, Water Supply Department, PMC Head Quarter, Shivajinagar, Pune-411 005.
2. The Chief Engineer, Water Resource Department, Sinchan Bhavan, Barane Road, Mangalwar Peth, Pune - 411011.
3. The Superintending Engineer, Pune Irrigation Circle, Water Resource Department, Sinchan Bhavan, Barane Road, Mangalwar Peth, Pune - 411011.
4. Executive Engineer, Khadakwasala Irrigation Division, Water Resource Department, Sinchan Bhavan, Barane Road, Mangalwar Peth, Pune - 411011.
5. Shri. Vithhal Dnyandev Jarad, R/at- Post-Undwadi, Tal. Baramati, Dist.- Pune-413102.



# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

## Maharashtra Water Resources Regulatory Authority

ORDER NO. 19/2018

**In the Matter of the**  
**Appeal filed by Pune Municipal Corporation in the matter of the Judgment**  
**and Order of the Primary Dispute Resolution Officer dt. 23/10/2017**  
**- Case No. 14 of 2018**

1. Pune Municipal Corporation,  
Shivaji Nagar,  
Pune.

....Appellant

Versus

a) Chief Engineer, Water Resources Department, Sinchan Bhavan, Barne Road,  
Mangalwar Peth, Pune - 411 011.

....Respondent No. 1

b) Superintending Engineer, Pune Irrigation Circle, Water Resources Department,  
Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune - 411 011.

....Respondent No. 2

c) Executive Engineer, Khadakwasla Irrigation Division, Water Resources  
Department, Pune.

....Respondent No. 3

d) Shri. Vithhal Dnyandev Jarad, R/at- Post-Undwadi, Tal. Baramati, Dist.- Pune-  
413102.

....Respondent No. 4



**Coram: Shri. K. P. Bakshi, Chairperson**

**Shri. V. M. Kulkarni, Member (WRE)**

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

**Date : December 13, 2018**

### **BACKGROUND**

1. The matter is related to sectoral water conflict. Khadakwasla Complex in Pune District has four dams viz. Varsgaon, Panshet, Temghar and Khadakwasla. The Khadakwasla Complex is in Krishna Basin of the State. The water from this Khadakwasla Complex is being supplied to various domestic bulk water users, industries and to the farmers in Haveli, Daund, Baramati, Indapur and Purandar talukas in Pune District. Planned irrigation potential is 76, 981 ha. The major domestic water consumer is the Pune Municipal Corporation ("PMC" for short). The State Government has allocated reservation of 11.50 TMC of water to the PMC. The conflict is between PMC and the farmers aggrieved by excess consumption of water by the PMC.
2. Shri. Vithhal Dnyandev Jarad, R/at- Post-Undwadi, Tal. Baramati, Dist. - Pune had filed an Application before Chief Engineer, Water Resources Department (WRD) Pune who is also the Primary Dispute Resolution Officer ("PDRO" for short) for the Krishna basin (Case No. 1/2017) with prominent prayer to restrict the water consumption of the PMC to norm based population requirement and to release water for agriculture as per the quota allocated for agriculture. Other prayers were compelling PMC to use water economically and using water meters both at supply end and consumer ends.
3. The PDRO, after hearing both the parties fixed the annual entitlement for PMC as 8.19 Thousand Million Cubic Feet ("TMC" for short) of water, on the basis of population data submitted by the PMC and the reasonable use norms decided by Maharashtra Water Resources Regulatory Authority ("Authority" for short) by its Order dated September 22, 2017. He has given his judgement on October 23, 2017.

PMC the Appellant having, aggrieved by the Order passed by the PDRO on October 23, 2017 has filed appeal before this Authority on September 26,



**महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण**

**Maharashtra Water Resources Regulatory Authority**

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

2018 under Section 22(3) of the Maharashtra Water Resources Regulatory Authority , Act 2005 ( "Act" for the short) along with the separate delay condonation application.

5. Authority considering the issues involved and justification given by the Appellant condoned the delay under the provision in Section 22(3) of the Act.

#### GIST OF THE PRAYERS

6. The Appellant, through his written submissions before this Authority has prayed for following reliefs:
- The record and proceedings of Complaint No 1/2017 be called.
  - To dismiss the Complaint No. 1/2017 filed before PDRO.
  - To squash and set aside the impugned judgement and award dated October 23, 2017.
  - To allow the Appellants appeal of 2018.

#### GROUND FOR THE APPEAL

7. The gist of the grounds mentioned by the Appellant in his Application is:
- Appeal is filed under Section 22(3) of the Act.
  - The Appellant relied primarily on Central Public Health Environmental Engineering (CPHEEO) water supply norms for determining his water requirement and in his opinion PDRO ought to have granted minimum of 1230 MLD (15.85 TMC) of water.
  - Other grounds mentioned in the appeal are :
    - PDRO has ignored the fact that as per existing Agreement between the Appellant and the Respondent no. 3, Appellant is entitled to get 11.5 TMC of water.
    - PDRO has not considered the floating population.
    - PDRO has considered only 15% system losses as against actual system losses of 35%.



- d) PDRO has not considered the commercial, industrial and institutional water requirements.

### THE PROCEEDINGS BEFORE THE AUTHORITY

8. This Authority has conducted first hearing in this matter on November 12, 2018.

i) The hearing was attended by following persons:

(a) Shri. V.G. Kulkarni .... Chief Engineer, Water Supply  
Department, being authorized  
representative for and on behalf of Pune  
Municipal Corporation, Pune  
**....Appellant**

(b) Shri. Sanjeev Chopade ....Superintending Engineer, Pune  
Irrigation Circle, Pune  
**....For Respondent No.1**

(C) Shri. Pandurang B. Shelar ....Executive Engineer, Khadakwasla  
Irrigation Division, Pune  
**....For Respondent No.1**

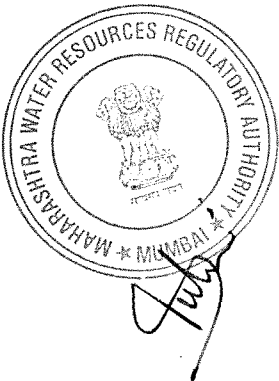
(d) Shri. Vithal Dnyandev Jarad ....The Original Complainant in the Case  
No.1/2017 on the file of PDRO  
**..... For Respondent No.2  
in this Appeal and Appellant in Case  
no. 1/2017 before the PDRO**

ii) It was felt necessary that the Superintending Engineer, Pune Irrigation Circle, Pune and Executive Engineer, Khadakwasla Irrigation Division, Pune shall be made as Respondents, being necessary and essential parties in respect of the subject matter. Accordingly, the Appellant was directed to amend the affidavit and add the above parties.

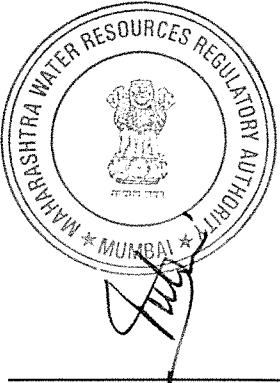
During the pleading the Appellant relied primarily on the CPHEEO supply norms for determining his water requirements and in his opinion PDRO ought to have granted minimum of 1230 MLD (15.85 TMC) of water.



- iv) Other grounds pleaded by the Appellant were :
- PDR0 has ignored the fact that as per existing Water Supply Agreement, PMC is entitled to get 11.5 TMC of water.
  - PDR0 has not considered the floating population.
  - PDR0 has considered only 15 % as against actual system losses of 35%.
  - PDR0 has not considered the commercial, industrial and institutional water requirements.
  - PDR0 has not considered the water supply being made to the area outside Corporation boundaries.
- v) This Authority clarified that CPHEEO norms given in Manual on Water Supply and Treatment released by Ministry of Urban Development, New Delhi in 1999 are for design purpose only. There after this Authority, under the powers vested in it, by the provisions in Section 11(a) of the MWRRA ( Amendment and Continuance) Act, 2011 ("Amendment Act" for short) has determined the Criteria For Distribution Of Surface Water Entitlements To Be Given By River Basin Agencies ("Criteria " for short) on September 22, 2017 after extensive stakeholder consultation. The PDR0 is duty bound to follow these State specific reasonable use norms which has also considered the supply side constraints.
- vi) Shri. Vithhal Dnyandev Jarad, the Respondent in this case and Appellant in the Original Application in Case No. 1/2017 before the PDR0 expressed serious concerns about pollution of downstream water sources caused due to release of untreated sewage into the river by the Appellant adversely affecting the health of the downstream habitat and the agriculture. He also expressed that Appellant - PMC is not paying water charges regularly.
- vii) Shri. Chopade, the Superintending Engineer, Pune Irrigation Circle Pune, on behalf of the Respondent brought to the notice of this Authority that the Appellant is not paying the bills of water supply regularly and there are huge arrears.
- viii) Taking into consideration the documents on record and the pleadings made by the parties, the Authority issued the following directions:



- (i) The PDRO to submit all records of proceedings related to Case No. 1/2017 within a week time.
- (ii) The Appellant shall also make Superintending Engineer, Pune Irrigation Circle, Pune and Executive Engineer, Khadakwasla Irrigation Division, Pune as Respondents, being relevant and necessary parties and serve the copies of the Appeal along with all documents, before November 21, 2018.
- (iii) The Appellant to submit a comprehensive Affidavit as regards to and including ;
- The specific points in the PDROs Order on which the Appellant intend to challenge the same in the present Appeal and the grounds of such challenge under the specific legal provisions.
  - Copy of the agreement between the Appellant and Respondent – Water Resources Department regarding supply of water.
  - Water Budget submitted by the Appellant to the Respondent – Water Resources Department.
  - Water actually received during the year 2017-18, total population served, per capita consumption including and excluding Unaccounted for Water (UFW).
  - Status of water Audit.
  - The details of sewage being generated, sewage being collected, sewage being actually treated and sewage being released into the river without any treatment, water quality reports at sewage discharge points and water quality monitoring stations along the river.
  - Water being Community Resource under the Public Trust Doctrine, the information mentioned in sub-para c, d and f shall also be made public by hosting it on the Appellant's website and declaration to this effect be made in the Affidavit.
  - The compliance of various stipulations laid down by this Authority in Clause 6.2 and 11 of Criteria dated September 22, 2017.
- (iv) The Respondent No.1 and also newly added Respondents from the Water Resources Department to submit following information by way



of an Affidavit and said data be hosted on its website in the interest of public at large:

- a) The domestic water supply provisions in the project planning of reservoirs through which water is being supplied to the Appellant.
  - b) Sectoral allocation in MCM for domestic water use in the reservoirs.
  - c) Entitlement, allocation for the year 2017-18 and Quota sanctioned for the year 2017-18.
  - d) Actual delivery of water for the year 2017-18.
  - e) Arrears of water charges as on the date of Order in original and the present appeal.
- (v) The Respondents including the newly added the Respondents to file an Affidavit in reply to the present Appeal as well as the additional Affidavit being filed by the Appellant in terms of the above Order and shall serve its affidavit with copies to all parties before November 30, 2018.
- (vi) The Re-joinder Affidavits, if any, shall be submitted by December 10, 2018.

## SECOND AND FINAL HEARING BEFORE THIS AUTHORITY

9. This Authority has conducted second hearing in this matter on December 13, 2018.

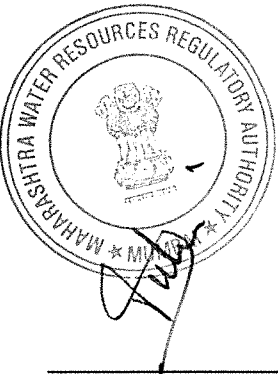
i) The hearing was attended by following persons:

(i) Shri. V.G. Kulkarni  
....Chief Engineer, Water Supply  
Department, being authorized  
representative for and on behalf of  
Pune Municipal Corporation, Pune

....Appellant

(ii) Shri. Sanjeev Chopade  
....Superintending Engineer, Pune  
Irrigation Circle, Pune

....For Respondent No. 1 & 2





(iii) Shri. Pandurang B. Shelar .....Executive Engineer, Khadakwasla  
Irrigation Division, Pune

....For Respondent No. 3

(iv) Shri. Vithhal Dnyandev Jarad ....The Original Complainant in the Case  
No.1/2017 on the file of PDRO

....Respondent No. 4

ii) As directed, the Appellant submitted a fresh affidavit dated November 22, 2018 making the Superintending Engineer, Pune Irrigation Circle, Pune as Respondent No. 2 and Executive Engineer, Khadakwasla Irrigation Division, Pune as Respondent No. 3. In the fresh Affidavit, Appellant - PMC submitted the following facts and requested to make available 1250 MLD (15.65 TMC) of water under the provision of clause 12 of the Criteria:

- a) Population including newly added villages is 48,10,283 lakhs.
- b) At present, distribution losses are 35% which includes 20% leakage and 15% Non Revenue Water (NRW). It is planned to reduce losses upto 15% by the year 2027 by restoring to 100% metered water supply.
- c) The water in the Katraj lake is polluted and cannot be used for drinking purpose at present.
- d) Non-domestic consumption in 2017-18 is 99.22 MLD.
- e) The scheme for taking entire water through pipeline is at final stage.
- f) Electro-magnetic flow meters have been installed.
- g) The scheme for making available 6.50 TMC of treated water has been commissioned and in last three years 7.50 TMC water has been lifted by WRD
- h) Information required for Bulk Water Audit has been given to Chief Engineer, Water Audit, Aurangabad.

iii) Respondent No. 3, also submitted the affidavit and also rejoinder on the submission of the Appellant.

iv) During the hearing this Authority pointed out that the Appellant has not provided the grounds of challenge of the Order of PDRO dated 23-10-2017 under specific legal provisions in their revised affidavit.



- v) The Appellant on the enquiry, regarding the mandatory submission of Water Budget, as stipulated by Authority's Criteria dated September 22, 2017, the Respondent No. 2 replied that the Appellant has not submitted the Water Budget. The Appellant has clarified that they are collecting authentic population information from AADHAR Authorities.
- vi) This Authority asked clarification for difference in population stated in original affidavit submitted by the Appellant to PDRO (39, 18, 763 + 1, 58, 011) and to this Authority (48, 10, 283). The Appellant stated that 11 villages are added in the month of October 2017 and the population figures are reconciled as per AADHAR data.
- vii) Appellant informed that Water Audit is in progress.
- viii) This Authority pointed out that, as per the affidavit of the Appellant, the sewage generated is only 744 MLD, which is very less as compared to the water being used. In reply, the Appellant submitted that this has been estimated after deducting UFW from the water use. He further submitted that there is a proposal for construction of new Sewerage Treatment Plants (STPs).
- ix) The Appellant confirmed that the information regarding water supply and sewage treatment is uploaded on their website.
- x) In the query regarding payment of Water Charges, the Appellant stated that payment of Rs. 30 Crores is made since last hearing. Respondent No. 2 stated that payment of 30 Crores received in October 2018 and balance of Rs. 205 Crores is pending.
- xi) This Authority during hearing observed that there exist dispute regarding pending Water Charges.
- xii) This Authority also observed that the terms and conditions of the water supply agreement needs modifications in light of Authority's Criteria dated September 22, 2017 and the penalty charges for pollution be modified so that it will be deterrent for the polluter. This Authority also pointed out following errors in the prevailing Agreement;
- a) Mention of Bombay Canal Rules, 1934 need to be deleted as these Rules were framed in exercise of the rule making powers under



Bombay Irrigation Act, 1879 which has been repealed by the Maharashtra Irrigation Act, 1976.

- b) Definition of "Quota" is not as per the MWRRA Act, 2005.
- c) Clause No. 11 (iii) & clause No. 1(b) are contradictory to each other.
- xiii) Respondent No. 4 submitted that the Canal Advisory Committee is arbitrarily increasing the water quota of the Appellant and the farmers are deprived of their rightful entitlement of water for irrigation. Further, the Appellant is releasing untreated water in river causing health hazard to the people on the downstream side and the Orders of PDRO dated 23-10-2017 are not implemented.
- xiv) Appellant requested this Authority under clause 12 of the criteria issued by this Authority on September 22, 2017, to give decisions on city specific concern and issues mentioned by him in his additional affidavit.
- xv) This Authority clarified that as the appeal is under Section 22(3) of the Act on the decision of PDRO dated October 23, 2017, no new facts and evidences can be considered for deciding the appeal, only the procedure followed by the PDRO and decision of the PDRO will be reviewed under prevailing law. However, this Authority will give necessary decisions under clause 12 of the criteria on city specific difficulties and concerns faced by the Appellant which will be useful for the Respondent No.2 for deciding the Water Entitlement for the Appellant after submission of the Water Budget.
- xvi) The hearing in the matter is closed for decision.

#### DATA ON RECORD

10. During the proceedings of the case and submissions made by the parties in litigation, following data has come on record which has relevance in the matter under consideration.

i) **Water Planning of the Khadakwasla Complex.**

Source: Affidavit filed by Respondent No. 3 on December 1, 2018.



Use	Provision in TMC	Remark
Irrigation	22.55	Irrigation Potential 76,981 ha
Evaporation Losses through lake	2.92	
PMC drinking Water	8.3	5.00 TMC - Khadakwasla + 3.30 TMC - Temghar.
<b>Total</b>	<b>33.77</b>	

ii) **Sectoral Allocation for Khadakwasla Complex.**

Source : Affidavit filed by Respondent No. 3 on December 1, 2018.

(Sectoral Allocation as decided by the State Government vide GR dated November 17, 2016 as per the provisions in Section 16(A) of the MWRRA ( Amendment & Continuance) Act, 2011.

Use	Provision in %	Provision in TMC
Drinking	15 %	5.07
Industry	10 %	3.38
Irrigation	75 %	25.32
<b>Total</b>	<b>100 %</b>	<b>33.77</b>

iii) **Actual Non-Irrigation Reservations on Khadakwasla Complex**

Source : Affidavit filed by Respondent No. 3 on December 1, 2018.

Use	Consumers	Sanctions in TMC
Drinking	56	13.69
Industry	23	0.88
<b>Total</b>		<b>14.57</b>

iv) **Actual Water Use of PMC**

Source : Affidavit filed by Respondent No. 3 on December 1, 2018.

Year	Water Use in TMC
2011-12	15.90
2012-13	15.39
2013-14	15.95

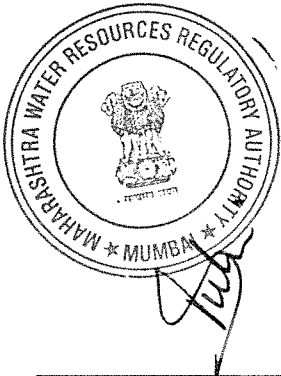


Year	Water Use in TMC
2014-15	15.83
2015-16	16.50
2016-17	16.71
2017-18	18.71
<b>Average</b>	<b>16.43 Calculated (17.30) Submitted</b>

Note : As per the Affidavit filed by PMC on November 22, 2018 the water consumption of PMC in 2017-18 is 412.36 MCM (14.56 TMC)

**v) Population Served by the Appellant in the Year 2017**

- a) As per Affidavit filed by PMC before PDRO on June 17, 2017  
Population of Pune City : 39,18,763
- b) As per Affidavit filed by PMC before PDRO on October 17, 2017  
Population of Cantonment Area served by the PMC : 1,58, 011  
( Total a+b : 40,76,774)
- c) As per communication of PMC to this Authority on November 18, 2017, population of Pune City : 39,18,763
- d) As per Communication of PMC to this Authority on December 13, 2017, population of Pune City : 48,10,283
- e) As per Affidavit filed by PMC before this Authority on November 22, 2018 population of PMC + Cantonment Area +surrounding area : 48,10,283.
- vi) Per Capita Per Day Consumption as per the Affidavit filed by the PMC before this Authority on November 22, 2018 : 235 lpcd (including UFW)
- vii) UFW as per the Affidavit filed by the PMC before this Authority on November 22, 2018: 35 %. (20 % leakages through distribution system + 15 % Non Revenue Water).
- viii) Sewage Generated as per Affidavit filed by PMC before this Authority on November 22, 2018 : 744 MLD.
- ix) Installed Capacity of STP as per Affidavit filed by PMC before this Authority on November 22, 2018 : 537 MLD.



x) **Water bills pending with PMC**

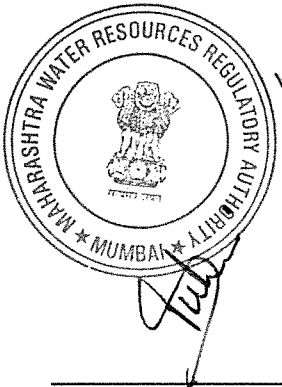
Source : Affidavit filed by Respondent No. 2 on December 1, 2018

Particulars	Amount in Rs. Crores
Regular Water Charges	72.43
Water Charges for non-domestic use	152.10
Penalty for delayed payment	1.88
<b>Total</b>	<b>226.41</b>

**ANALYSIS OF THE DATA AND CONCLUSIONS**

11. Based on the data on record, the conclusions drawn by this Authority are as follows:

- i) There is a large variation in population figures for the year 2017 submitted by the PMC to the PDRO and to this Authority. The correct population figures shall be taken into account after validation.
- ii) There is a discrepancy in water consumption data submitted by the Appellant - PMC and Respondent No. 2. This discrepancy need to be removed.
- iii) The average water use of Appellant - PMC is far in excess as compared to drinking water provisions in project planning of the Khadakwasla Complex (8.3 TMC) , Sectoral Allocation for domestic use (5.07 TMC) and Water Entitlement of the PMC (11.5 TMC).
- iv) The UFW (35%) is much more than the desirable limit of upto 15%. There is a need to use the water efficiently and minimise the wastage. Water Audit is very much necessary to evaluate the reasons behind excessive UFW.
- v) The sewage generation 744 MLD seems to be on lower side as compared to water being consumed. Generally sewage generated is 80 % of the water consumed. Appellant - PMC shall take this issue on priority for proper scrutiny and arrive at correct figures.
- vi) Installed capacity of the STP is inadequate which is contributing to the pollution of the river.
- vii) The provision of water for drinking purpose in Khadakwasla complex is only 8.3 TMC. Therefore, unless the PMC makes available treated water



for agriculture to the extent of its water use over and above 8.3 TMC, the farmers will not get their legitimate quota of water.

viii) Khadakwasla system is over stressed. Diversion of more and more water meant for agriculture for the domestic use is not a sustainable solution. Demand side management by efficient use and minimising wastage of water, rainwater harvesting, recycling and reuse of water need to be focused at.

### FACTUAL MATRIX

12. The Appellant - PMC is an Urban Local Body ("ULB" for short) established under Section 3 of the Maharashtra Municipal Corporation, Act 1949.
13. The State Government, considering the forecasted population of Pune in the year 2021 has approved water reservation of 11.5 Thousand Million Cubic Feet ("TMC" for short) per annum for the Appellant from Khadakwasla dam in the meeting of Minister Level High Power Committee ("HPC" for short) held on March 10, 2005.
14. Thereafter Appellant has signed an agreement with WRD on March 1, 2013 which has permitted the Appellant to draw 11.5 TMC of water from Khadakwasla dam which includes 11 TMC of water for domestic use and 0.5 TMC of water for commercial use for a period of 6 years subjected to various conditions incorporated in the Agreement.
15. In the project planning the drinking water provisions in Khadakwasla complex is 8.3 TMC. (5 TMC in Khadakwasla plus 3.3 TMC in Temghar). As against this domestic water use sanctioned to PMC and 55 other water use entities is 13.69 TMC. The total water use of Khadakwasla complex is 33.77 TMC. The State Government has sanctioned 15 % sectoral allocation for drinking water sector. Thus sectoral allocation for drinking in Khadakwasla complex is 5.06 TMC only. Due to diversion of excess water for drinking purpose the agriculture sector has come under tremendous stress although Appellant - PMC is making available some treated water for agriculture.

The average actual water use of PMC in last 7 years is 17.3 TMC and the maximum use in the year 2017-18 is 18.71 TMC. The actual water use of the Appellant is much beyond the water reserved for the Appellant in Khadakwasla dam, consequently agriculture sector is deprived of their quota.



Shri Vithhal Dyanadev Jarad, farmer from Undewadi, Tal. Baramati, District Pune, approached the Chief Engineer (WRD) Pune, (Case No. 1/2017) with the specific pray to restrict the water use of PMC to norm based water requirement of the population with few other prayers such as;

- a) PMC should use the water economically.
  - b) The water of Katraj lake need to be used.
  - c) The PMC should make available 6.50 TMC of treated water for irrigation.
  - d) Flow meters should be used both at supply side and consumption side.
17. Chief Engineer (WRD), Pune is also the Primary Dispute Resolution Officer ("PDRO" for short) appointed by the State Government under Section 22(1) of the Act, to resolve the disputes with regard to issuance or delivery of water Entitlements under the Act and having powers as are vested in a civil court, under the Code of Civil Procedures, 1908.
18. Appellant had given the population data of Pune City to the PDRO during proceedings of the case. As per his submission the population of Pune city in the year 2017 is 39,18,763 and that of cantonment area to which water is supplied by the Appellant is 1,58,011. This Authority has observed that PDRO has considered the same population figures while passing his order.
19. The PDRO following the due procedure and giving an adequate opportunity to all the parties has passed the Order dated October 23, 2017 which has fixed the Entitlement for the Appellant as of 8.19 TMC based on the population figures submitted by the Appellant-PMC and the reasonable water use norms laid down by this Authority vide Orders dated September 22, 2017.
20. The Appellant-PMC, having aggrieved by the order of the PDRO approached this Authority with an appeal under Section 22 (3) of the MWRRA Act, 2005 against the Order passed by the PDRO the Respondent No.1 dated October 23, 2017 (communicated through letter dated November 2, 2017).
21. The Appellant-PMC in its appeal has primarily relied upon Central Public Health Environmental Engineering Organisation (CPHEEO) water supply norm which was published in the year 1999. These are only the design guidelines whereas this authority under the provisions of the Section 11(a) of the Act has evolved the State specific reasonable use criteria for each





category of use vide its Statutory Orders passed on September 22, 2017 after exhaustive stakeholder consultation. The Appellant - PMC was also invited for this consultation, however it opted not to participate. This Criteria fixed by this Authority is legally binding on the Appellant as well as the PDRO. The Appellant also claims 35% water against UFW which should be maximum up to 15% as per CPHEEO norms as well as Criteria of the Authority.

22. The Appellant-PMC vide his revised Affidavit dated November 22, 2018 has also requested to review the entitlement given by the PDRO in view of the difficulties faced under the provisions in clause 12 of the Criteria. However, on scrutiny of records it is seen that the Appellant has failed to submit his Annual Water Budget to WRD as per clause 6.2 (ii) of the Criteria.
23. Appellant PMC, in his affidavit submitted to this Authority has claimed that it is supplying domestic water to 48, 10, 283 population, including surrounding rural area. During the pleading before this Authority, Appellant-PMC also submitted that 21 villages have been added to Corporation area as a subsequent development.
24. The per capita per day consumption for population of 48,10,283, as agreed by the Appellant in the affidavit, including distribution losses is 235 lpcd as against the reasonable use Criteria of 155 lpcd. (135 + 15 % distribution losses). The consumption as per the Respondent- WRD is much more than this.
25. During the proceedings before this Authority, Respondent No. 4 in his appeal, expressed serious concerns about pollution of downstream water sources caused due to release of untreated sewage into the river by the Appellant adversely affecting the health of the downstream habitat and the agriculture. He also expressed that Appellant - PMC is not paying water charges regularly.



### RELEVANT PROVISIONS

26. Relevant Provisions for this litigation are as follows:

**i) Constitutional Provisions: Right to Water**

Right to water is not explicitly enshrined as a fundamental right in the Indian Constitution. However, Hon'ble Supreme Court of India have



interpreted Article 21 of the Constitution, right to life, as encompassing the right to safe and sufficient water and sanitation.

In Narmada Bachao Andolan Vs Union of India [(2000) 9 SCC 571] the Hon'ble Supreme Court of India held that right to water is a fundamental right under Article 21 of the Constitution. Hon'ble Supreme Court further observed that water is the basic need for the survival of the human beings and is a part of the right to life and human rights under Article 21 of the Constitution.

## ii) Relevant Provisions in the State Water Policy

### Clause 4.0:

Clause 4 of the State Water Policy, 2003 has laid down general principles for **allocation of water resources. It has given top priority for domestic use for drinking, cooling, hygiene, and sanitation needs including livestock.**

## iii) Relevant Provisions in MWRRRA Act, 2005 and its subsequent amendments

### Object behind Constitution of this Authority :

This Authority has been constituted as per the provisions in Section 3 of the Maharashtra Water Resources Regulatory Authority Act, 2005, *to regulate the water resources within the State of Maharashtra, facilitate and ensure judicious, equitable, and sustainable management, allocation and utilisation of water resources, fix the rates for use of water for agriculture, industrial, drinking and other purposes, and matters connected therewith or incidental thereto.*

### Section 11(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;"*



**Section 11(j) :**

*"Entitlements may be subjected to review at intervals of not less than three years and then, only if warranted by concerns about the sustainability of the level of allocation"*

**Section 11(q) :**

*"to promote efficient use of water and to minimize the wastage of water and to fix reasonable use criteria for each Category of Use;"*

**Section 31B of the MWRRA (Amendment & Continuance) Act 2011 :**

*"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 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) Act, 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. "*

**iv) Relevant Provisions in the Criteria Determined by MWRRA for Distribution of Entitlements by RBA for Domestic and Industrial Uses.**

MWRRA Act, 2005 in its provision of 11 (a) confers the function on MWRRA to decide criteria for distribution of water entitlements by the river basin agencies. Accordingly, Authority has determined the Criteria for Distribution of Surface Water Entitlements by River Basin agencies for Domestic and Industrial Uses on September 22, 2017. The relevant provisions in these Criteria are :



**"6. CRITERIA FOR DOMESTIC WATER USE :**

6.1 The applicable per capita norms for entitlement to DBWU shall be as under.

**Table No 1**

<b>Sr. No.</b>	<b>Category</b>	<b>Norm (lpcd)</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
4	Municipal corporations (having population less than 50 lakh)	135*

\* **Note 1:** Urban population (in Category 2 to 5) where water is provided with public stand post, norm shall be restricted to 55 lpcd for such population clusters and in areas where water is provided with piped water supply but without sewage system, norm shall be restricted to 70 lpcd.

**Note 2:** Norms mentioned in column No. 3 are maximum water supply levels. DBWUs at Sr. No. 2 to 5 shall strive to reduce their demand of freshwater by conjunctive use of water that can be made available by rainwater harvesting and recycling.

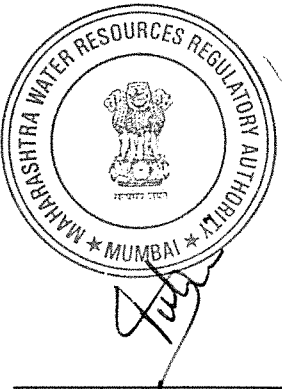
**Note 3:** Norms are exclusive of UFW. Entitlements for the first year shall include UFW limited to 15 % over and above the quantity arrived with prescribed norms. This limit of UFW shall be reduced by 1 percent per year during subsequent years of the control period (2<sup>nd</sup>& 3<sup>rd</sup>).

**Note 4:** Norms are inclusive of commercial, institutional and minor industry requirements. However, for billing RBAs shall charge DBWU separately for such portion of water supply with applicable rates.

6.2 The RBAs shall observe the following conditions while distributing the entitlements.

(i) .....

(ii) DBWU shall submit the water budget, prepared on the basis of criteria evolved and conditions laid down by this Authority. RBA shall scrutinize the water budget & sanction the entitlement.



Entitlement so sanctioned shall remain unchanged for the control period of the criteria. ”

**“11. LONG TERM STRATEGY:**

*Water is a critical resource which needs to be managed with long term perspective. Freshwater resource is limited. Further, in order to avoid conflict of interests arising among various water user groups, freshwater demands of various user groups will have to be managed within their sectoral allocations. Thus, it may not be possible in near future to cope up with ever expanding water demand of growing population and industry with present supply norms. Hence, it is essential to implement the following strategies with immediate effect to reduce freshwater consumption to cope up with reduced supply norms in future.*

**11.1 Domestic Sector:**

- a) *Metering for every society / household.*
- b) *Leakage reduction by 1 percent per year through detection and repairs till it attains the level of maximum of 10 %.*
- c) *Reducing freshwater per capita consumption by increasing public awareness and promoting water efficient toilets, showers, basins, washing machines, leak proof fittings etc.*
- d) *Managing non potable water demands such as toilet flushing, public and private gardening, car washing, fire hydrants etc. from water that can be made available from rain water harvesting and recycling and thus reducing freshwater demand by 15 per cent in next three years.*
- e) *Treatment of entire generated sewage to CPCB / MPCB standards, whichever is stringent, and making it available for reuse.*

**“12 DIFFICULTIES IN IMPLEMENTATION**

*In case of any difficulty in implementation of these criteria, the DBWU/IBWU/RBA may approach the Authority with specific petition. The decision of the Authority shall be final.*



v) **Relevant Provisions in the Water Supply Agreement between Appellant and the Respondent No. 3:**

**Clause 1(a) :**

*"In consideration of the PMC making payment to the Executive Engineer, Khadakwasla Irrigation Division, Pune for Khadakwasla Irrigation Division as hereinafter specified and observing and performing the convenience and conditions here in contained Executive Engineer Khadakwasla Irrigation Division , Pune for Khadakwasla Irrigation do hereby grants to the PMC permission to draw 11.5 TMC water per year from the said source (11.00 TMC water per year for domestic use and 0.5 TMC water per year for commercial use for a term of six years commencing from 1<sup>st</sup> day of March 2013 on the following terms and conditions."*

vi) **Technical Guidelines for Floating Population:**

The Maharashtra Jivan Pradhikaran (MJP) vide letter dated December 18, 2015 has circulated the water supply norms for the floating population as follow:

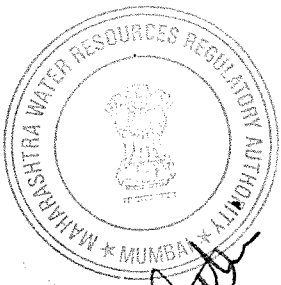
*"7(b) Floating population shall be certified by Chief Officer/ Deputy Commissioner. The rate of supply shall be as follows:*

- (i) *Bathing facilities provided : 45 lpcd.*
- (ii) *Bathing facility not provided : 25 lpcd. "*

**FRAMING OF ISSUES**

27. From the documents and data on record, pleadings by the parties in litigation, following issues are arises for consideration:

- i) **Whether the Application filed by Respondent No. 4 in this Appeal before PDRO (Case no.1/2017) is liable to be dismissed?**
- ii) **Whether the impugned order of the PDRO dated October 23, 2017 is illegal and liable to be set aside as alleged by the Appellant?**
- iii) **Whether this Authority can consider the additional facts brought to the notice of the Authority and can decide the entitlement for the Appellant as per Clause 12 of the Criteria?**



- iv) Whether is it necessary to give any decisions under Clause 12 of the Criteria on difficulties brought to the notice of this Authority by the Appellant during the proceedings of this Appeal? If yes, which difficulties need to be addressed and what can be the decisions thereon?

### FINDINGS OF THE AUTHORITY

28. Findings of this Authority on the above issues are as under:

- i) **Whether the Application filed by Respondent No. 4 in this Appeal before PDRO (Case no.1/2017) is liable to be dismissed ?**

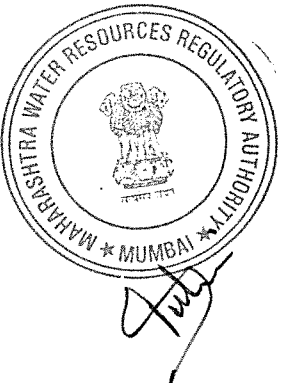
As per the data on record it is a fact that the Appellant, the PMC is using water far in excess as compared to drinking water provisions in the project planning of Khadakwasla complex, Sectoral Allocation for domestic use, Quantity agreed in Water Supply Agreement existing between the Appellant and the Respondent No.3 and the reasonable use norms prescribed by this Authority.

Consequently, the Respondent No.4 and the farmers on Khadakwasla Complex are deprived of their share of water.

The prayers of the Respondent No. 4 in its original application (Case No.1/2017) filed before the PDRO are :

- a) PMC should use norm based water for its population.
- b) PMC should use the water economically and reduce the wastage of water.
- c) PMC should also use water from alternative sources like Katraj lake to reduce burden on Khadakwasla Complex.
- d) Water supply to PMC should be restricted to 11.5 TMC as per the Agreement.
- e) PMC should be compelled to install measuring devices on the water supply pipelines at source side and also on supply side.
- f) The quota reserved for agriculture be allocated to agriculture sector.

The application is in larger public interest. The above cited prayers are consistent with the objects of the MWRRRA Act, 2005. Moreover, Section



11(q) of the said Act mandates this Authority to promote efficient use of water and minimise the wastage of water.

In view of the above facts, this Authority is of the view that the other prayers in the original Case No. 1 of 2017 need to be addressed appropriately in addition to fixing the population based entitlement for the Appellant – PMC.

**Thus, the answer to the issue under consideration is in negative.**

**ii) Whether the impugned order of the PDRO dated October 23, 2017 is illegal and liable to be set aside as alleged by the Appellant?**

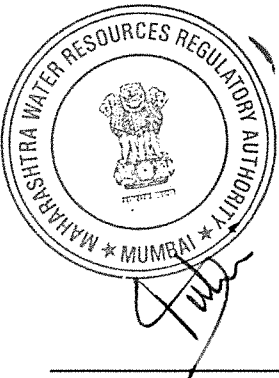
Present appeal is under section 22(3) of the Act, challenging the impugned Order of the PDRO dated October 23, 2017. This Authority called the record of proceedings from PDRO's office. On scrutiny of proceedings, this Authority is of the opinion that the PDRO has given adequate opportunity to present the case to all the parties. Having heard the parties involved in the litigation, perusing documents as well as data on record, submissions made by the parties the PDRO has passed the Order correctly based on the population data made available by the PMC and following the Criteria given by this Authority vide Orders dt. 22/09/2017.

However, during the review, this Authority has observed that PMC has failed to cite the provisions under Section 31B of the MWRRRA (Amendment & Continuance) Act 2011 during the proceedings before the PDRO which are of vital importance in protecting its own water rights. PDRO also at his own not considered these provisions while passing the Order.

Thus, the answer to the issue under consideration is partly affirmative and this Authority is of the view that the order of the PDRO needs to be amended to this extent.

**iii) Whether this Authority can consider the additional facts brought to the notice of the Authority and decide the entitlement for the Appellant as per Clause 12 of the Criteria?**

The Appellant, in his affidavit dt. 22/11/2018 has argued that he was deprived of the opportunity to submit his say as per Authorities Order dt.





22/09/2017 as the proceedings in Case No.1/2017 before the PDRO, were closed on 23/10/2017. This argument of the Appellant is not acceptable because this Authority has passed these Criteria a month before the proceedings before the PDRO were closed.

However, the Appellant-PMC has requested this Authority under Clause 12 of the Criteria issued by this Authority on September 22, 2017 to allow him to use minimum of 1250 MLD ( 15.65 TMC ) of water .

In this regard, the Authority is of the view that the Appellant, PMC ought to have submitted its water budget to the River Basin Agency (RBA) as per provisions in Clause 6.2 of the Criteria of the Authority dated 22/09/2017. PMC has shown negligence in this regard.

As per provisions in the Section 11(a) of the Maharashtra Water Resources (Amendment and Continuance ) Act 2011 RBA is expected to determine the Entitlement based on the Criteria determined by this Authority, after Sectoral Allocation is done by the State Government.

Domestic Water requirement are primarily depends on population. Here, in this particular case population figures are changing frequently. Further, net fresh water requirement is to be determined after giving due consideration to non-potable demands viz. gardening, fire fighting, car washing, toilet flushing that can be satisfied by water which can be made available through ground water sources, rainwater harvesting and water that can be made available from recycling . RBA is expected to sanction the entitlement after due scrutiny of the Water Budget submitted by the Bulk Water User on these aspects.

Thus in view of the above facts, this Authority cannot determine the Entitlement for the Appellant but can resolve any difficulty faced in implementation of the provisions.

**Thus, the answer to the issue under consideration is in negative.**

**iv) Whether is it necessary to give any decisions under Clause 12 of the Criteria on difficulties brought to the notice of this Authority by the Appellant during the proceedings of this Appeal? If yes, which difficulties need to be addressed and what can be the decisions thereon?**

The Authority, after giving due considerations to concerns raised by the Appellant, is of the opinion that some of the city specific concerns need to



be addressed separately. The considered views of the Authority on such concerns are as under. The Appellant - PMC has a liberty to approach RBA with his water budget for revised entitlement.

**a. Considerable floating population of the city :**

This Authority appreciates that City Administration has to address the water needs of considerable floating population. In regards to water supply norms for the floating population this Authority found it prudent to relay upon the norms determined by the MJP which are mentioned in paragraph 25(vi) above.

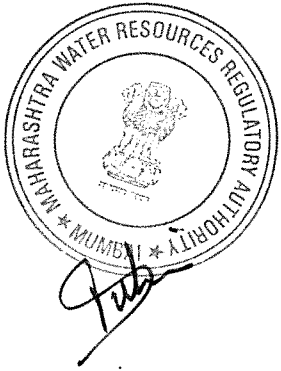
If the split up of floating population, for which bathing facilities are provided and the population for which bathing facilities are not provided is not available, average norm i.e. 35 lpcd shall be adopted. The average annual floating population shall be considered for estimation of the water requirement of the floating population and not the peak floating population.

**b. Industrial Requirements :**

The Petitioner has submitted that his industrial requirement is 99.22 MLD (36.21 MCM/ 1.27 TMC). The norms, prescribed by this Authority, include the requirement of minor industries only. Hence, this Authority is of the considered view that this industrial requirement needs to be considered separately over and above the population based domestic water requirement and the same shall be billed separately as per prevailing tariff.

**c. Relaxing limit for Unaccounted for Water from 15 % to 35 % :**

The Criteria issued by this Authority, vide clause 6.1 (Note 3) allows 15 % UFW for the first year of the control period. This limit shall be reduced by 1 % per year during the subsequent years of the control period (2<sup>nd</sup> and 3<sup>rd</sup> year). This desirable limit of UFW has been fixed by this Authority in consultation with the stakeholders. The Appellant - PMC opted not to participate in this consultation in spite of invitation from the Authority. The same limit is also prescribed by the Ministry of Urban Development, in its Manual of Water Supply and Treatment. This UFW figures are the indicator of performance of the distribution system and the management of the city also.



The Appellant has mentioned in the Affidavit that his distribution losses are 35 %, which includes 20 % leakage and 15 % Non-Revenue Water (NRW). However, this is only the rough estimate and not the conclusions drawn from Water Audit Report.

This Authority is of the considered opinion that no additional water is justifiable over and above the prescribed norms for NRW as this quantity is actually in use, although no revenue is generated through it.

The Appellant has not carried out Water Audit of its distribution system to identify the reasons of such excessive UFW. The control measures are possible only after identifying the reasons through Water Audit.

This Authority is of the opinion that fresh water has considerable economic potential. Its value is much beyond its price. Further, this Authority has been mandated by the Section 11(q) of the Act to promote efficient use of water and minimise wastage.

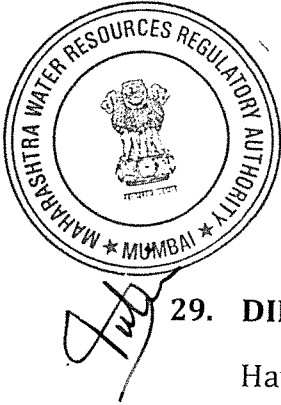
The Appellant must strive to reduce the distribution losses within prescribed limits. In the meanwhile the demand supply gap can be bridged by managing the non-potable demands viz. gardening, car washing, fire fighting, toilet flushing through water that can be made available from groundwater, rainwater harvesting, recycling etc.

Considering above said facts and the statutory provisions, this Authority is not inclined to relax the UFW limit.

**d. Water requirement of villages outside Corporation Limit :**

Appellant has submitted that as per the orders of the State Government he has to supply water to the villages outside the Corporation limit within the radius of 5 Km at 50 MLD.

The provision for such villages can be made in the Water Budget at above said norms after due confirmation of the population of these villages. The water permissions already given to such villages shall stand cancelled automatically.



**29. DIRECTIONS :**

Having heard the parties to the litigation, perusing documents as well as data on record, submissions made by the parties, various relevant statutory provisions and having answered the issues as above with necessary



decisions under clause 12 of the Criteria issued by this Authority on September 22, 2017, this Authority directs as under:

- i) Water being the basic need for survival of the human and part of the right to life, both the Appellant – PMC as well as Respondent No. 2 and 3 are duty bound to supply adequate drinking water to all its citizens, in view of the provisions mentioned in paragraph 25 (i) above. At the same time, as available water resources are already overstressed due to ever growing demand of the urban population, reasonable use norms must be followed and water supplied must be used efficiently minimising its wastage. It should also be kept in mind that fresh water has considerable economic potential in its diverse alternative uses. Its value is much beyond its price. Diversion of more and more water for domestic use by reducing the rights of agriculture sector is not sustainable.
- ii) Considering the provisions in Section 31(B) of the MWRRA (Amendment and Continuance) Act 2011, the water reservation of 11.5 TMC of water sanctioned by the High Power Committee in its meeting dated March 10, 2005 i.e. prior to September 17, 2010 need to be considered as the Entitlement sanctioned under MWRRA Act, 2005. Hence, this Water Entitlement shall prevail over the Order passed by the PDRO on October 23, 2017.
- iii) Appellant shall prepare the Water Budget, strictly as per norms provided in the Criteria, issued by this Authority on September 22, 2017 under Section 11(a) of the MWRRA (Amendment and Continuance) Act, 2011 and 11(q) of the MWRRA Act, 2005 and submit it to River Basin Agency (RBA) after verifying the population being served. The Water Budget shall necessarily but not restricted to include the following data in addition to any other data as required by the RBA for determining the Entitlement:
  - a) Total Population being served.
  - b) Population being served with individual household taps and their water demand.
  - c) Population being served with community stand posts and their water demand.
  - d) Population being served by tankers and their demand.



- e) Floating population if any and its water demand .
  - f) Population served outside corporation limits and their water demand.
  - g) Gross annual domestic water requirement in MCM.
  - h) Annual major industrial demand .
  - i) Non potable needs that can be satisfied by water that can be made available from ground water, rainwater harvesting, recycling etc. in MCM.
  - j) Net fresh water requirement in MCM.
  - k) Sewage Generation in MLD
  - l) Installed capacity of sewage treatment plants in MLD.
  - m) Population data shall be countersigned by the Commissioner after verifying the same.
- iv) RBA shall approve the Bulk Water Entitlement for the Appellant after due scrutiny of the Water Budget and following :
- a) the Criteria determined by this Authority on September 22, 2017
  - b) Decisions given by this Authority in Paragraph 27(iv) above, under the provisions in Clause 12 of the Criteria
  - c) Provisions in Section 31 (B) of the MWRRRA (Amendment and Continuance) Act 2011.
- v) The Bulk Water Entitlement so determined by the RBA shall be effective from the date of such order subjected to minimum of 11.5 TMC considering the provisions in Section 31(B) of the Act.
- vi) The fresh, Water Supply Agreement shall be signed by the Appellant and the Respondent based on the Entitlement so determined. The provisions in the Agreement shall be consistent with the provisions in the Criteria determined by this Authority and the provisions in the Act.
- vii) Appellant-PMC must carry out Water Audit of its Water Distribution System within three months from the date of issue of this Order and take all necessary remedial measures on war footing to reduce the UFW (distribution losses + Non-Revenue Water). A time bound program shall be formulated within month's time and shall be implemented till the percentage of UFW is reduced to limit prescribed in the Criteria. The



time bound program and the Annual Progress Report regarding achievement of the targets shall be submitted to this Authority and shall also be put in public domain.

- viii) Considering the fact that Khadakwasla Complex is already overstressed, Appellant must strictly implement, the long term strategy specified by this Authority in Clause 11.1 of the Criteria dated September 22, 2017 to reduce the burden on fresh water. The use of available groundwater and also the water that can be made available from rainwater harvesting and recycling, for non-potable uses like gardening, car washing, fire fighting, toilet flushing, process industries etc. must be promoted, to reduce the burden on fresh water. It seems to be the only sustainable solution to reduce the burden on fresh water and to cater for future needs.
- ix) Water being community resource, the Appellant – PMC is duty bound to protect the water bodies in its jurisdiction from encroachment and to preserve the quality of its water from pollution. Appellant must promote use of water from alternative sources in its jurisdiction like Katraj Lake.
- x) Appellant – PMC is duty bound to treat all sewage that it creates, as the untreated sewage is polluting the downstream water resources, reducing its usability and also causing serious health hazards to the downstream population. The Appellant – PMC must estimate the sewage being generated correctly and prepare a time bound program for augmenting the existing treatment capacity by installing STPs of adequate capacity to treat all the sewage that it generates and submit yearly progress report to this Authority indicating sewage generated, installed capacity of STPs, sewage actually being treated along with the test reports of effluent being discharged into the river.
- xi) In view of the data on record at paragraph 10(i) and conclusion in paragraph 11(vii) above Appellant - PMC, must make available treated water for agriculture to the extent of its water use over and above 8.3 TMC.
- xii) Water being Community Resource under Public Trust Doctrine , both the Appellant - PMC and the Respondent No. 3 must mandatorily keep all the data / information related to water in public domain after its due validation and update it time to time and such data shall contain but not



restricted to Water Budget, Entitlement sanctioned, actual consumption in MLD and in lpcd, Zone wise consumption in MLD and in lpcd, distribution losses, Non-Revenue Water, sewage being generated, installed capacity of STPs, sewage being actually treated, test reports of treated effluent being discharged to river/canal, Water Agreements, water charges billed by WRD, water charges paid to WRD, water audit reports etc.

- xiii) So as to avoid the breach of the agreement signed by the Appellant with Respondent No. 3, Appellant must pay the water charges regularly to the Respondent WRD as per the provisions in the Agreement. Further, as agreed by the Appellant during the proceedings before this Authority, the payment of all undisputed bills shall be made before March 31, 2019. All the disputes regarding water charges shall be settled mutually by January 15, 2019 as per the provisions in the water supply agreement and all arrears of bills upto March 31. 2018 shall be paid by latest June 30, 2019.
- xiv) Appellant as well as the Respondent No. 2 and 3 shall submit the compliance of the directions issued herein above before April 15, 2019.

Thus, the Appeal is partially allowed with directions as above.

**List it for review of the compliance on July 10, 2019 at 3.00 pm.**

Delivered on December 13, 2018.

*S. T. Sangle*  
13/12/18

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

*V. M. Kulkarni*  
13-12-18

(V.M. Kulkarni)  
Member (WRE)

*K. P. Bakshi*  
13/12/18

(K. P. Bakshi)  
Chairperson

