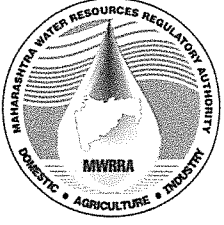




सत्यमेव जयते



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण Maharashtra Water Resources Regulatory Authority

File No. MWRRRA/2017/Legal/ Case No. 8(2017)/639

Date : 12/09/2018

In the matter of

Petition filed by Adv. Ashish Jaiswal, Ramtek as regards Making Provision of Water for Irrigation Purpose by Curtailing the Use of Water from Pench Project Complex by the Nagpur Municipal Corporation - Case No. 8 of 2017

Please find herewith a copy of MWRRA Order No. 13/2018 dated 12/09/2018 in the above matter.

Encl : As above

(Dr. Suresh Kulkarni)

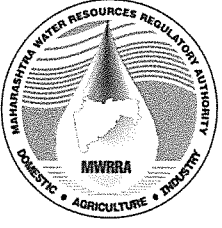
Secretary

Copy for information and necessary action to:

1. Adv. Ashish N. Jaiswal, R/o Rajaji Ward, Ramtek, Tal. Ramtek, Dist. Nagpur -441106.
2. Commissioner, Nagpur Municipal Corporation, Mahapalika Marg, Near Vidhan Bhavan, Civil Lines, Nagpur - 440001.
3. Collector, Collector Office, Civil Lines, Nagpur - 440001.
4. Secretary (WRM & CAD), Water Resources Department, Mantralaya, Madam Kama Road, Mumbai - 400 032.
5. Chief Engineer, Water Resources Department, Sinchan Seva Bhavan, Civil Lines, Nagpur - 440 001.
6. Superintending Engineer & Administrator, CADA, Wainganga Nagar, Ajni, Nagpur - 440003.
7. Executive Engineer, Pench Irrigation Division, Wainganga Nagar, Ajni, Nagpur - 440003.



सत्यमेव जयते



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

Maharashtra Water Resources Regulatory Authority

ORDER NO. 13/2018

In the Matter arising out of the

Petition filed by Adv. Ashish Jaiswal, Ramtek as regards Making Provision of Water for Irrigation Purpose by Curtailing the Use of Water from Pench Project Complex by Nagpur Municipal Corporation - Case No.8 of 2017

Adv. Ashish Jaiswal , R/o Rajaji Ward, Ramtek, Tal. Ramtek, Dist. Nagpur

....Petitioner

----Vs-----

- 1) Nagpur Municipal Corporation, through Municipal Commissioner
- 2) The Collector, Nagpur District, Nagpur
- 3) The Project Officer, Pench Irrigation Management Project, Nagpur
- 4) Chief Engineer (WR), Water Resources Department, Nagpur
- 5) Secretary (WRM & CAD), Water Resources Department, Mumbai

....Respondents

Coram: Shri. K. P. Bakshi, Chairman
Shri. V. M. Kulkarni, Member (WR Engg.)
Shri. Vinod J. Tiwari, Member (Law)

Date : September 12, 2018

BACKGROUND

1. Adv. Ashish Nandkishor Jaiswal, Ramtek, the Petitioner had filed a Petition at Nagpur bench of Hon'ble High Court of Bombay (WP No. 4315/2004). Hon'ble High Court while disposing of the said Petition issued Order on July 3, 2017 in which the Petitioner was given a liberty to approach this Authority.

The operative part of the said Order of the Hon'ble High Court reads as under:



1. *“Writ Petition has been filed in Public Interest, seeking a direction to release a particular quantity of water for kharif and rabi season from Pench Irrigation Project. The matter has been admitted for final hearing and is pending since last 12 years. In the meanwhile, a regulatory authority for monitoring this aspect has already been constituted and is functioning.*
2. *None appears for petitioners even on second call. Shri. P.S. Tembhare, learned A.G.P. for respondent nos.1, 2 and 4.*
3. *We find that the grievance may have been redressed, however, if it still survives, petitioners have to approach the regulatory authority for said purpose. Hence, with said liberty to petitioners, we dispute of the present Writ Petition as infructuous. No costs.”*

2. Later on the Petitioner under Section 11 & 12 of the Maharashtra Water Resources Regulatory Authority Act, 2005 (“the Act” for short) approached this Authority on September 19, 2017. The Petition primarily contending the reliefs as regards to making of provision of Water for Irrigation Purpose from Pench Project Complex (“PPC” for short) by rationalising the Use of Water by Nagpur Municipal Corporation (“NMC” for short), the Respondent No.1 herein .

3. The gist of contents of the Petition is :

- i. The Respondent No. 1 - NMC, Nagpur is making liberal use of water available in the PPC. According to the petitioner, the PPC consists of 3 reservoirs viz. Totaladoh, Navegaon Khairi & Khindsi aggregate storage of which is 1200 Million Cubic Meter (“MCM” for short). Out of this, 112 MCM was being supplied to Nagpur city. The reservation for Koradi and Khaparkheda Thermal Power Stations (“TPS” for short) amounts to 67 MCM. The irrigation utilization is 625 MCM (Kharif) and 240 MCM (Rabi). The area supposed to be brought under irrigation of PPC is about 1,09,200 ha.
- ii. Year 2017 is a water deficit year for the PPC, in spite of this Respondent No.1 is using the water liberally beyond the stipulated norms. Consequently, the Petitioner and the farmers are deprived of water for irrigation.



- iii. Thus, having aggrieved by the act of the Respondent No.1 the Petitioner has approached this Authority. The Petitioner's intention in filing this Petition is to seek appropriate relief by compelling NMC to reduce water use in the year 2017 and make available water for agriculture.
- iv. As a long term relief the Petitioner has sought direction to Respondent No.1 to construct its own water storages.

4. The Petitioner has prayed for following reliefs:

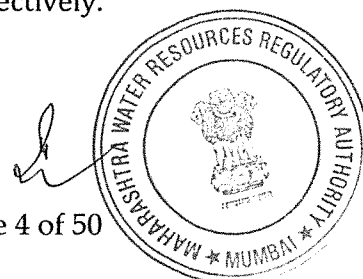
- i. To fix the quantum of water use by Nagpur city (requirement from September 2017 to July 15, 2018) based on current population and per capita norm.
- ii. To direct Respondent No.1 NMC, Nagpur to utilize all other sources of water and determine the entitlement from PPC accordingly.
- iii. To conduct water audit of the water being used by the NMC.
- iv. To declare that the reservation of 78 MCM for NMC is illegal and thereby cancel the same reservation.
- v. To direct the NMC to construct dams of its own for use of water by the citizens of Nagpur city.
- vi. To utilize and reserve the remaining water for agriculture.
- vii. To curtail the norm of 150 lpcd to 100 lpcd by the NMC due to shortage of water.
- viii. To grant Reliefs such further and other reliefs the case may warrant and *the Petitioner is entitled to.*

5. This Authority conducted six hearings in this matter on 04/10/2017, 25/10/2017, 23/11/2017, 2/2/2018, 15/3/2018 and 17/4/2018 and the Interim orders were passed from time to time. It was felt necessary that the State of Maharashtra through Water Resources Department and the Chief Engineer WR (WRD), Nagpur be made as Respondents, being necessary and essential parties in respect of the subject matter. Accordingly, the Petitioner was directed to amend and add the above parties and accordingly the petitioner submitted a fresh affidavit making the Chief Engineer (WR, WRD, Nagpur) as Respondent No. 4, whereas the Secretary (WRM & CAD), WRD, Government of Maharashtra is made the Respondent No. 5.



FACTUAL MATRIX

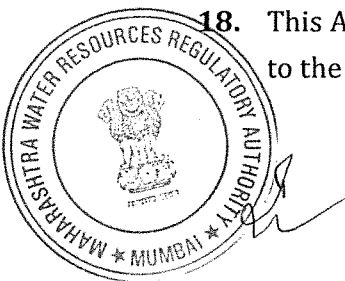
6. This case is arising out of diversion of more water for NMC than the provision in the designed utilisation of the project report of PPC and consequently the farmers are deprived of their share of water. The petitioner, who had earlier approached Hon'ble High Court by way of a Public Interest Litigation (PIL), has alleged various facts of grave injustice on the farmers and prayed for various reliefs. As apparent from the records, the said PIL was admitted and was pending for quite long time. In the intervening period, this Authority was constituted under the provisions of the Section 3 (1) of the Act and considering this development, Hon'ble High Court disposed the petition with the liberty to the petitioner to approach this Authority in the matter. Accordingly, these proceedings have been initiated upon the petition being preferred by the petitioner in the larger public interest, in light of the alleged facts as under :
7. Pench Hydro Project is an interstate project between Madhya Pradesh ("MP" for short) and Maharashtra state ("MS" for short). The project site is at the border of MP and MS. It has catchment area of 1657 sq. miles of which 1640 sq. miles lies in MP.
8. As per the interstate agreement signed on March 8, 1964 at Bhopal the approximate run off from the catchment is 60 Thousand Million cubic feet ("TMC" for short). Out of this 60 TMC, the MP is allowed to utilise 35 TMC in its territory leaving behind 25 TMC for Pench Hydro Project. Certain amount of return flow on account of regeneration from irrigation in MP is also envisaged. Inclusive of this return flow about 30 TMC of yield has been considered for the design of Pench Hydro Project.
9. The water after Hydro- Electric generation is stored in reservoir at Navegaon Khairi having storage capacity of which is 180 MCM. The water utilisation in MS is planned from this Navegaon Khairi. In addition to this, there exists a dam namely Khindsi having storage capacity of 104.26 MCM which feeds to Pench canals.
10. Thus, PPC comprises of three reservoirs viz. Totaladoh, Navegaon Khairi and Khindsi having storage capacities of 1041, 180, & 104.26 MCM respectively. The aggregate storage capacity is 1325.26 MCM.



11. As per the interstate agreement signed on December 8, 1968, in lean years, the upstream use in MP is to be restricted to 35/60 of the available yield at Totaladoh subject to minimum of 20 TMC.
12. In the project planning of Pench Project, the provision for Nagpur city water supply is 112 MCM and that for the TPS is 67 MCM. The remaining water is to be used for irrigation. The irrigation command area of the Pench Project is 1,04,400 ha, which has been delineated under the Maharashtra Management of Irrigation System by Farmers Act, 2005 ("MMISF Act" for short).
13. Subsequently, on March 31, 1998 the State Government sanctioned additional 78 MCM of water for NMC on temporary basis, up to year 2005, with some conditions.
14. This temporary sanction granted in 1998 was extended by the State Government in 2008, retrospectively for further period of 5 years i.e. up to December 31, 2010. The said sanctioning letter also directed NMC to create its own sources of water till that time and to construct a pipe line to convey water from the dam apart from some other conditions. One of the conditions was: NMC shall pay Rs. 8445 lakh towards rehabilitation of affected irrigation area due to diversion of 48 MCM of water. However, NMC has not complied with this condition.
15. NMC has submitted the water budget for the year 2017-2018 is 169 MCM, which comes to about 165 lpcd, whereas the reasonable use norm decided by this Authority is 135 lpcd plus 15 % distribution losses.
16. Up till now MP was not utilising its share of water completely. As a result MS was getting more water. Now MP has tapped water of its share, hence MS is getting less water as compared to earlier years.
17. Incidentally, the year 2017 was lean year for the PPC. Only 43% (as of October 2017) water was available. This has aggravated the situation. The farmers are deprived of water of their share, the petitioner pleaded.

THE PROCEEDINGS BEFORE THE AUTHORITY

18. This Authority having considered the facts and circumstances, issued notices to the Respondents calling upon their submissions on the points raised in the



petition. This Authority conducted various effective hearings from time to time and gave opportunities to the parties to argue in a fair and transparent manner.

The first hearing on October 4, 2017

19. The summary of the arguments put forth by the Petitioner as well as the Respondents during the hearing and in the form of written submission is as follows;

i. **Adv. Ashish Jaiswal (Petitioner)** pleaded about the way in which water consumption on the part of the Respondent No.1 - NMC is being continued liberally. The demand for water is made with norms higher than the standard ones. This resulted in consumption of more water.

Moreover, NMC has got additional reservation of 78 MCM water subject to condition that NMC shall pay for restoration of irrigation that is required to be curtailed. It amounts to Rs. 84.45 crore. The NMC has so far not paid this amount to the WRD. Hence, additional reservation of NMC is illegal. The Nagpur city gets one-third of its water requirement from the Kanhan River and two-third from the Pench Project. Due to deficient storage position in PPC during the year no water was supplied to Kharif irrigation. However, no cut is applied to the water requirement of NMC.

ii. **On behalf of Respondent No.1 - NMC Shri. Deepak Chitnis (Dy. Engineer, NMC)** submitted that the present Nagpur City Population is approximately 28 lakh. The city gets water from PPC (190 MCM) and Kanhan Water Works (60 MCM) i.e. 250 MCM in aggregate. According to him, the NMC had conducted water audit in 2006. The present non-revenue water (NRW) is 50% against that of 65% earlier. This was made possible due to laying the closed pipeline from Navegaon Khairi to the city. It is now proposed to reduce the NRW losses to 25% by the year 2022. The 24 X 7 water supply project on PPP basis is being executed which will reduce the losses. He also made clear that, as of now, there is no proposal of constructing the proposed Rahari, Kochi and Jamghat projects by NMC. All alternatives are at preliminary study stage.

iii. **Shri. J. B. Turkhede, EE, PID, Nagpur (Respondent No. 3)** informed that the present storage available in PPC is 43%. Presently, one



irrigation rotation is in progress. The rainfall during the monsoon of 2017 is lean. Interception of runoff due to Chowrahi Dam in MP territory has further adversely affected the storage in PPC.

Interim Directions vide Order No. 11/2017dt. 10/10/2017

20. "Authority has observed that the water consumption of NMC is far more than the standard norms. Analyzing the petition & inputs of preliminary round of the pleadings of the representatives of both the parties, this Authority deems it necessary to issue following interim directions, in view of water deficit in the PPC and redressing the hardships to the Petitioner;

- i. *The NMC shall submit its water budget to the Vidarbha Irrigation Development Corporation, Nagpur (VIDC) before October 15, 2017 on the basis of Criteria and the conditions laid down in the Criteria for Distribution of Surface Water Entitlements by River Basin Agencies for Domestic and Industrial Uses (Criteria) brought out by the MWRRA in September 2017. NMC shall consider water that can be made available from alternative surface and groundwater sources to arrive at its net water requirement from the Pench Project Complex. NMC shall also consider present population and permitted unaccounted for water for water budgeting.*
- ii. *VIDC after due scrutiny and ensuring that all possible alternatives have been tapped by the NMC in its water budget shall sanction the entitlement from the PPC on the basis of Criteria laid down by this Authority.*
- iii. *Based on the storage position of reservoirs as on October 15, the VIDC shall grant allocations for domestic and industrial bulk water uses for the year 2017-18 as per Clause 8 of the Criteria.*
- iv. *Considering the water deficit in the Pench Project Complex, the available water needs to be used efficiently and judiciously, minimizing the wastage by all water use sectors.*
- v. *Irrigation rotation shall be planned within quota of water for agricultural sector in consultation with the project level Water User Association. In doing so, sufficient carry over shall be kept reserved in anticipation of the late outbreak of monsoon in the next year.*
- vi. *Collector - Nagpur's request for granting two weeks time for submitting their say is granted. The NMC, Collector - Nagpur and EE, PID, Nagpur*



shall file their affidavits before this Authority by October 23, 2017 serving copies of it to the Petitioner and other Respondents before the next hearing.

- vii. Pench Project Authorities shall exercise strict supervisory control to ensure efficient use of water and avoid wastage while water is released for irrigation.*
- viii. The NMC should get the water audit done by the Chief Auditor, Water & Irrigation, Maharashtra State, Aurangabad on priority as the NRW is abnormally high."*

Proceedings conducted in Second hearing on October 25, 2017

21. The summary of the arguments put forth by the Petitioner as well as the Respondents during the hearing and in the form of written submission is as follows;

- i. Adv. Ashish Jaiswal (Petitioner)** pleaded that Respondent No.3 has not implemented the latest Criteria for Distribution of Surface Water Entitlements by River Basin Agencies for Domestic and Industrial Uses ('Criteria' for short).

Petitioner, expressed doubts, on the data submitted by NMC regarding number of bore wells and private wells in the NMC's jurisdiction of Nagpur city. Petitioner also expressed concerns about passive approach of Respondent No.1 of the NMC regarding minimizing wastage of water, initiating awareness campaign etc.

NMC has not submitted the water budget water year 2017-18 as per the stipulations in the Criteria.

The rejoinder submitted by him, contains arguments countering the stand of the Respondents. He concluded his submission with request to initiate action against the officers of WRD for non-compliance of the directions issued by this Authority through its Interim Order dated October 10, 2017.

- ii. Adv. S. M. Puranik, the Learned Counsel appearing on behalf of NMC** pleaded that the additional reservation of 78 MCM of water in favour of NMC is essential. The proposal of constructing dams of its own



to supply water to the city is under consideration of the NMC, but has not materialized because of procedural delay.

iii. **Shri. S. S. Gaikwad (the Executive Engineer, NMC)** was also present and submitted that the NMC is seized of the matter regarding losses taking place in conveying water to the city. The main contentions in the written submission on behalf of Respondent No.1 -NMC are as under:

- a. The Government's guidelines entitled the NMC to water equivalent to 15% of storage capacity. The capacity of Totaladoh and Kamati-Khairi reservoir together is 1348 MCM. Thus Shri. Gaikwad claimed that, NMC is entitled to get 202.2 MCM (15% of the storage capacity).
- b. NMC is taking water through closed pipeline from Kamati-Khairi reservoir.
- c. NMC has handed over its 130 MLD sewage treatment plant to MAHAGENCO and thereby a saving of 47.45 MCM of fresh water is achieved. In other words, only 30.55 MCM out of the additional allotment of 78 MCM is being consumed.
- d. The amount due to WRD from NMC towards restoration of curtailed irrigation is not yet paid by the NMC, and that they have sought waiver for the same.
- e. Undertaking 24 X 7 project under PPP by the NMC will ensure reduction in NRW up to 25% by February, 2022.
- f. The requirement of NMC from October 2017 to July 2018 is approximately 169 MCM from PPC.

iv. **Respondent No. 3** through written submission and oral pleading submitted as under:

- a. The water for Kharif irrigation has already been released.
- b. NMC has submitted water budget for water year 2017 -18 which is under scrutiny.
- c. As per the interstate agreement, Maharashtra is entitled to get 30 TMC (849.50 MCM) water in a normal year. (25 TMC State's share + 5 TMC regeneration from use of MP)



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- d. Construction of Kochi barrage is 60 % completed. However, the Rahadi barrage and Jamghat projects are still at project preparation stage.
 - e. Temporary approval for reservation of additional 78 MCM to NMC was till the year 2005 and is subjected to the condition that NMC shall develop its independent source of water by that time. Till to date, NMC has not fulfilled this commitment.
 - f. The amount due to WRD for restoration of curtailed irrigation of Pench has not so far been paid by NMC.
- v. **Shri. Lalit Ingle (SE, CADA, Nagpur)** also appeared in person and humbly submitted that:
- a. The water budget of NMC is received by the VIDC on October 12, 2017 and is being scrutinized.
 - b. As per the provision in GR of Irrigation Department dated August 10, 2004 the district level committee meeting under the chairmanship Guardian Minister of Nagpur is convened tomorrow i.e. October 26, 2017.

vi. **The Collector, Nagpur, the Respondent No. 2 through its officials submitted that:**

The meeting of the district level committee regarding reservation of water for drinking purpose from irrigation projects under the chairmanship of the Guardian Minister, as per Irrigation Department GR dated October 8, 2004, shall be convened in the last week of October, in which information regarding water budget of NMC and also the entitlement as per norms shall be placed before committee.

Interim Directions vide Order No. 13/2017 dt. October 30, 2017

22. Having heard the parties, this Authority recorded its findings and passed following Interim directions as Order No. 13 of 2017 dt. October 30, 2017:

“Taking into view the affidavits submitted by the parties and the inputs received during the hearings, this Authority deems it necessary to issue certain interim directives in view of water deficit in Pench Project Complex, as follows :

- i. WRD shall scrutinize the water budget submitted by NMC and decide appropriate allocation of NMC for the water year 2017-18.
- ii. WRD shall submit its response to affidavit filed by NMC.
- iii. Due to upstream abstraction of water, historical fortnightly inflow pattern is expected to change. Considering this eventuality, WRD shall provide adequate carryover in Pench Complex.
- iv. NMC Nagpur shall substantiate the data submitted by it regarding number of open wells and bore wells. In long term perspective, NMC shall assess the groundwater potential scientifically.
- v. NMC shall start awareness campaign to avoid wastage of water and use the available fresh water efficiently.
- vi. NMC shall substantiate its industrial water requirement with list of industrial consumers to whom it is supplying water through its domestic network along with consumer-wise last year water use on or before next hearing.
- vii. NMC shall submit the last water audit report to this Authority.
- viii. Both WRD and NMC shall submit action taken report as per first as well as second (this) Interim Order.

Third hearing dt. November 23, 2017

23. The summary of the arguments put forth by the Petitioner as well as the Respondents during the hearing and in the form of written submission is as follows;

i. Adv. Ashish Jaiswal, the Petitioner pointed out that:

The water demand submitted by the NMC is not as per the Criteria issued by this Authority on September 22, 2017. He further argued that present year being a deficit year, demand should have been less than 135 liters per capita per day (lpcd). He further pleaded that as per the Pench Project Report, NMC has reservation of 112 MCM. Planned utilization of Pench complex is 965 MCM of which considering sectoral allocation limit of 15%, domestic water quantity works out to be 144.75 MCM. The agreement for temporary reservation of 78 MCM has expired on 31/12/2016. The NMC has not paid rehabilitation charges of Rs.



84.45 crore. In spite of this, the District Authority i.e. Water Reservation Committee, Nagpur illegally allocated 190 MCM water to NMC.

He further added that as per the MMISF Act 2005, farmers should get their regular quota as per their entitlement. He also brought to the attention that NMC has not assessed the groundwater potential in the city as per directives of this Authority. He finally demanded to fix the quota for each category in the light of Criteria issued by this Authority on September 22, 2017.

- ii. **Adv. S. M. Puranik, appearing** on behalf of the Respondent No.1 - NMC pleaded that the 190 MCM water quota sanctioned is well within the sectoral allocation of 15% and additional reservation of 78 MCM is appropriate as Corporation has requested the Government to waive the restoration charges amounting to Rs. 84.75 crore.
- iii. **Mr. S. S. Gaikwad, Executive Engineer,** also for the Respondent No. 1 - the NMC, submitted that there are 68,707 bore wells in the city and said that NMC has taken due cognizance of these bore wells in computing water requirement submitted to the WRD. He informed that the campaign has been launched in the city for economic use of water. He also informed that industrial consumers are using 60.63 MLD of water from NMC network. He submitted the data of industrial users in the form of a Compact Disc (CD). He also mentioned that target has been fixed to reduce the Unaccounted For Water (UFW) to 25% by February 2022 and that water auditing has been initiated.
- iv. **Shri. J. B. Turkhede, EE, PID, Nagpur, the Respondent No.3 clarified** that reservation of 78 MCM was temporary and has already expired on December 31, 2016 due to non-payment of the restoration charges of Rs. 84.45 crore to the WRD by NMC. He further explained that the share of Maharashtra is 965 MCM in the Pench project and as per project Report reservation of 112 MCM for domestic use is provided. He further informed that the Sectoral Allocation for domestic use works out to be 144.75 MCM and there is no reduction in reservation 190 MCM (112 MCM+ 78 MCM on temporary basis) on account of commissioning of pipeline. He further added that during current year, as yield is 600 MCM



only, 200 MCM water was made available for one Kharif rotation & 100 MCM water is allocated for one Rabi rotation. He further ensured that the NMC's entitlement & allocation for the current year shall be declared within a week.

- v. **Shri. Anil W. Khadatkar, Representative of the Respondent NO. 2 - Collector, Nagpur** informed that water budget as received from the NMC was placed before the Guardian Minister for sanction.

Interim Directions vide Order No. 17/2017 dt. December 8, 2017

24. Having heard the parties, this Authority recorded its findings and passed following Interim directions as Order No. 17 of 2017 dt. December 8, 2017 :

- i. *Authority expressed extreme displeasure for non-compliance on the part of Respondent No.3 of its interim orders issued on October 10 (Order No. 11) & October 30 (Order No. 13), 2017 in the matter.*
- ii. *Authority directed to make Secretary (WRM & CAD), WRD and Chief Engineer (WR), Nagpur as Respondents in this case. The Petitioner and Respondents shall serve copies of the Petition and all necessary submissions to Secretary (WRM & CAD), WRD and Chief Engineer (WR), Nagpur.*
- iii. *Secretary (WRM & CAD), WRD shall submit affidavit putting forth the facts regarding additional reservation of 78 MCM especially regarding its validity.*
- iv. *Secretary (WRM & CAD), WRD shall also review the provisions in WRD GR No. Misc 1003/(310/03)/I(P) dated August 10, 2004 which is issued prior to the enactment of the MWRRRA Act, 2005 in light of provisions in the Act - especially Section 11(a) of the MWRRRA (Amendment & Continuance) Act, 2011 and Criteria for Distribution of Surface Water Entitlement evolved by MWRRRA in November 2012 and revised in September 2017 and also Section 11(q) of the MWRRRA Act, 2005 and directives issued thereunder and he shall file Affidavit-in-reply accordingly.*
- v. *NMC shall submit its year wise plan to reduce UFW on or before next hearing.*



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25. Show Cause Notices to Respondents under Section 26 of the Act

This Authority observed that the said directions given in the initial three proceedings were not complied by the Respondents concerned. Mandating the prompt compliance, on the part of Respondents was quite necessary in this case. In spite of that either Respondent No.3 nor has the Respondent No.4 taken it seriously.

This Authority, therefore, constrained to issue the Show Cause Notice to the Respondent No. 3, 4 and the Superintending Engineer & Administrator, CADA, Nagpur under the provisions in Section 26 of the Act, calling upon the explanation and the personal presence of the concerned responsible officials. Notices were issued on January 4, 2018.

Fourth hearing date February 02, 2018

26. The summary of the arguments put forth by the Petitioner as well as the Respondents during the hearing and in the form of written submission is as follows;

- i. **Adv. V. G. Palashikar, the Id. Counsel for Respondent No.4** objected that the petitioner as a farmer in individual capacity cannot file petition with MWRRA as only Water User Association can file petition with Authority. He further added that when Chief Engineer was not party in the case, how can Authority issued the show cause notice to the Chief Engineer? However, this Authority pointed out that the copy of the directives dated December 8, 2017 were given to the Chief Engineer, Nagpur. As the Chief Engineer has not taken its cognizance. The notice under Section 26 was issued. This Authority therefore directed to the Chief Engineer to file the para-wise reply to the Petition & Application by the petitioner by next date of hearing.
- ii. **Shri. C.A. Birajdar, Secretary (WRD), Respondent No. 5** personally appeared and submitted that the Superintending Engineer & Administrator CADA Nagpur is the competent authority for implementation of the order of this Authority dated September 22, 2017.
- iii. **Shri. Lalit P. Ingle, S.E. & Administrator CADA Nagpur, personally appeared before this Authority and humbly** submitted that 190 MCM quota was allocated to the Corporation as per the instructions



received in "Pani Arakshan Baithak" held at Nagpur on 30/10/17. He further submitted that the WRD GR dated November 17, 2016 is not clear who is competent to grant reservation of water and prayed for clarification in this regard.

- iv. **Adv. Ashish Jaiswal**, the Petitioner, further submitted additional application which was taken on record. Respondents were ordered to submit a para -wise reply to this submission by the next date of hearing.
- v. **Shri. J.B. Turkhede, Respondent No. 3**, clarified that, minimum 45 MCM of water is required for one rotation, as such it is not possible to release water for Rabi considering deficit in the reservoir.

Interim Directions dt. February 8, 2018

27. Having heard the parties, this Authority recorded its findings and passed following Interim directions as dt. February 8, 2018 :
 - i. *There seems to be confusion among the officers of River Basin Agencies as to who should act on the implementation of the Criteria issued by this Authority on September 22, 2017. It is therefore necessary on the part of Government to issue necessary directions regarding this and the earlier WRD GR dated November 17, 2016 needs to clarify further.*
 - ii. *Superintending Engineer, CADA, Nagpur shall determine the entitlements and also the allocation for the current year to all domestic and industrial bulk water users of Pench Project as per "Criteria for Distribution of Surface Water Entitlements by River Basin Agencies for Domestic and Industrial Uses" issued by this Authority on September 22, 2017 and same needs to be forwarded to this Authority by the next date of hearing.*

Fifth hearing dated March 15, 2018

28. The summary of the arguments put forth by the Petitioner as well as the Respondents during the hearing and in the form of written submission is as follows;



- i. **Adv. Ashish Jaiswal, the Petitioner pointed out that :**
- a. Initially there was a reservation of 112 MCM for NMC in Pench Project. Additional 78 MCM temporary reservation was done in 1999. In 2010, NMC committed that due to construction of pipeline, there will be a saving of 81 MCM in fresh water demand but saving of water could not be materialized even though pipeline project is commissioned. Similarly, inspite of treated water being supplied to TPS at Khaparkheda, there is no reduction in fresh water demand of Khaparkheda TPS.
 - b. He also pointed out that as per the interstate agreement between MS and MP of 1964, 25 TMC water is to be spared to MS in Pench Project and 5 TMC is to be made available out of the regenerated flow. However, 35 TMC water is considered into water budget which is not realistic.
 - c. He pointed out that there is no initiative on the part of NMC for constructing water supply dams.
 - d. He pleaded that due to last year carryover of 122 MCM the situation regarding water supply is under control. He further, alerted that situation will be worst in future.
 - e. He pointed out that even in the present scarcity condition; no campaign for water conservation is organized by the NMC.
- ii. **Adv. S.M. Puranik, the Id. Counsel appearing for the Respondent No.1 - NMC,** pointed out that NMC has carried out massive campaign for water conservation. He further added that they have circulated 44,000 calendars in Loksatta and 35,000 calendars in Sakal Newspaper for generating awareness for water and further submitted that the NMC is seriously campaigning for educating the public at large for conservative use of water in this scarcity period. Adv. Puranik further pointed out that as stated in the Additional Affidavit submitted by the NMC, all efforts are being taken to reduce the losses but it cannot be achieved overnight. NMC has targeted to reduce the losses by the year 2022. However, the definite deadline cannot be given at the moment as it is not in a position to ascertain the extent of expenditure required to incur for the loss reduction.



iii. **Mr. S. S. Gaikwad (Executive Engineer, NMC), appeared in person also for the Respondent No.1 submitted that:**

- a. The work of Survey & Investigation for the proposed dams has been entrusted to WRD. NMC has also deposited necessary amount required for investigation with WRD.
- b. As a result of Water Saving Campaign undertaken by NMC, water use has been reduced by 30 MLD.

iv. **Shri. J. B. Turkhede, the Respondent No.3** clarified that there is increase in the demand of TPS at Khaparkheda, therefore, there is no reduction in fresh water demand inspite of treated water is being supplied to the TPS by NMC.

v. **Shri. Ashish Jaiswal, the Petitioner** admitted that the drinking water has the first priority and as such he has no objection to supplying water for drinking when there is a need. However, he pointed out that despite of the directions given by this Authority, NMC has not submitted the time bound program for construction of reservoirs of its own for water supply. He also stated that it is not clear which Census has been considered by the corporation for arriving at the demand. He further submitted that NMC has not yet declared the deadline for reducing the losses and bringing them within permissible limit. Petitioner further stated that the basis for additional 78 MCM demand has not yet been given by NMC.

He further submitted that the 78 MCM reservations was conditional and NMC had to develop its own source of water supply by the year 2005. He also drawn towards the attention of this Authority's observations that the entitlement of MAHAGENCO needs to be determined by considering specific consumptions decided by this Authority and treated water made available by NMC. He further emphasized that the deadline should be given for bringing the Unaccounted For Water ("UFW" for short) within 15%. He expressed that norms set by this Authority for permissible UFW In Criteria Order dated 22/09/2017 which were finalized after due consultation with the stakeholders, be implemented in its true spirit by NMC.



Interim Directions dt. March 27, 2018

29. Having heard the parties, this Authority recorded its findings and passed following Interim directions issued on March 27, 2018 :

- i. *"This Authority appreciates the prompt action taken by the Respondent No.5 in compliance to the order passed by this Authority on December 18, 2017.*
- ii. *This Authority observed that the Superintending Engineer & Administrator CADA, Nagpur has passed order dated February 20, 2018 without application of mind. This Authority objected strongly on contents of Para 2 of his order in which word 'Sectoral Allocation' is incorrectly used. As per the Section 16 A of the MWRRA (Amendment & Continuance) Act, 2011, only the State Cabinet is competent to decide the Sectoral Allocation. The Superintending Engineer has no authority to decide Sectoral Allocation. Further, the Superintending Engineer has wrongly quoted this authority in Para 2 of his order. This Authority has never given any directions regarding Sectoral Allocation. Authority observed that the Superintending Engineer has no clarity regarding the term 'Allocation' and 'Sectoral Allocation' and without this clarity he has passed the incorrect order. This Authority in its order dated February 8, 2017 has given directions to determine 'Entitlement' and 'Allocation' for the current year.*

This Authority observed that Section 2 (1) (b) of MWRRA Act, 2005 has clearly defined the term 'Allocation' which has altogether different meaning than 'Sectoral Allocation'. The order passed by the Superintending Engineer, is therefore, without application of mind and has gross conceptual and computational errors and he has misquoted this Authority in his order. The Respondent No.5 may take serious note of this.

This Authority has also observed that Superintending Engineer has not considered the industry specific 'Water Use Standards' prescribed by this Authority in Para 7.1 of Order dated September 22, 2017 while fixing the entitlements for the industry.

It is, therefore, directed that the Superintending Engineer to pass correct order for the current water year after considering the statutory provisions of the Acts as well as the Orders passed by this Authority with due application of mind towards the guidelines in G.R. issued by the Government on February 5 and 17, 2018.



- iii. This Authority also observed and pointed out the errors in water budget submitted by the Respondent No.1-NMC. Most of the bulk water users considered in Sr. No.8 of its water budget (60 MLD) are seems covered under per capita norm. Authority clarified that if NMC clearly indicates its industrial water demand by giving industry wise details to Respondent No. 3, it can be considered over and above the per capita norm.*
- iv. It is further directed by this Authority that looking into the misconceptions in the minds of the field officers regarding statutory provisions; Respondent No. 5 should organize a workshop for Superintending Engineers who are expected to grant entitlements and allocations in the true spirit and meaning.*
- v. As prayed in the Petition at prayer No. (e) by the Petitioner, the Respondent No.1-NMC to file its reply as regards to a time bound program for developing alternative drinking water supply sources for NMC as planned in the year 2010.The Affidavit be submitted before 10th April, 2018.*
- vi. The Respondent No.1 & 3 are directed to submit their detail reply with necessary calculations upto April 10, 2018 as regards to the entitlements of various Bulk Entities- Domestic and Industrial sector in the command area.*
- vii. The Respondent No. 3 is also directed to submit his reply upto April 10, 2018 with necessary calculations / details as to why the fresh water demand of Khaparkheda TPS is not reduced inspite of treated sewage water is being supplied by the NMC to this TPS. Respondent No.3 shall also clarify the population considered while calculating additional demand of NMC of 78 MCM.*
- viii. It is also directed that the non potable demand of railways needs to be met from treated water and NMC to submit its response in next date of hearing.*
- ix. The final hearing is scheduled on April 17, 2018 at 2:00 p.m. All the parties shall take necessary steps to complete the pleadings before April 16, 2018. “*



Sixth and final hearing dt. April 17, 2018

30. The final hearing in the matter was undertaken on April 17, 2018 and the parties were given the opportunities to submit the arguments, which were heard at length.
- i. This Authority directed to file written notes of arguments within 4 weeks and Final Order has been reserved till then, which will be displayed on the website of this Authority under due intimation to the parties to the proceedings
 - ii. The parties submitted written notes of arguments in due course of time, though some parties submitted it belatedly, this Authority condoned the delay in submission thereof and accordingly directed to take the written notes of arguments on record.

SUMMERY OF THE ARGUMENTS AS SUBMITTED BY THE PARTIES

31. Adv. Ashish Jaiswal (the Petitioner) :

The gist of the submission of the Petitioner through its original Petition dated September 19, 2017 and its subsequent submissions dated October 24, 2017, January 04, 2018, January 23, 2018, February 02, 2018 and June 07, 2018; and the oral arguments he made is :

- i. The main thrust of the petitioner is on legality of additional reservation of 78 MCM granted to NMC. He strongly argued for declaring this additional reservation as illegal and set it aside. The Petitioner has pointed out that there was provision of 112 MCM of water in the Project Report of the Pench project. However, State Government had given additional reservation of 78 MCM to NMC in the year 1997 on temporary basis with condition that upto the year 2005 NMC should construct its own reservoirs. Another condition was that NMC was to pay an amount of 84.45 crore to WRD towards restoration of curtailment of irrigation facility of 8445 ha. The Petitioner has argued that this additional reservation of 78 MCM is illegal and needs to be set aside. In support of this, he has pressed following arguments before this Authority:
 - a. The additional reservation of 78 MCM was not at all necessary as per standard norms.



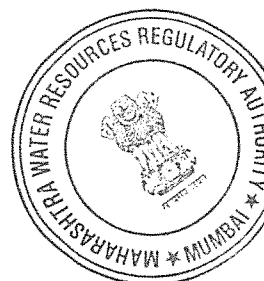
- b. Due to diversion of additional 78 MCM of water, 8445 ha of fertile land is deprived of water.
 - c. This additional reservation was temporary and conditional. The stipulated obligations viz. construction of own sources and payment of Rs. 84.45 crore to WRD towards restoration charges have not been fulfilled by NMC.
 - d. WRD has not renewed the agreement since December, 2016.
 - e. NMC has alternative water sources whereas farmers do not have other alternatives.
 - f. The additional reservation of 78 MCM is encroachment on the rights of the farmers.
- ii. From one side, the population of Nagpur city is increasing day by day and on the other side due to climate change phenomenon, the yield of PPC is reducing. The yield of PPC is also reduced due to construction of Chourai Dam by the MP in its territory and only remedy is to develop alternative sources viz. Rahadi, Kochi, Kanhan, Shihora, Chinchghat, Kolar Barrages for NMC. He further insisted time-bound programme for this. NMC has made unforgiveable negligence in developing its own water sources and illegally encroaching on water rights and livelihood of farmers since the last 21 years. Any further delay in execution of new sources is a threat to the farmers. However, NMC is not giving priority for development of these alternative sources of water in its budget.
 - iii. Even in drought year, NMC is not serious about reducing its consumption. Consequently, the farmers are suffering. He prayed for conducting the audit of water consumption of NMC.
 - iv. The Entitlement and Allocation for the year 2017-18 need to be decided as per the Criteria laid down by this Authority vide its Order dated September 22, 2017.
 - v. NMC should start awareness campaign and avoid wastage of fresh water. NMC should use media like FM Radio, hoardings, social media to make aware citizens regarding use of water efficiently, use of groundwater, use of water obtained through rain water harvesting for non domestic uses and to reduce fresh water consumption. Further, NMC should frame year-wise plan to reduce the UFW and implement it.



- vi. Fresh water should not be supplied to Koradi and Khaparkheda TPS. They should use the treated water as per the Policy of GOI dated January 28, 2016.
- vii. As per provisions in policies and acts, the interest of the farmers need to be protected. The behaviour and attitude of NMC is arbitrary, the rural economy is on the verge of collapsing.
- viii. The NMC is claiming for Sectoral Allocation of 15% on the basis of storage capacity of PPC, ignoring the water share of the MS. NMC still nurtures the attitude that 60 TCM water is available in PPC.

32. Nagpur Municipal Corporation (the Respondent No.1): The gist of the submissions of the Respondent No. 1 is:

- i. The State Government, vide its letter dated March 29, 1965 has approved reservation of 112 MCM for NMC. Thereafter, vide letter dated March 21, 1998, the State government has permitted NMC to use additional 78 MCM of water up to December 2005. Further, the State government has extended the time limit for use of 78 MCM water up to December, 31, 2010. NMC has made huge investment of RS. 550 Crore. on infrastructure, considering this additional sanction of 78 MCM. Hence, if additional sanction of 78 MCM is cancelled the investment will become idle. NMC, through its mayor, has requested the State government vide letter dated November 26, 2009, to waive the demand of RS. 84.45 Crore on the ground that NMC was proposing to lay pipeline from Kamati Khairi reservoir to Mahdula pumping station.
- ii. The Kochi and Jamghat projects are under consideration of the State government and through Jamghat project NMC will get 254.85 MCM of water in future.
- iii. NMC had explored the possibility of developing new sources of water supply and one of the source was constructing a barrage at Rahari . However, Rahari barrage is within the command area of Pench. It is on downstream of Nagpur city. As such, water from this project, would be required to be lifted against the gravity that would have increased cost of energy to NMC and hence the proposal was dropped.
- iv. As per the guidelines of the State government 15 % water is reserved for domestic use. The storage capacity of Totaladoh dam, pick up weir at Kamati Khairi and Khindsi reservoir together is 1262 MCM. The 15%



of this 1262 MCM is 189.3 MCM. Hence, the State government has approved water use of 190 MCM for NMC.

- v. Earlier, WRD was supplying water to NMC from 48.4 km of the Right Bank Canal of the Pench project. The losses in the canal were about 30 %. Hence, earlier WRD had to discharge 271 MCM of water from Kamati Khairi reservoir to supply 190 MCM to NMC. However, NMC has spent RS. 250 Crore in laying pipeline from Kamati Khairi reservoir which has become operational from April 2015. Since, then there is a saving of 81 MCM of water.
- vi. NMC has submitted water budget for the year 2017-18 to WRD as per the norm of 135 lpcd. However, losses in the distribution system are 30%.
- vii. NMC has handed over sewage treatment plant of 130 MLD to MHAGENCO. This has resulted into fresh water saving of 47.45 MCM. Another, 200 MLD plant is being constructed. NMC will supply 150 MLD of water to Khaparkheda and Koradi TPS by the end of this year. The raw water so saved should be given to NMC.
- viii. The distribution losses in the system of NMC are 30% and losses in raw water pumping main, treated water pumping mains and water treatment plant together are 5 %.
- ix. NMC has undertaken 24x7 water supply project and NRW shall be reduced to 25 % upto February 2022. However, NMC has expressed its inability to give time bound program to reduce losses further up to 15% as it requires huge investment.
- x. NMC is supplying potable water to population of 30,96,718, including the floating population of 55,000. NMC has given the estimate of gross water requirement of 294.81 MCM including 35 % losses. Further, considering availability of 83.10 MCM from other surface as well as groundwater sources, NMC has arrived at 211.710 MCM water requirements from PPC. NMC has justified this higher water requirement on following grounds
 - a. The city observes two big gatherings of people on the occasion of Dhamma Chakra Pravartan Din and Tajuddin Baba Dargah;
 - b. Nagpur is a second capital of the State has big floating population;
 - c. In summer season, extra 50 lpcd is required for cooling purpose;



- d. Nagpur has large number of institutes, commercial complexes and hotels;
- e. Nagpur city is emerging as an education hub;
- xi. NMC has quoted the reference of IS 1172: 1993 and claimed that minimum water needs of communities having population more than 1 lakh are 150 to 200 lpcd. NMC has claimed additional water to meet the requirements of non-domestic entities like schools, colleges, hospitals, restaurants, railway stations, railway coach washing centres, bus stops, airport etc.
- xii. In piped networks, corporation has no control over use of water by the consumers.
- xiii. In Indian scenario, order of this Authority to reduce losses to 15 % is unrealistic and difficult to implement. In support of this NMC has given the example of USA where average losses are 16%.
- xiv. NMC is trying to reduce the water losses by creating awareness regarding saving and careful use of water by the citizens. NMC has distributed 67,000 calendars with "Save Water" message. Further, campaigns have been carried out in schools.
- xv. Open wells in the Nagpur city are contaminated and wells in outskirts go dry during summer. If water cut is applied during summer it may lead to law and order situation in Nagpur.
- xvi. NMC has undertaken two projects with the help of WRD for augmentation of city water supply viz. Kolar barrage on Kanhan River and to lift water from Kanhan River.
- xvii. Railway authorities have constructed recycling plants of 0.6 MLD capacity and rain water harvesting structures at 14 locations.
- xviii. Authority should give direction for supply of 180 MCM of water to NMC and not to apply any cut.

33. Collector, Nagpur (Respondent No 2) : Respondent No. 2, the Collector, Nagpur vide his affidavit dated October 10, 2017 has brought the contents in the G.R. of Irrigation Department dated August 10, 2004 to the notice of this Authority and further submitted that the water budget of NMC for the year 2017-18 and entitlements of water will be placed before district level



committee on drinking water reservation from irrigation dams to be held in last week of October, 2017.

34. The Project Officer, Pench Irrigation Management Project, Nagpur (Respondent No. 3): The Project Officer, Pench Irrigation Management Project, Nagpur (The Respondent No. 3) has filed his say through affidavit dated October 18, 2017. The gist of his submission and oral arguments is:

- i. As per the Interstate Agreement, signed between the State of Maharashtra (MS) and Madhya Pradesh (MP) in 1964, 60 TMC of water is available at Totladoh dam site. The share of MS and MP is 35 TMC and 25 TMC respectively. In addition to this, Maharashtra will get additional 5 TMC as regeneration from use of water in MP. The agreement also provides for minimum 20 TMC use by MP in lean year.
- ii. The yield at Totladoh site has declined due to environmental changes and construction of various projects in the territory of MP.
- iii. The drinking water demand of NMC has increased due to population increase. Irrigation Department, Government of Maharashtra, vide order dated March 21, 1998 approved temporary additional reservation of 78 MCM for NMC, up to year 2005, with condition that NMC shall develop their independent source of water up to year 2005. However, NMC has not developed any alternative source.
- iv. Temporary reservation of 78 MCM of water is converted into permanent reservation vide the order of the State Government dated February 12, 2008 and subsequent order of the Chief Engineer dated December 27, 2008 on following conditions.
 - a. Agreement shall be signed within 90 days.
 - b. Permission for water use shall be in effect only after signing of an agreement.
 - c. NMC shall pay Rs. 8445 lakh to WRD on account of reduction in command area of 8445 ha.
 - d. Temporary reservation of 78 MCM will get cancelled as and when an agreement is signed.



- v. However, in the meeting dated August 25, 2010 Hon. Minister for Water Resources Government of Maharashtra has given the orders to continue the temporary reservation of 78 MCM until further orders.
- vi. In spite of repeated requests NMC has not paid RS. 8445 Lacks.
- vii. Agreement for additional water use of 50 MCM was signed between NMC and the Respondent no. 3 on January 1, 2011. The time limit of this agreement was upto December 31, 2016. Thereafter, it has not been renewed.
- viii. Since, 2000-2001 to this year irrigation water supply was not reduced due to supply for NMC.

35. Chief Engineer WRD Nagpur, Respondent No. 4 : The gist of the submissions and oral arguments made by the Respondent No. 4 is:

- i. Meeting of the committee, constituted under G.R. dated August 10, 2004 took place on October 30, 2017 under the chairmanship of Hon. Guardian Minister of Nagpur district. The committee considered the allocation as per G.R. dated November 17, 2016.
- ii. As per the section 31B of the MWRRA (Amendment and Continuance) Act 2011 the allocations made prior to September 17, 2010 is to continue without fresh permission.
- iii. As per the G.R. dated November 17, 2016, the water reservations of non-irrigation sector are intact. This G.R. can mean to be direction under section 23 of the Act.
- iv. The Respondent No. 3,4,5 are confused about the authoritativeness of the decision in this regard.
- v. The entitlement and allocation proposal received from Respondent NO.3 is forwarded to Executive Director.
- vi. Chief Engineer is the regional head. Decision of entitlement vests in Secretary (WRM & CAD)
- vii. The minutes of the meeting dated October 30, 2017, annexed to the affidavit of Respondent No. 4 indicates that the reservation of non-irrigation uses has been kept intact by the committee, as per the G.R. dated November 17, 2016.



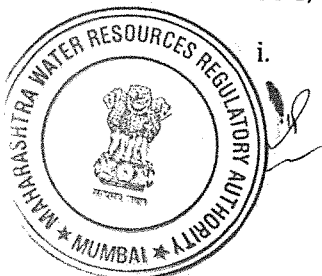
36. Deputy Secretary WRD on behalf of Respondent No. 5 : Deputy Secretary on behalf of Respondent No. 5 filed say vide affidavit dated March 14, 2018. The gist of the submission is:

- i. As per the Rules of Business framed under Article 166 (3) of the Constitution of India, "In-charge Minister" as appointed by Hon'ble Governor is the head of the concerned Government Department in respect of matters pertaining to his Department. Further, as per the said Rules such minister is competent to dispose of all matters belonging to his Department. Hence, decision taken by Hon'ble Minister on August 25, 2010, in respect of the temporary reservation to NMC until further orders, has to be considered as decision of the "State Government".
- ii. The provision in Section 31B of the MWRRA (Amendment & Continuance Act) 2011, which is a "non obstante" and this section has overriding effect.
- iii. As per Section 31B of the MWRRA (Amendment & Continuance) Act 2011, any person or Water Use 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 September 17, 2010, being the date of commencement of Section 1 of MWRRA (Amendment & Continuance) Act 2011, shall be deemed to be have been granted in accordance with the provisions of the said Act of 2011 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. Government Resolution dated August 10, 2004 has been reviewed in light of provision in Criteria issued by this Authority on September 22, 2017 & necessary corrigendum has been issued on February 17, 2018.

37. Data Submitted by the Respondent No. 1- NMC

Water Budget for 2017-18 : Respondent no.1 submitted water budget of 197.33 MCM for the year 2017-18 vide letter dated October 12, 2017 from PPC, the basis of which is as under.

- i. Population of Nagpur as 28,69,100



- ii. Supply at consumer tap @ 135 lpcd.
- iii. Peak season additional demand @ 50 lpcd for the period 15th March to 15th June.
- iv. Additional fire demand of 6.36 MLD
- v. Additional Bulk Water Demand of 60 MLD for Railway, Hospitals & Institutes.
- vi. Additional Water Supply of 4.5 MLD for MES Kamati.
- vii. Additional Water Supply of 0.9 MLD for CBK Kamati.
- viii. Total losses 35% (30 % distribution losses + 5% losses in Treatment plant)
- ix. Water availability of 58 MCM from Kanhan River.
- x. Water availability of 5.84 MCM from Gorewada Lake.
- xi. Water Availability from of 5.44 MCM from 4967 public bore wells.
- xii. Water Availability from of 2.22 MCM from public open wells.
- xiii. Water Availability from of 4.56 MCM from 25,000 private open wells.

38. Non-irrigation Entitlements and Allocations from PPC approved by Superintending Engineer & Administrative, CADA, Nagpur vide letter dated April 10, 2018:

Bulk Water User	Demand (MCM)	Entitlement (MCM)	Allocation as per MWRRA Norm (MCM)
NMC (drinking)	170.97	125.97	118.05
NMC (Industrial)	26.93	22.93	21.01
Khaparkheda TPS (Industrial)	58.66	70.15	64.27
Khaparkheda TPS (Drinking)	3.34	3.34	3.19
Kalameshwar Nagar Parishad	1.02	1.02	0.95
Parshivawni Water Supply	0.47	0.47	0.44
Fishery Center Nawegaon Khairi	1.80	1.80	1.65

39. Report of Chief Auditor Water & Irrigation Maharashtra State dated

April 24, 2017: The Chief Auditor Water & Irrigation Maharashtra State has audited the water supply of NMC for the period 1 November, 2016 to 31, October, 2017. The important observations related to this petition are :

- i. Total Consumption of water: 251.866 MCM.
- ii. Population (2017): 28,69,100.
- iii. Per capita Consumption including distribution losses: 220 lpcd.
- iv. Non-Revenue Water (NRW) : 57.64 %.
- v. Commercial and Industrial Water Use : 22.03 MCM (8.74 %)
- vi. Waste Water / Sewage being generated: 562 MLD.
- vii. Installed Capacity of Sewage Treatment Plants(STP) : 200 MLD
- viii. Capacity of on-going STP : 130 MLD.

40. 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 Bacho 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.

41. 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.



42. Relevant Provisions in MWRRA Act, 2005 and its subsequent amendments

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 31 B :

" 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. "


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43. 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

Sr. No.	Category	Norm (lpcd)
(1)	(2)	(3)
4	<i>Municipal corporations (having population less than 50 lakh)</i>	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 (2nd& 3rd).



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. "

"7. CRITERIA FOR INDUSTRIAL WATER USE

7.1. The water use standards for various categories of industries shall be as under;

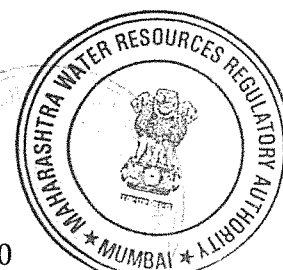
Table No 2

Sr. No.	Name of Industry	Category	Water Use Standards
(1)	(2)	(3)	(4)
(i)	Power	Thermal Power Station	3.5 cum / MWh for old TPS & 2.5 cum/MWh for TPS installed after January 1, 2017 *.

* Note 1- As per revised Electricity Policy of GoI dated January 28, 2016, the Thermal Power Station (TPS) located within 50 km radius of STP of local body, shall mandatorily use treated sewage water. RBA shall ensure that such TPS switches over to treated sewage wherever possible as per the policy."

"8. SHARING WATER DEFICIT

8.1 As per the State Water Policy, the domestic water use for drinking, cooking, hygiene and sanitation including livestock has first priority. However, natural water availability is extremely diverse across the various



river basins and sub-basins of the state. Annual variations are approximately within the range of 30%. The annual fluctuations in rainfall and consequent water deficit in the reservoirs need to be addressed. During the deficit years, the DBWUs will also have to share some deficit. However, while doing so, the basic needs for health & hygiene should not be lost sight of. Considering this aspect, allocation for DBWUs from the reservoir in the deficit year shall be governed by following formula;

$$AD \text{ (in percentage)} = 70 + [(U \times 30) / 100]$$

Where $U = \frac{\text{(Reservoir Storage on 15th October + Kharif Utilisation)} \times 100}{\text{Design Annual Utilization from the Reservoir}}$

Applicable cut in % = 100 - AD

Note - In case the live storage in the reservoir on 15th October is less than or equal to total domestic water entitlements from the reservoir for the balance year, all available water shall be kept reserved for domestic sector.

Illustration :- If the live storage as on 15th October plus the Kharif utilization already done is 90% i.e. deficit in water availability is 10%, the deficit to be shared by domestic sector shall be calculated as under;

$$AD = 70 + [(90 \times 30) / 100] = 97\%$$

$$\text{Applicable cut} = 100 - 97 = 3\%$$

So Bulk Water User in Sr. No. 4 in Table No 1 will get at

$$135 \times 97\% = 131 \text{ lpcd}$$

8.2 Allocation for IBWU from the reservoir in the deficit year shall be governed by the following formula;

$$AI \text{ (in percentage)} = 60 + [(U \times 40) / 100]$$

Where $U = \frac{\text{(Reservoir Storage on 15th October + Kharif Utilisation)} \times 100}{\text{Design Annual Utilization from the Reservoir}}$



Applicable cut in % = 100 - AI."

"11. LONG TERM STRATEGY:

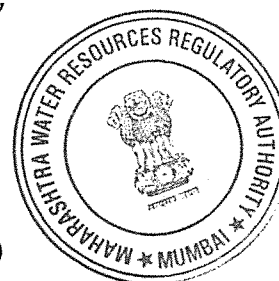
Water is a critical resource which needs to be managed with long term perspective. Freshwater resource is limited. Further, in order to avoid conflict of interests arising among various water user groups, freshwater demands of various user groups will have to be managed within their sectoral allocations. 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.*

11.2 Industrial Sector:

- a) Mandatory guidelines stipulated by MoEF/CPCB/MPCB whichever is most stringent, regarding effluent discharge should be strictly followed.*



b) Reduction in consumption by optimizing the process, modifying the equipments and creating awareness amongst the workers."

Important Relevant Provision in Prevailing Government Resolutions

44. Government Resolution Dated January 21,2003:

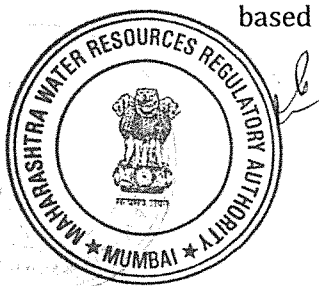
- i. Para 9.0 of the said G.R. has constituted committee under the chairmanship of District Collector for the co-ordination and monitoring of drinking water supply in rural as well as urban areas of the district.
- ii. Para 12.0 of the said G.R. has constituted a committee under the chairmanship of the District Collector for keeping reservations for the purpose of drinking water. The contents of the said paragraph indicate that the mandate of the committee is limited to reservation of water for areas which are deprived of drinking water, due to total depletion of the local water resource, due to scarcity conditions.
- iii. Para 5.2 of the said G.R. provides for procedure to be adopted check list and scrutiny procedure for the proposals of water supply proposals. It clearly indicates that the drinking water demands should be placed for three stages e.g. up to year 2011, 2021,2031. It also in stipulates that the said water demand shall be based on population and per capita consumption norms.

45. Government Resolution Dated August 10, 2004:

The State Government vide G.R. dated August 10, 2004 has revised the composition of the committee constituted earlier vide G.R. dated January 21, 2003. The committee, which was constituted under the chairmanship of District Collector, was reconstituted under the chairmanship of Guardian Minister of the District.

The paragraph 2.1 of the said G.R. provides for reservation of drinking water in scarcity year, in nearby reservoirs, for areas whose local water sources have been totally depleted.

However, in paragraph 2.2 of the said G.R. also provides for water population based water supply norms in normal year.



46. Government Resolution Dated November 17, 2016:

- i. Vide G. R. dated November 17, 2016, the government has declared sectoral allocation of water for different water use sectors from completed, ongoing and future irrigation projects under provision in section 16A of the Act as under:
 - a. Drinking Water : 15 %
 - b. Industrial : 10%
 - c. Irrigation : 75%
- ii. The other important provisions in the said G.R. are :
 - a. non-irrigation reservations given up to the date of G.R. shall be intact.
 - b. The sectoral allocation shall be inclusive of proportionate evaporation.
 - c. In deficit years, deficit shall be shared in the proportion of water use; provided further that the maximum curtailment for domestic and industrial sectors shall be limited to 25% and 50% respectively.
 - d. Sectoral allocation shall be reviewed after minimum period of 3 years.

47. Government Resolution Dated February, 5, 2018:

Government has issued directions, vide G. R. dated February 5, 2018, regarding sharing of deficit of water, in deficit years, amongst irrigation and non-irrigation sectors, as per the criteria determined by this Authority on September 22, 2017. The State Government has given the responsibility of sharing of water deficit amongst the different water use sectors on Member Secretary of Canal Advisory Committee of concerned project.

48. Government Resolution Dated February, 17, 2018:

Vide G. R. dated February 17, 2018, the State Government has revised the water supply norms provided in the paragraph 2.1 and 2.2 of the earlier G.R. dated August 10, 2004. Government has directed to use the provisions/criteria/ norms determined by the authority vide its order dated September 22, 2017 for ascertaining the demand of water.



49. FRAMING OF ISSUES:

This Authority having considered the nature of the case, the contentions made in the submissions of the parties, the documents placed on record as well as data submitted, following issues are arises for consideration:

- i. Whether this Authority has jurisdiction to adjudicate the present dispute? AND Whether the Petitioner has, the locus standi in filing this Petition before this Authority?*
- ii. Whether additional reservation of 78 MCM granted by WRD to NMC is legal and has subsistence at moment?*
- iii. Whether NMC has prepared Water Budget consistent with the Criteria determined by this Authority under Section 11(a) and 11(q) of the Act?*
- iv. Whether the justification given by the Respondent No. 1 in support of higher water demand and higher distribution losses are acceptable?*
- v. Whether S. E. CADA has sanctioned the Entitlement, Allocation and Quota of Water to Respondent No. 1, following the Criteria determined by this Authority, under Section 11(a) and 11(q) of the Act*
- vi. Whether it is necessary to reserve remaining water for agriculture?*
- vii. Whether it is necessary to develop alternative water sources for NMC in time bound manner?*
- viii. Whether the provisions in the prevailing Government Resolutions regarding water reservations for non-irrigation uses need further refinements/clarity?*
- ix. Whether it is necessary to initiate action against Respondent No. 3, 4 and the Superintending Engineer, CADA Nagpur under section 26 of the Act.*



FINDINGS OF THE AUTHORITY

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

i. Whether this Authority has jurisdiction to adjudicate the present dispute? AND Whether the Petitioner has, the locus standi in filing this Petition before this Authority?

The present Petition has been preferred by the Petitioner in continuation of his earlier public interest litigation pursued before the Hon'ble High Court Bench at Nagpur and having got the liberty from Hon'ble High Court to approach this Hon'ble Authority, he approached this Authority by way of Petition for the cause involving larger public interest. The matter is concerned with water entitlements from Pench Project Complex, which can be adjudicated as per relevant provisions in MWRRA, Act 2005.

Thus, the answer to both the issues is in the affirmative.

ii. Whether additional reservation of 78 MCM granted by WRD to NMC is legal and has subsistence at moment?

The Petitioner argued that the additional reservation of 78 MCM granted by the State Government to NMC is illegal on following grounds:

- a. Irrigation Department, Government of Maharashtra, vide order dated March 21, 1998 approved temporary additional reservation of 78 MCM for NMC, up to year 2005, with condition that NMC shall develop its independent source of water upto year 2005. However, NMC has not developed any alternative source.
- b. NMC has not paid Rs. 8445 lakh to WRD on account of reduction in command area of 8445 ha, which was a prerequisite for the reservation.
- c. WRD has not renewed the agreement for 78 MCM of water.

It is a fact that NMC has not developed any alternative source. Further, in spite of repeated requests from WRD, NMC has not paid Rs. 8445 lakh towards restoration charges. No valid agreement exists as on date between NMC and WRD.



Say of the Respondent No. 5 in this regard is :

- (i) The provisions in Section 31B of the MWRRA (Amendment & Continuance Act) 2011 are "non obstante" & has overriding effect.
- (ii) Hence the reservation of 78 MCM is continuing.

The Section 31(B) of the Act is;

31(B) " 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. "

The additional reservation of 78 MCM was granted to Respondent No. 1 - NMC on March 21, 1998, was up to year 2005. Further, this temporary reservation of 78 MCM of water is converted into permanent reservation vide the order of the State Government dated February 12, 2008 and subsequent order of the Chief Engineer dated December 27, 2008. Although, these sanctions were conditional and conditions are yet to be satisfied, these sanctions were accorded prior to the September 17, 2010, being the date of commencement of Section 1 of MWRRA (Amendment & Continuance) Act 2011, this Authority, considering the provisions in Section 31B of MWRRA (Amendment & Continuance Act) 2011, is of the opinion that additional reservation of 78 MCM is legal and intact as on today and can't be set aside.

This Authority is also of opinion that water reservations are granted to the local bodies for their water supply schemes, considering



futuristic populations and stipulated norms. Hence, the reservations so granted cannot be considered as water rights in every year. It is the obligation of the local body to keep its water consumptions within stipulated population based norms. Further, as per the provisions in the State Water Policy and the Act, in the water deficit years, deficit should be shared by all the water use sectors.

iii. Whether NMC has prepared Water Budget consistent with the Criteria determined by this Authority under Section 11(a) and 11(q) of the Act?

Clause 6.2(ii) of the criteria issued by this Authority, on September 22, 2017 clearly mention that Domestic Bulk Water Users shall submit the water budget, prepared on the basis of criteria evolved and conditions laid down by this Authority. NMC has submitted the water budget for the year 2017-18 to WRD vide letter dated October 12, 2017. On scrutiny of this water budget it is observed the said budget deviates from these criteria. An attempt has been made to match the requirement with total reservation granted i.e. 190 MCUM. The major deviations are:

- a. In addition to the norm of 135 lpcd , additional 50 lpcd requirement is proposed for 120 days in summer for the entire population, which has no base.
- b. Total system losses considered are 35 %, whereas the criteria allow maximum upto 15%.
- c. Most of the bulk water consumers are covered under per capita norm. Thus, for some population, demand considered is twice.
- d. In spite of deficit year, demand placed is without any deficit sharing.

Project Report of Pench Phase III (1998) prepared by Maharashtra Jivan Pradhikaran (MJP) considers water at consumption rate of 120 lpcd after accounting for 20% system losses.

Thus, the water budget submitted by the Respondent No. 1 - NMC is neither consistent with the Criteria nor with the project report.

Hence, the answer to this issue is in the negative.



iv. Whether the justification given by the Respondent No. 1 in support of higher water demand and higher distribution losses are acceptable?

Considering the provisions in Paragraph 40 and the provisions in the State Water Policy, Respondent No. 1 and the State Government are duty bound to supply adequate drinking water to its citizens on priority. However, these provisions cannot be construed as right of Respondent No. 1 to use water without following any norms.

This Authority, under the provisions of Section 11(a) and 11(q) of the Act has determined the Criteria for distribution of entitlements which stipulates reasonable water use norms. As per these norms the Respondent No. 1 is entitled to get water at 135 lpcd in normal year and additional 15% of water towards permissible distribution losses. Further, as per clause 2.8 of the policy and clause 8 of the Criteria, the deficit of water in deficit years, is to be shared by all water use sectors.

The Respondent No. 1 - NMC, for the population of 30,96,718 has given the gross water budget of 265.53 MCM for domestic purpose and 29.28 MCM for non-domestic purposes. This includes 35% distribution losses. The gross water use thus considered in the water budget including distribution losses is about 261 lpcd and net water use excluding losses is about 193 lpcd.

Respondent No. 1 has given justification for its higher water demand and has also argued that the norms stipulated by this Authority are on lower side. This defence of the Respondent No. 1 is not sustainable due to following facts;

- a. This Authority, has determined the Criteria after extensive consultation with various line departments of the State Government, municipal corporations, NGOs and experts in water sector and are rational.
- b. Note (iii) below Table No. 1 of the Criteria which is also supported by note (iii) below Table No. 2.1 in the Water Supply and Treatment manual published by Central Public Health and Environmental Engineering Organization, New Delhi in 1999, (CPHEEO Manual) clarifies that the norms provided are inclusive of requirement of water for commercial, institutional and minor industries.



- c. Not only the demand but also the supply side constraints need to be considered.
- d. The excess use by the Respondent No. 1, deprives the farmers from their legitimate entitlements of water.

Thus this Authority is of the view that the demand of Respondent No. 1 - NMC is excessive, even after giving due consideration to city specific reasons. There is a large scope for reducing the water use by resorting to measures like demand side management and leakage control for which the Respondent No. 1 - NMC is duty bound.

Thus, the answer to this issue is in the negative.

v. *Whether S. E. CADA has sanctioned the Entitlement, Allocation and Quota of Water to NMC, following the Criteria determined by this Authority, under Section 11(a) and 11(q) of the Act?*

S.E. CADA Nagpur, initially vide his order dated February 20, 2018 has declared entitlement and allocation for the year 2017 to NMC. However, this order had both conceptual and mathematical errors.

Subsequently on April 10, 2018, S.E. CADA Nagpur passed the fresh order. The quota sanctioned to NMC, by this order, for the year 2017-18 is 139.03 MCUM, which includes 118.05 MCUM for domestic use and 21.01 MCUM for industrial use.

After scrutiny of both the orders it is seen that there is a variation in design utilisation considered while calculating the allocation percentages. In order dated February 20, 2018 design utilisation considered is 965 MCUM whereas in subsequent order dated April 10, 2018 design utilisation considered for calculation of allocation percentage is 708 MCUM. Both of these figures are not matching with the design utilisation figure of 1087 MCUM mentioned in the annexure to affidavit filed by the Respondent No. 3 on October 18, 2017.

It is also observed from the said order that S.E. CADA Nagpur has no clarity about Entitlement, allocation and Quota. He has incorrectly used the word "allocation" for "Quota".

Hence, the answer to this issue is partly in the negative.



vi. Whether it is necessary to reserve water for agriculture?

The year 2017 was a lean year. The water available in PPC was less than 40% on 15th October. The Respondent No. 3 has given one Kharif rotation to the farmers of PPC and released about 200 MCM of water.

Right of access to clean water is the fundamental right of every citizen and the State Government is duty bound to provide adequate water for drinking. Further, considering storage provision in PPC, this Authority is of view that adequate water was not available for rotation in Rabi season. The balance water if any shall be kept as a carryover for the next year as similar situation may repeat in next year also.

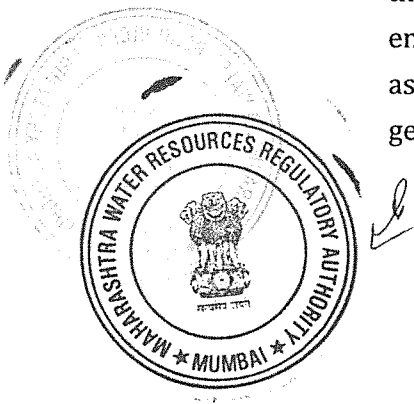
However, in future the Respondent No. 3, 4 and 5 shall allocate the quota of water to different water use sectors as per the entitlements and allocations.

Hence, the answer to this issue is in the negative.

vii. Whether it is necessary to develop alternative water sources for NMC in time bound manner?

As per the interstate agreement between MS and MP, signed on March 8, 1964 at Bhopal, the approximate run off from the catchment upto Totladoah dam site is 60 TMC. Out of this 60 TMC, the MP is allowed to utilise 35 TMC in its territory leaving behind 25 TMC for Pench Hydro Project. There will, however, be a certain amount of return flow on account of regeneration from irrigation in MP. Inclusive of this return flow, about 30 TMC of yield has been considered for the design of Pench Hydro Project.

The MP has developed their projects in phases. Although, 35 TMC of water was allotted to MP, their actual utilisation was comparatively less in earlier days. The balance water from the share of MP was available for use in PPC and the State of Maharashtra was enjoying the benefits of the same. However, now MP has constructed projects for utilisation of entire water of its share. Consequently, yield in PPC has been reduced as compared to earlier years. Henceforth, Maharashtra is not likely to get more water than its own share.



Although, the additional reservation of 78 MCUM given to NMC is legally protected by Section 31 (B) of the MWRRA (Amendment & Continuance Act) 2011, physically it is not sustainable without curtailing the entitlements of irrigation sector.

Almost entire irrigation command area of PPC has been delineated under MMISF Act. Hence, RBA & the State Government have an obligation to deliver water to the Water Users Associations in the command as per their entitlements.

Hence, this Authority is of opinion that, it is very essential to develop alternative water sources for NMC on war footing to cater for growing water demands of the city. In fact, negligence shown so far, in developing alternative sources has caused present grave situation.

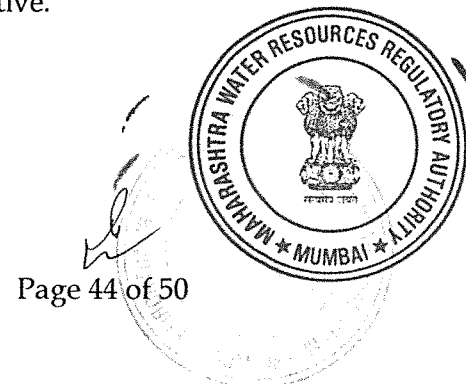
As regards to development of alternative source in the form of Rahari barrage, the argument of the NMC is:

“Rahari barrage is within the command area of Pench. It is on downstream of Nagpur city. As such, water from this project, would be required to be lifted against the gravity that would have increased cost of energy to NMC and hence the proposal was dropped.”

In the State of Maharashtra, price of water is set much below it's cost, to make it affordable to economically weaker sections of the society. The prevailing State tariff policy is neither to recover the returns on infrastructural investments nor its depreciation. Tariff is targeted only to recover operation and maintenance. Further, domestic and agricultural water charges are cross subsidised by industrial water users. Thus, domestic water tariff is much below its economic cost and value.

Hence, the above justification of the NMC regarding their decision not to develop alternative water source in the form of Rahari barrage is not acceptable.

In light of above, the answer to this issue is in the affirmative.



viii. Whether the provisions in the prevailing Government Resolutions regarding water reservations for non-irrigation uses need further refinements/clarity?

This Authority from the submissions of the Petitioners and Respondents has realised that there is confusion on following issues due to lack of clarity:

a. "Reservation" and "Entitlement" are being used as synonymous terms.

Authority is of the view that the reservation to the water use entity is only the letter of support for investment to be made on the water supply scheme or the industry. It cannot be the water right of the water use entity in all the years.

Reservations are granted to the domestic water supply schemes considering futuristic population in next 25 to 30 years. Hence, water use entity cannot go on claiming the entire quantity of water till its population grows to the level considered for reservation. The entitlement will increase gradually as the population grows.

However, due to clarity in guidelines, the water use entities are claiming the entire quantity of water for which they have been granted the reservation. In some cases, Water Resources Department, is also supplying water without taking into consideration the existing population. Due to this the urban population has become habitual for excessive water use.

The Act has given the legal water right to the water user in the form of water entitlement.

Hence, it is necessary to give clarification regarding the significance of the term "water reservation" in continuation of the earlier G. R. issued in relation to water reservation

The authorities, competent to grant the water reservations, can also give following clarification in the letter, of granting the water reservation;

"This reservation is only the letter of support for the water supply scheme or the industry as the case may be. Actual quantity of water



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that will be supplied every year shall be governed by *entitlement* granted to the water user entity by the River Basin Agency based on the population and the reasonable use norm decided by this Authority and the yearly *allocation* declared by the prescribed Authority on the basis of reservoir contents of the year and shall be subjected to various provisions in the agreement that will be signed by the water user entity with River basin Agency”.

b. Jurisdiction of the District Water Reservation Committee constituted under paragraph 12 of the G. R. dated January 21, 2003 and reconstituted thereafter vide G.R. dated August 10, 2004.

Authority has observed that there exists confusion amongst the field officer regarding the jurisdiction of the District Level Water Reservation Committee. Such committees are also taking decisions in respect of Bulk Water Users, which have been granted permanent reservations and entitlements under the provisions of the Act.

This Authority, under the provisions of the Act has determined the Criteria for granting the water entitlements to the non-irrigation water use entities vide its order dated September 22, 2017. It is now legally binding on the RBA to follow these Criteria. If the District Level Water Reservation Committee takes decision which contradicts the Criteria determined by this Authority, the field officers are confused about the authoritativeness. Respondent No. 4, the Chief Engineer, WRD Nagpur in his affidavit dated February 1, 2018, has expressed the similar concerns.

As the delivery of quota of water to the water user entity, to whom entitlement is granted, is legally binding on the officers of the WRD, the jurisdiction of the District Level Water Reservation Committee, in regard to determining the reservations in the water resources projects, can be limited to contingent reservations only, required in scarcity conditions, to cater for the water requirements of that population, whose water supply source is fully depleted due to the scarcity, as stipulated in the paragraph 12 of the G.R. dated January 21, 2003.



In addition to this, the District Level Committee may ensure that the adequate water is being kept reserved in the reservoirs, for delivery of quota entitled to the Domestic Bulk Water Use Entities to whom permanent reservations and entitlements have been granted, following the criteria determined by this Authority. Authority is of the opinion that so as to avoid contradictory decisions, District Level Water Reservation Committee, should not preferably; determine the quota, for permanent entitlement holders.

The State Government has already issued an amendment to G.R. dated August 10, 2004 vide G.R. dated February 17, 2018. However, a fresh consolidated G.R., giving clarity to all the above issues if issued, will avoid the field level confusions.

c. Basis for applying Sectoral Allocation :

The State Government has issued G.R. regarding Sectoral Allocation on November 17, 2016. This G.R. is silent about whether the Sectoral Allocation is to be applied to storage capacity of the reservoir or to the planned annual utilisation. Respondent No. 1 , in support of its arguments, has calculated the Sectoral Allocation on the basis of total live storage capacity of PPC. Authority is of the opinion that the Sectoral Allocations need to be calculated based on planned annual utilisation.

In light of above, the answer to this issue is in the affirmative.

ix. Whether it is necessary to initiate action against Respondent No. 3, 4 and the Superintending Engineer, CADA Nagpur under section 26 of the Act?

Show cause notices were issued by this Authority under section 26 of the Act on January 4, 2018 to Respondent No. 3, 4 & the Superintending Engineer, CADA Nagpur for non-compliance of the interim orders issued by this Authority.

Concerned officers appeared before this Authority and submitted the action taken reports. Respondent No. 3 submitted his compliance with supporting documents on January 12, 2018 and March 12, 2018. Respondent no.4 filed affidavit in compliance on February 1, 2018 and



Superintending Engineer CADA Nagpur filed his submission on March 12, 2018.

On scrutiny of the compliance submitted, this Authority is of the opinion that as most of its orders are compiled with it is now not necessary to initiate action under section 26 of the Act against these officers.

Thus, the answer to above issue is in the negative.

51. We record our appreciation for co-operation rendered by the petitioner, the Counsels representing the parties and the parties impleading in person.

52. **FINAL ORDERS / DIRECTIONS :**

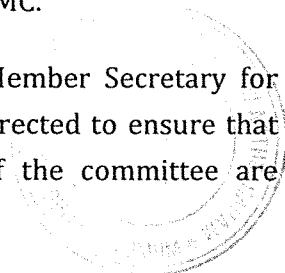
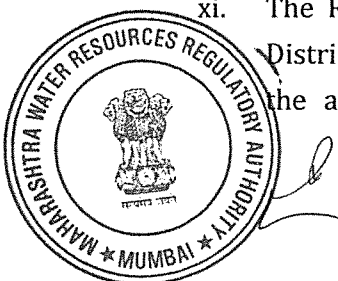
Having heard the parties to the litigation, perusing documents as well as data on records, submissions made by the parties and having answered the issues as above, this Authority hereby directs as under:

- i. As the additional reservation of 78 MCM was granted to Respondent No. 1 - NMC prior to the September 17, 2010, being the date of commencement of Section 1 of MWRRA (Amendment & Continuation) Act 2011, it is intact as on today, as per the provisions in section 31B of the MWRRA (Amendment & Continuation) Act 2011 and hence can't be set aside.
- ii. Respondent No. 1 shall restrict its water budget strictly within the reasonable use norms prescribed by this Authority by an order issued on September 22, 2017 under section 11(a) & 11(q) of the MWRRA Act.
- iii. Respondent No. 3 & 4 shall review the design utilization of the PPC and appropriate figure shall be used for calculating the allocation percentage.
- iv. The Respondent No. 1 & 5 are duty bound to supply norm based drinking water to its citizens. Also the Respondent No. 3, 4 & 5 have obligation to deliver water to the Water Users Associations in the command area of PPC to whom entitlements have been given under MMISF Act, 2005. Hence, alternative water sources for NMC shall be



developed in time bound manner by the Respondent No.1 and the Respondent No. 5.

- v. Respondent No. 1 - NMC must strictly implement the long term strategy provided by this Authority in clause 11 of the criteria dated September 22, 2017 and brings the water consumption and losses within stipulated norms.
- vi. Respondent No. 1 - NMC is further directed to carry out the accurate assessment of groundwater potential with the help of Groundwater Survey & Development Agency, Pune and Central Groundwater Board office at Nagpur and plan augmentation of the water supply with groundwater, storm water as well as ponds/reservoirs/tanks available within the Nagpur city area.
- vii. Respondent No. 1 - NMC must undertake measures on war footing, to reduce the distribution losses. A time bound program shall be formulated by Respondent No. 1, within a months' time and shall be implemented till the percentage of distribution losses are reduced to limit prescribed in the Criteria. The time bound program and the annual report regarding achievements of targets shall be submitted to this Authority and shall also be put in public domain.
- viii. Respondent No. 1 shall not supply any fresh water to Railway Authorities for non-potable use.
- ix. Respondent No. 5 shall issue the necessary amendments/clarifications to the relevant G.R.s taking into consideration the findings of this Authority, mentioned in paragraph 50 (vi) of this order.
- x. S. E. CADA Nagpur, under the provisions of section 11(j) of the Act and considering reduced yield in PPC, shall review and reduce the entitlements given to Koradi, Khapakheda Thermal Power Plant in phased manner, due to concerns about the sustainability of allocation, and considering that these demands can alternatively be satisfied from the treated effluent from the Respondent No. 1 - NMC.
- xi. The Respondent No.3 – Collector Nagpur and Member Secretary for District Level Water Reservation Committee is directed to ensure that the agenda notes prepared for the meeting of the committee are




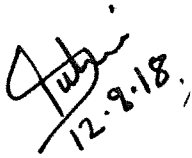
consistent with the directions issued by the Water Resources Department vide G.R. dated February 17, 2018 and Criteria issued by this Authority on September 22, 2017.

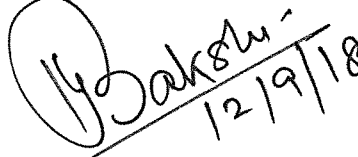
- xii. The show cause notices issued by this Authority to the Respondent No. 3, 4 and the Superintending Engineer, CADA Nagpur under section 26 of the Act on January 4, 2018 are hereby withdrawn with warning to obey the orders of this Authority in its true spirit in reasonable time. Though, the Superintending Engineer is now declared by the State Government as an officer responsible to sanction the quota of water to non-irrigation water use entities, respondent no. 4, as a Head of the Department can't avoid his administrative responsibilities. The Respondent No. 4 is expected to supervise the role of its subordinates and guide them in carrying out their responsibilities. Superintending Engineer CADA Nagpur, is directed to review and declare the quota strictly as per the Criteria determined by this Authority under section 11(a) and 11(q) of the Act.
- xiii. The Respondents shall submit the compliance of directions issued herein above within three months from the date of issue of this Order.
- xiv. List it for review of the compliance Report on December 20, 2018 at 3:00 PM

The Petition is accordingly disposed of with no costs.

Delivered on September 12, 2018.


12.09.2018
(Vinod J. Tiwari)
Member (Law)


12.8.18.
(V.M. Kulkarni)
Member (WR Engg.)


12/19/18
(K. P. Bakshi)
Chairman

