

महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

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

Maharashtra Water Resources Regulatory Authority

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

File No. MWRRRA/2018/Legal/ Case No. 17(2018)/349

Date : 06/05/2019

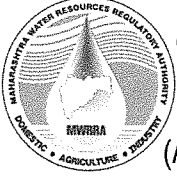
Petition filed by Dr. Sanjay Lakhe Patil, Jalna against SE, CADA, Nashik's letter about not releasing water in Jayakwadi dam at Paithan from Upper Dam viz. Gangapur & Palkhed - Case No. 17 of 2018.

Please find herewith a copy of MWRRRA Order No. 04/2019 dated 06/05/2019 in the above matter.

(Rasik M. Chauhan)
Secretary

Copy for information & necessary action to :-

1. Dr. Sanjay Lakhe Patil, "Shrishail", Opposite Jalna Co. Op. Sugar Mill, A/p Ramnagar, Taluka & District Jalna - 431213 (Petitioner).
2. Hon'ble Minister, Water Resource Department, Mantralaya, Madam Kama Road, Mumbai - 400032(Respondent No. 1)
3. Secretary (WRM & CAD), Water Resource Department, Mantralaya, Madam Kama Road, Mumbai - 400032. (Respondent No. 2)
4. Executive Director, Godavari Marathwada Irrigation Development Corporation, 1st floor, Sinchan Bhavan, Jalna Road, Aurangabad-431 005 (Respondent No. 3)
5. Chief Engineer, Water Resources Department, North Maharashtra Region, Sinchan Bhavan, Trimbak Raod, Nashik - 422 002 (Respondent No. 4)
6. Superintending Engineer & Administrator, Command Area Development Authority, Sinchan Bhavan, Trimbak Raod, Nashik - 422 002 (Respondent No. 5)



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

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Maharashtra Water Resources Regulatory Authority

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

ORDER No. 04/2019

Petition filed by Dr. Sanjay Lakhe Patil, Jalna against the letter Order dated 01/11/2018 of Superintending Engineer & Administration, CADA, Nashik about not releasing water in Jayakwadi dam at Paithan from Upper Dam viz. Gangapur & Palkhed -

Case No. 17 of 2018

Dr. Sanjay Lakhe Patil,
Jalna.

.....Petitioner

V/s.

1. Hon'ble Minister, Water Resource Department, Mantralaya, Madam Kama Road, Mumbai - 400032.
2. Secretary (WRM & CAD), Water Resource Department, Mantralaya, Madam Kama Road, Mumbai - 400032.
3. Executive Director, Godavari Marathwada Irrigation Development Corporation, 1st floor, Sinchan Bhavan, Jalna Road, Aurangabad-431 005.
4. Chief Engineer, Water Resources Department, North Maharashtra Region, Sinchan Bhavan, Trimbak Raod, Nashik - 422 002.
5. Superintending Engineer & Administrator, Command Area Development Authority, Sinchan Bhavan, Trimbak Raod, Nashik - 422 002.

.....Respondents



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

Date : May 06, 2019

BACKGROUND

1. This Authority on September 19, 2014 in Case No. 1/2014 had issued directions regarding equitable distribution of water in Upper Godavari sub-basin under Section 11(c) of the MWRRA Act, 2005. This Order was challenged in the Hon. High Court at Bombay in PIL 173/2013 & other connected matters and the matter was disposed by Hon. High Court at Bombay on September 23, 2016 wherein the Authority's Order dated September 19, 2014 was upheld. The directions issued by this Authority on September 19, 2014 are perpetual in nature until they are further revised. As per these directions, ED GMIDC, Aurangabad is expected to review the storage position at Paithan Dam and also that of upstream dam complexes in the first fortnight of October, every year, duly accounting for planned kharif use and issue order, as to equitable distribution of water, in case, the natural storage position at the Paithan dam in the first fortnight of October is below 65% of its live storage.
2. As per the above said this Authority's Order, Executive Director, Godavari Marathawada Irrigation Development Corporation ("ED GMIDC" for short), Aurangabad has to take review of storage position in Jayakwadi on 15th October of every year and upstream dams and decide on equitable distribution of water. Accordingly, ED GMIDC Aurangabad took a review of storage position on October 15, 2018 and issued an Order on October 23, 2018 to release 8.99 TMC water into the Jayakwadi reservoir from upstream reservoirs in Nashik & Ahmednagar District.
3. Dr. Sanjay Lakhe Patil, Jalna filed a Petition before this Authority on November 2, 2018. The Petitioner has primarily prayed and sought an intervention from this Authority in the matter, arising out of the internal letter / correspondence dated 01/11/2018, of Superintending Engineer & Administration, CADA, Nashik addressed to Respondent



No. 4 – CE, NMR, Nashik about not releasing water in Jayakwadi dam at Paithan from Upper Dams viz. Gangapur & Palkhed and further prayed for immediate release of water as per the Order dated 23/10/2018 of the Respondent No.3 – the ED GMIDC apart from several other prayers made in the Petition such as initiating action against those who have allegedly succeeded in stopping the water release from Gangapur & Palkhed dam.

4. After scrutiny of the said petition by the Petitioner, this Authority issued notice to all concerned and posted the matter for hearing.

THE PROCEEDINGS BEFORE THE AUTHORITY

5. This Authority has conducted four hearings in this matter i.e. on November 19, 2018, November 26, 2018, December 11, 2018 and December 21, 2018.

BRIEF OF FIRST HEARING ON NOVEMBER 19, 2018

6. This hearing was attended by the Petitioner, Advocate for Respondent No. 1 & 2 and Representative of Respondent No. 1 & 2 and Respondent No. 7.
7. At the outset, of the hearing, Advocate for the Respondent No. 1 & 2 submitted that they have not received the copy of the Petition on which the Petitioner had shown the copy of the acknowledgements of service of the Petition to all the parties. The Authority expressed its displeasure regarding misleading submission made by the Advocate for the Respondent No. 1 & 2. The copies of the Petition along with the documents were already served by the Petitioner as well as by office of this Authority vide the email dt. 13/11/2018 along with the notice of hearing.
8. At the time of hearing the Petitioner has submitted an additional Affidavit and served its copies to all present parties. The said additional Affidavit has been taken on record.
9. Though the Advocate for Respondent No.1 & 2 prayed for grant of time to file reply on Affidavit, considering the urgency involved in the matter, the Authority asked about the status of the implementation of the Order



dt. 23/10/2018 issued by the Respondent No. 3 – the Executive Director, Godavari Marathwada Irrigation Development Corporation (“GMIDC” for short), including any modification or amendment made therein subsequently and also inquired whether Respondent No. 7 has authorization to represent the Respondent No. 6 – the Chief Engineer (CE), North Maharashtra Region (NMR), Nashik, Respondent No. 5 - the Superintending Engineer & Administrator (SE), Command Area Development Authority (CADA), Nashik. The Respondent No. 7 submitted that he does not have the said Authorization letter. However, he has submitted letter dated November 16, 2018 from Respondent No. 6 - CE, NMR, Nashik requesting to grant three weeks time to submit their say on Affidavit.

10. The Authority observed that there is duplication of the Respondents and found it prudent to suggest that there shall be only five Respondents being relevant and necessary parties - viz. Minister of Water Resources Department (WRD), Secretary (WRM & CAD) - WRD-Mumbai, ED-GMIDC-Aurangabad, CE- NMR-Nashik, SE (CADA)-Nashik. The Petitioner submitted that he has no objection to this. In view of above, Authority directed to delete other Respondents i.e. Respondent No.1, 4, 7, 9, 10 & 11 from the list of Respondents as they are not necessary parties as agreed and accepted by the Petitioner for the purpose of the adjudication of the Petition for the prayers made therein.
11. This Authority in view of the urgency involved in the matter, found it necessary to ask the Respondent No. 7 who appeared in person, about the status of the implementation of the said Order dated October 23, 2018, including any subsequent Order or the modification / amendments made therein and also asked to bring all data from the concerned officers. In response, he submitted that he does not have exact figures regarding the actual water released from upstream dams and actual water reached to Jayakwadi Dam and requested to give time. However, the Authority directed to obtain the information telephonically and adjourned the hearing for an hour to enable the Advocate for Respondent No.1 & 2 and also the Respondent No.7 to collect the necessary information and submit it at the time of next hearing scheduled at 4:00 p.m. on the same date.
12. Having perused the records, the Authority observed that the information in the oral submissions differs from the information in the submitted



documents. Hence, the Authority directed to submit if revised order issued by the Respondent No. 3 - ED, GMIDC, Aurangabad, if any.

13. After the resumption of the hearing at 4:00 p.m., the Advocate for the Respondent No. 1 & 2 assisted by Respondent No. 7 who is also Astd. Superintending Engineer in the office of CADA, Nashik, submitted that as per the Respondent No. 3 - ED, GMIDC's Order to release 8.99 TMC water, approximately about 8.04 TMC water has already been released so far. The remaining water from the Pravara Complex is being released and the exercise will be completed within two to three days. Advocate for the Respondent No. 1 & 2 also submitted that the release of water from Gangapur as well as Palkhed dam has been stopped on November 02, 2018 on the Orders of the Respondent No. 3 - ED, GMIDC of which the copies shall be placed on record along with the Affidavit by the Respondents.
14. The Authority painfully observed that the information regarding the releases of water from the upstream dams is not being made available in public domain inspite of specific directions of the Respondent No. 3, in its Order dated October 23, 2018 resulting in misunderstanding among the people and such type of litigations for want of correct and factual information. This information ought to have been hosted on the website in public domain in the larger public interest as well as keeping in mind the doctrine of transparency. However, as brought to the knowledge of this Authority, it seems that the authorities and the officers concerned have miserably failed to put such relevant and essential information in public domain for which they all have to explain in Affidavit as the Petitioner has specifically pointed out that the several directions given in the Order in Original dt. 23/10/2018 as regards to the information as well as procedure to be followed in compliance thereof has not been followed in its true meaning and the sense.
15. As the said information to be kept in public domain was not made available, the Petitioner expressed his apprehension regarding the stoppage of release of water from the upstream dams. The Petitioner has further alleged that the release of water from Gangapur Complex was stopped after the release of 0.1 TMC of water due to external interventions.



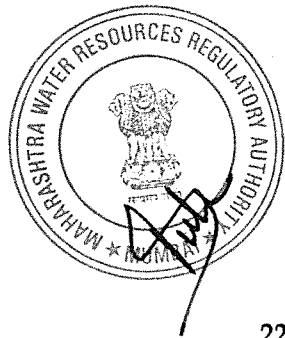
16. Taking into consideration, the documents on record, information submitted orally and the pleadings made by the parties, the Authority issued the following directions:

- (i) *The Respondent No. 3 - Executive Director, Godavari Marathwada Irrigation Development Corporation, Aurangabad, shall submit the copy of Order if any, passed by him revising his earlier Order dated October 23, 2018 regarding the release of water from upstream dams to Jayakwadi and keep it in public domain and submit the same on Affidavit, including necessity of such revision based upon the subsequent developments, if any.*
- (ii) *The Respondent No. 3 - Executive Director, Godavari Marathwada Irrigation Development Corporation, Aurangabad shall also ensure that the information regarding actual water released from upstream dams and actual water reached to Jayakwadi Dam, in compliance to Order issued by him for equitable distribution of water in Upper Godavari sub-basin, shall be kept in public domain and the same shall be submitted on Affidavit on or before next date of hearing.*
- (iii) *The Respondent No. 3 - the Executive Director, GMIDC, Aurangabad, the Respondent No. 6 - the Chief Engineer, North Maharashtra Region, Water Resources Department, Nashik and The Respondent No. 5 - the Superintending Engineer & Administrator, Command Area Development Authority, Nashik shall remain personally present in the next hearing.*
- (iv) *As recorded in earlier paras, there shall be only five Respondents and need to be renumbered as under viz. Respondent No. 1 - Minister of Water Resources Department, Respondent No. 2 - Secretary (WRM & CAD) WRD Mumbai, Respondent No. 3 - ED GMIDC Aurangabad, Respondent No. 4 - CE NMR Nashik, and Respondent No. 5 - SE CADA Nashik. The memo of the Petition be amended forthwith.*
- (v) *Respondent No. 3 - ED GMIDC Aurangabad, Respondent No. 4 - CE NMR Nashik, and Respondent No. 5 - SE CADA Nashik shall file an Affidavit in detail and the copies of the affidavit shall be served to all the parties before November 26, 2018.*
- (vi) *The Petitioner is at liberty to file Rejoinder Affidavit, if any.*



BRIEF OF SECOND HEARING ON NOVEMBER 26, 2018

17. This hearing was attended by the Petitioner, Advocate & Representative of Respondent No. 1 & 2, and representative of Respondent No. 3 & Respondent No. 5. Chief Engineer, North Maharashtra Region, Nashik filed an Affidavit on behalf of Respondent No. 3
18. Shri. K. B. Kulkarni - Respondent No. 4 submitted the Affidavit as per the direction given by the Authority in the 1st hearing dated November 19, 2018. He also submitted the letter of ED, GMIDC, Aurangabad - Respondent No. 3 dated November 23, 2018 authorizing him to represent on behalf of Respondent No. 3.
19. The Petitioner submitted that he has not received the copy of Affidavit but Adv. Wadekar clarified that the Affidavit has already been emailed to the Petitioner. The hard copy of Affidavit was served to the Petitioner during the hearing.
20. Shri. K. B. Kulkarni - Respondent No. 4 categorically pointed out and submitted that the revised proposal was sent to the ED, GMIDC, Aurangabad on 01/11/2018 & ED, GMIDC has given approval to it vide its letter dated 02/11/2018 & these letters will be kept in public domain. The Authority specifically inquired whether any revised office order has been issued by ED, GMIDC, Aurangabad, he clarified that that the revised proposal was sent to the ED, GMIDC, Aurangabad on 01/11/2018 & ED, GMIDC has given approval to it vide its letter dated 02/11/2018 but no office order has been issued, consequent upon the approval granted by ED GMIDC, Aurangabad vide its letter dated 02/11/2018.
21. Shri. K. B. Kulkarni - Respondent No. 4 submitted that the details of water released until November 23, 2018 from various upstream dams and water reached to Paithan dam site are given in Annexure R-5 of his Affidavit. He further stated that as on today entire quota of water which is expected to be released has been released. However, entire water has not been reached to Jayakwadi reservoir. It will take another few days to reach the entire water.
22. Taking into consideration the pleadings made by the parties & the inputs received during the hearing, the Authority had issued the following Directions:



- (i) *As the Office Order cannot be amended by communication in letter format, the Respondent No 3 shall issue revised office order which shall also include the reasons and the consequent proposals necessitating such revision and keep the same in public domain.*
- (ii) *The Respondent No 3 shall submit an updated Annexure R-5 on Affidavit.*
- (iii) *The Respondent No 3 shall file an Affidavit in Reply to the Additional Affidavit filed by the Petitioner dated November 19, 2018*

BRIEF OF THIRD HEARING ON DECEMBER 11, 2018

- 23. This hearing was attended by the Petitioner, Advocate and Representative of Respondent No. 1 and 2, and representatives of Respondent No. 3, 4 and 5.
- 24. Shri. R. P. More, representative for Respondent No. 3, 4 & 5, submitted the emailed copy of compliance by the Respondent No. 3. He also informed that the revised order has been issued by the ED GMIDC Aurangabad - Respondent No. 3 and is also hosted on the WRD website. He further informed that the process of water release from upstream dams is complete and water reached to Jayakwadi reservoir is 4.60 TMC.
- 25. Dr. Sanjay Lakhe Patil - Petitioner brought attention of the Authority towards Hon. Supreme Court's Order dated October 31, 2018 in SLP No. 21241/2017 about the theft of water.
- 26. The Authority stated that the issue of unauthorized use of water is being dealt with separately by this Authority and necessary order has already been issued to all concerned.
- 27. The Authority on the basis of documents on record observed that 8.367 TMC of water has been released from upstream dams as against 8.99 TMC and 4.60 TMC water has actually reached to Jayakwadi reservoir. Thus, the losses are about 45% as against 32% anticipated by the Respondent No. 3 while passing the order dated October 23, 2018.
- 28. Taking into consideration the pleadings made by the parties, the documents on record and casual approach shown by the Respondents

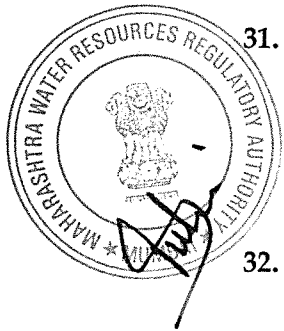


towards proceedings before this Authority, the Authority issues the following Directions:

- (i) *The Secretary (WRM & CAD) WRD - Respondent No. 2, ED GMIDC Aurangabad - Respondent No. 3, CE NMR Nashik - Respondent No 4 and SE & Admin, CADA Nashik - Respondent No 5 to remain present in person for the next hearing.*
- (ii) *ED GMIDC Aurangabad - Respondent No. 3 should file comprehensive Affidavit by December 19, 2018 which shall cover;*
 - a) *Revised Annexure R-5;*
 - b) *The reason for receipt of lesser water at Jayakwadi reservoir as compared to that required as per Strategy III*
 - c) *Reply to Additional Affidavit of the Petitioner dated November 19, 2018.*
 - d) *The compliance of action taken on direction at Sr. No. iii below.*
- (iii) *The compliance of the direction given in the Order by the ED GMIDC Aurangabad - Respondent No. 3 dated October 23, 2018 read with amendment Order dated December 6, 2018 be made public by hosting it on website especially regarding points at Sr. No. 9 to 15 and 17 to 19.*

BRIEF OF FOURTH & FINAL HEARING ON DECEMBER 21, 2018

29. This hearing was attended by the Petitioner, Advocate & Representatives of Respondent No. 1 & 2, and Respondent No. 3, 4 & 5.
30. SE & Admin. CADA Nashik - Respondent No 5 filed comprehensive Affidavit dated December 18, 2018 giving action taken regarding equitable distribution of water. The Authority confirmed that the copy of the same was served to the Petitioner.
31. Adv. Wadekar for Respondent No. 1 & 2 apologized for the absence of Secretary (WRM & CAD) WRD - Respondent No. 2. She submitted that the Respondent No. 2 is busy with Hon. Chief Secretary of the State for finalization of draft Affidavit to be filed in Hon. High Court at Bombay.
32. This Authority expressed its displeasure to ED GMIDC, Aurangabad - Respondent No. 3 about his casual approach towards the proceedings



before this Authority and the legibility of Affidavit submitted by SE & Admin. CADA Aurangabad dated December 10, 2018 on behalf of ED GMIDC, Aurangabad - Respondent No 3.

33. ED GMIDC, Aurangabad stated that 4.61 TMC water was finally reached into the Jayakwadi reservoir as against 6.09 TMC while passing the orders dated October 23, 2018. He further explained the reasons for more river losses than his anticipation which are as follows:
- (i) In this particular year, there was no return monsoon and hence the river course was comparatively dry.
 - (ii) There are number of big sized depressions formed in the river bed due to sand extraction.
 - (iii) Water was abstracted upto sill level of K. T. weirs.
 - (iv) At two locations sills of road bridges are above river bed level which abstracted some water.
 - (v) Local beneficiaries of Godavari & Pravara K. T. weirs fixed the needles forcefully even after its removal. This has abstracted about 0.95 TMC of water. These needles could not be removed in time due to Law & Order situation arised due to large gathering of the people, for which intervention of Police Authorities were sought by the WRD officials.

He further submitted that adequate Police force could not be available in time although it was requested. He further submitted that water stored in the K. T. weirs was released afterwards but could not reach Jayakwadi due to small discharge and consequently the small driving head.

34. The Authority expressed that the field officials could have registered the FIRs against those who had obstructed the water or created hindrances in the operation of the equitable distribution of water. SE & Admin. CADA Nashik informed that no such FIRs were registered, even though written complaints were made to the jurisdictional Police Authorities from time to time.
35. In regard to reservoir lifts, SE & Admin. CADA Aurangabad submitted that list of Authorized users is being prepared and will be uploaded on the website and thereafter the action will be taken against unauthorized



users. He further informed that in most of the cases MSEB has given electric connections without water permission from WRD.

36. Dr. Lakhe Patil - Petitioner pointed that the figures in previous & current affidavit did not match and asked whether any water was released after December 2, 2018 to which SE & Admin. CADA Nashik replied that no water was released after December 2, 2018. The Petitioner also requested to confirm whether 5 TMC water was released from Pravara complex. SE & Admin. CADA Nashik stated that data of November 25 & 26 was not considered by SE & Admin. CADA Aurangabad in his Affidavit dated December 10, 2018 & confirmed that 5.91 TMC of water was released from Pravara Complex, out of which about 2.03 TMC was for use in Pravara Canals and remaining was for Jayakwadi. Thus, 3.88 TMC of water was released from Pravara Complex as against 3.85 TMC ordered by the ED GMIDC, Aurangabad in his revised Order dated December 6, 2018. The Authority noted the negligence of SE & Admin. CADA Aurangabad who should have included the data pertaining to releases on November 25 & 26 in his Affidavit dated December 10, 2018.
37. In regard to unauthorized lifting of water from Jayakwadi reservoir which has influence on the measurement of water reached at Jayakwadi, SE & Admin. CADA Aurangabad stated that based on inflow & outflow data and earlier trend, unauthorized lifting of water is considered.
38. The Authority also expressed the concerns on the accuracy of the data regarding water reached at Jayakwadi, as it is derived data based on the basis of past data regarding lifting of water from the reservoir and further expressed that the methodology for measurement need to be refined from next year. Water should be measured before it reaches Jayakwadi submergence, preferably at last K. T. weir locations.
39. When asked about whether any water releases can be made now, ED GMIDC, Aurangabad submitted that it will not be possible to release water considering mandatory requirement of upstream area and even though water is released such a small discharge will not reach to Jayakwadi due to dryness of stream and will result in huge losses.
40. Taking into consideration the pleadings made by the parties, the documents on record, the Authority issues the following Directions:



- (i) ED GMIDC, Aurangabad - Respondent No. 3 to file an Affidavit in Reply on the calculations given in Additional Affidavit, filed by Petitioner dated November 19, 2018 within two weeks with copy to Petitioner.
- (ii) SE & Admin. CADA Nashik shall submit the letters of District Collector Nashik dated October 26 & 29, 2018.
- (iii) SE & Admin. CADA Nashik shall submit on Affidavit whether water released from Gangapur Dam was a net loss or used for any other purpose.
- (vii) The Petitioner may file Rejoinder if any in weeks time with copy to Respondents.
- (viii) The matter is closed for the final Orders.

DOCUMENTS RECEIVED AFTER FINAL HEARING

41. The Respondent Authorities submitted following documents on record as required by this Authority. The Respondent No. 2 also submitted and placed on record the Order dated 22/11/2018 passed in the Writ petition No. 12589/2018 & WP No. 12591/2018 by the Aurangabad Bench of Hon'ble High Court of Judicature at Bombay in which their lordship bench J J S. S. Shinde & K. K. Sonawane, Hon'ble Judges in the Para 2 & 3 of the said Order observed as under:

".....2. However, learned Government Pleader to take instructions from the concerned Authorities and inform this Court within one week from today, that out of 8.99 T.M.C. water which is ordered to be released, how much quantity of water is actually reached to Jaikwadi Dam.

3. List the matter under caption "Direction" on 3rd December, 2018."



42. List of documents placed on Record by the respondents for perusal & information of this Authority:
- (i) Shri. K. B. Kulkarni, CE NMR Nashik's Affidavit on behalf of Respondent No. 3 dated 16/01/2019.
 - (ii) Shri. R. M. More, SE & Admin. CADA, Nashik's Affidavit on behalf of Respondent No. 5 dated 19/01/2019.

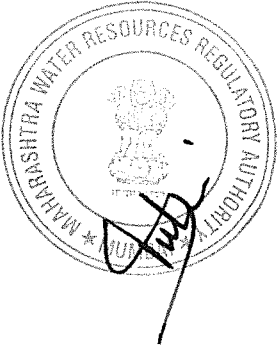


DATA ON RECORD

43. The Respondent also submitted the data of water released from upstream dams to the Jayakwadi Dam during the period 01/11/2018 to 02/12/2018 as per the details given below:

	Water to be released as per ED GMIDC Order dated 23/10/2018 in MCM (TMC)	Water to be released as per ED GMIDC letter of approval dated 02/11/2018 followed by Order dated 06/12/2018 in MCM (TMC)	Water Actually Released during 01/11/2018 to 02/12/2018 in MCM (TMC)
Mula Complex	54.00 (1.91)	54.00 (1.91)	54.09 (1.91)
Pravara Complex	109.00 (3.85)	109.00 (3.85)	167.36 (5.91)
Gangapur Complex	17.00 (0.60)	0.00 (0.00)	2.67 (0.09)
Darna Complex	57.50 (2.03)	91.50 (3.23)	92.26 (3.25)
Palkhed Complex	17.00 (0.60)	0.00 (0.00)	0.00 (0.00)
Total	254.50 (8.99)	254.50 (8.99)	316.38 (11.16)
Upstream Water Use	Godavari Left & Right Bank Canals		3.12 (0.11)
	Pravara Canals		57.50 (2.03)
	Total		60.62 (2.14)
Total Water released for Paithan dam = 316.38 - 60.62			255.76 (9.03)
Actual Water reached to Jayakwadi Dam at Paithan			130.25 (4.61)

Ref : The details of actual water released from upstream reservoirs during the period of equitable distribution (November 1, 2018 to December 2, 2018) and upstream water use through canal is as per the Affidavit made by Respondent No. 5 on behalf of the Respondent No. 3 dated December 18, 2018.



FACTUAL MATRIX

44. Having heard the parties to the litigation and perused the documents on Record, this Authority observed the facts as under:

- (i) The present petition is came to be filed on 02/11/2018 on the basis of the information which was gathered by the Petitioner which he believed to be true & correct and therefore approached this Authority with apprehension that less water will be released from upstream dams for Jayakwadi. The Petitioner has sought an intervention in the matter arising out of the internal letter No. लाक्षेविप्राना/ प्रशा-२/६४९७/सन २०१८ dated 01/11/2018 of SE & Admin. CADA, Nashik addressed to CE NMR Nashik in which developments after issuance of ED GMIDC Aurangabad's Order on October 23, 2018, regarding equitable distribution of water were mentioned and review of Order dated 23, 2018 was proposed. It is also mentioned in the said letter that the review of non-irrigation reservations in Gangapur and Palkhed reservoirs has been taken and it is revealed that their exist deficit in these reservoirs and if the water release from Gangapur dam is not stopped, it would have adverse impact on the irrigation and non-irrigation water supply from Gangapur Complex. The Petitioner has prayed for immediate release of water as per the Order dated 23/10/2018 of the Respondent No.3 - the ED GMIDC apart from several other prayers made in the Petition.
- (ii) In the year 2018-19, the storage position in Paithan dam, as on October 15, 2018 was 795.18 MCM and after accounting for Kharif use of 441.26 MCM, total water available was 1236.44 MCM, which was about 56.95% of the planned live storage. Hence, ED GMIDC Aurangabad was expected to operate upper dams as per Strategy III of the Table - 6, provided in the direction of this Authority dated September 19, 2014 to make up the water deficit in the Jayakwadi Dam.
- (iii) Accordingly, ED GMIDC Aurangabad, after consulting with the concerned field officers, had issued the order for equitable distribution of water on October 23, 2018 ("Original Order" for short). This Order directs the field officers to release 254.50 MCM (8.99 TMC) of water from upstream complexes (Mula - 54 MCM,



Pravara - 109 MCM, Gangapur - 17 MCM, Godavari Darna - 57.50 MCM and Palkhed - 17 MCM). ED GMIDC Aurangabad, in the same order, has given detailed instructions to the field officers under his control regarding implementation of the order.

- (iv) The data placed on record revealed that while the field officers were preparing for release of the water, the Order dated 23/10/2018 has been came to be challenged in the Special Leave Petition ("SLP" for short) 21241/2017 with SLP 5163/2018 before the Hon'ble Supreme Court of India which passed interim Order on 29/10/2018, which reads as under:

"List the matters for final disposal on 31st October, 2018 along with all pending applications."

- (v) Subsequently, in the meanwhile, the Interim Applications ("IA" for short) No. 153287/2018 in SLP No. 21241/2017 came to be disposed on 31/10/2018 by the Hon'ble Supreme Court of India. The Order passed by the Hon'ble SC while disposing of the said IA No. 153287/2018 which reads as under:

"..... We are not inclined to entertain this application since it goes beyond the special leave petition that is pending.

Accordingly, the application stands dismissed.

However, liberty is granted to the petitioner(s) to agitate the matter, if so advised, before the appropriate Authority/Court.

We make it clear that we have not expressed any opinion on the merits of the interim application."

- (vi) Hon'ble SC also heard the SLP No. 21241/2017 and passed following order on 31/10/2018

".....Learned counsel for the petitioner(s) says that there is a huge amount of theft of water, particularly in the dam area.

It is stated by learned Additional Solicitor General appearing on behalf of the State of Maharashtra that all steps will be taken so that there is no theft of water. However, if any specific complaint is made for theft of water, it will be brought to the notice of the concerned authority so that necessary action can be taken.

List the matter in the month of February, 2019."



Thus, Hon'ble Supreme Court did not entertain the IAs in SLP as per the Order mentioned herein above.

- (vii) It is also the fact that the orders issued by the officials of the Respondents to the MSEDCL officials to stop the electricity supply in the areas adjoining the river to prohibit lifting of water, came to be challenged in the Writ petition No. 12589/2018 & No. 12591/2018 in the Aurangabad Bench of Hon'ble High Court of Judicature at Bombay. But Hon'ble High Court disposed of the said petitions on January 11, 2019 in terms of orders passed therein on the statements made by the Petitioner in the said Writ Petitions.
- (viii) The process of releasing water from Bhandardara dam for feeding the Nilwande dam was started on October 25, 2018 and the process of releasing water from remaining complexes was started on November 1, 2018.
- (ix) As far as Gangapur dam is concerned, the water release was started on November 1, 2018 at 10:00 AM and stopped on the same day at 7:00 PM. In this duration, 0.094 TMC of water was released, which in the opinion of Respondent No. 5 has not actually wasted but reached to N. M. weir & has contributed into release of Jayakwadi.
- (x) Documents on record reveals that, the meeting was held on October 19, 2018 under the Chairmanship of Hon'ble Guardian Minister, Nashik to decide the non-irrigation water reservations, in major & medium projects, of the Nashik district for the year 2018-19. The District Collector - Nashik, on the basis of decisions taken in above said meeting, communicated to the Executive Engineer, Nashik Irrigation Division, Nashik, vide his letter dated October 26, 2018. The reservation made for non-irrigation use in Gangapur Complex for the year 2018-19 is 5.40 TMC (153 MCM). This is slightly more than the non-irrigation use considered in Strategy - III.
- (xi) Thereafter, based on the proposal submitted by SE CADA Nashik - Respondent No. 5, CE NMR Nashik - Respondent No. 4 on November 1, 2018, due to contingent requirements of rural and urban domestic water demands and considering minimum irrigation demands of Gangapur and Palkhed complexes,



submitted the proposal to ED GMIDC Aurangabad requesting him to modify his orders dated October 23, 2018. Respondent No. 4 in his proposal indicated the possibility of compensating the shortfall from alternative upstream reservoirs. He proposed to release more water from Darna complex instead of Gangapur & Palkhed complex, keeping the total water to be released unchanged. The Respondent No. 4 - CE NMR Nashik vide its letter No. 6744 dated 02/11/2018, again informed the Respondent No. 3 - ED GMIDC Aurangabad that pending approval from the Respondent No. 3, the release of water from Gangapur was stopped based upon the proposed revised water planning

(xii) The Respondent No. 3 - ED GMIDC Aurangabad instead of revising his Original Order by the simple letter No. 10407 dated 02/11/2018 approved the water planning from Palkhed & Gangapur projects. However, he categorically observed that the quantity of water to be released from upstream to the Jayakwadi projects should be the same at par with the quantity of water ordered to be released as per the Original Order. Thus, it is the fact that the actual quantity of water to be released is protected in revised approved planning. Water to be released from Palkhed & Gangapur projects was compensated by release from the other dams viz. Darna Complex. As such no prejudice is caused to the Petitioner.

(xiii) However, all these facts & developments happened post 23/10/2018, were not displayed on the official website of the Respondents and therefore, public at large including the Petitioner could not get updated information which ought to have been placed in public domain before stopping the release of water from the Gangapur Dam. But the officials have failed to do so, resulting in the miscarriage of the factual information and filing of the present Petition based on presumptions and assumptions drawn on the basis of copy of internal correspondence dated 01/11/2018 which is a letter written by SE & Admin, CADA, Nashik to the CE, NMR, Nashik seeking further advice as stated in the said letter.

(xiv) ED GMIDC Aurangabad - Respondent No. 3, on directions of this Authority, issued revised office order bearing No. 1262 dated December 6, 2018 ("Revised Order" for short) revising his



Original Order, in which the total quantum of water to be released is kept unaltered i.e. 254.50 MCM (8.99 TMC).

- (xv) The actual water released from upstream complexes during November 1, 2018 to December 2, 2018 is 316.38 MCM (11.16 TMC). However, the water utilised by the canal system of upstream dams, till it reaches to Jayakwadi Dam was 60.62 MCM (2.14 TMC). Thus, it can be considered that the water effectively released for Jayakwadi Dam is 255.76 MCM (9.03 TMC).
- (xvi) The water actually reached upto Paithan dam was 130.25 MCM (4.61 TMC) as against 172.45 MCM (6.09 TMC) as expected earlier by the Respondent No. 3 while issuing the Original Order of equitable distribution. The effective river losses, including the interception of water in the river bed against the sills of K.T. weirs and bridges in the river, are 45% as against 32% anticipated by ED GMIDC, Aurangabad while passing the Original Order.
- (xvii) The reasons given by the Respondent No. 5, for the shortfall in receipt of water at Jayakwadi Dam are:
- Due to less rainfall in later part of the monsoon i.e. in the month of August & September, river was dry at many places, which resulted into more transit losses than those anticipated while passing the Original Order.
 - There were local depressions in the riverbed due to sand extraction. The large quantity of water was intercepted in these depressions.
 - Similarly, some quantity of water was also intercepted against the sill of K. T. weirs, which are above river bed.
 - At locations of two road bridges, the sill of the road bridges being above the river bed, some water was intercepted at these bridge locations.
 - The local beneficiaries fixed the needles in the enroute K. T. weirs forcefully and intercepted 0.95 TMC of water. The police force was required to remove those needles which were available on November 16, 2018. The water stored in the K. T. weir was released thereafter, but due to gap in the flow, more transit losses were occurred and water could not reach to the Paithan dam.



f) In Pravara complex, water has to be drawn from river sluices after water level goes below crest. Small discharging capacity of the sluices put limitation on discharge. Also, Bhandardara canals were in operation which resulted into still smaller discharge into river. The discharge being smaller, the transit loss was more.

(xviii) During the proceeding before this Authority on December 21, 2018, ED GMIDC Aurangabad submitted that he is not in position to release more water from upstream reservoirs considering their own minimum requirement. He further clarified that, even though the additional water is released, such small discharge will not reach upto the Paithan dam due to dryness of the stream and will result in huge losses. Thus, any possibility of releasing more water to compensate the deficit in the actual receipt of water at Paithan dam was ruled out.

(xix) During the proceedings of the Case, this Authority has observed that the methodology adopted to measure the receipt of water at Paithan dam is not fully reliable. The quantity received at Jayakwadi Dam is not actually being measured but it is derived from the water balance method i.e. by accounting for opening balance, receipts, uses and closing balance. In the absence of the exact measurement of use of water from submergence of Paithan dam by large number of individual lift schemes and measurement of evaporation loss from Jayakwadi Dam, the conclusions drawn regarding receipt of water at Jayakwadi Dam by water balance method are not exact but approximate.

(xx) The Petitioner vide his additional affidavit dated November 19, 2018, raised some doubts about calculation made by Respondent No. 3 while issuing the Original Order for equitable distribution and claimed for release of more water for Jayakwadi Dam. However, Respondent No. 4 vide his affidavit dated January 16, 2019 has pointed out the obvious mistakes in calculations of the Petitioner.

(xxi) The Petitioner through his additional affidavit dated November 19, 2018 has also prayed for the record of faithful implementation of the Original Order. In response to this, Respondent No. 5 through his affidavit dated December 18, 2018 submitted the



details of compliance of various directions of the ED GMIDC Aurangabad given in its Original Order. The copy of this affidavit is also made available to the Petitioner.

- (xxii) It is also observed, from the documents placed on record by the Respondent No. 5, through the affidavit dated January 19, 2019, that inspite of agitations and hindrances at various dam K. T. weir locations, the field officers with support of police force, took all possible steps, for ensuring the smooth release of water from upstream reservoirs and transfer of water upto Jayakwadi Dam. The documents & data on record clearly indicate that the Law & Order controlling officials were informed & kept posted by the officials of the respondents from time to time. The field officers approached as many as on 27 occasions to the respective Police Stations for support. The officials of the Respondents took various adequate steps to snap electricity supply of the areas from where unauthorised lifting of water was going on. Photographs on records also reveal that the filed officers have made all possible efforts to remove needles which were forcefully plugged into the K.T. weirs & ensured the conveyance of water to Jayakwadi Dam.
- (xxiii) Ld. Sub-Divisional Magistrate - Shrirampur on October 31, 2018 in anticipation of hindrances from upstream beneficiaries in the process of release of water, has evoked Section 144(3) of the Criminal Procedure Code 1973 to avoid public interventions in the water release process and banned entry of any person excluding WRD staff in the Mula, Pravara and Godavari River stretches of Shrirampur & Rahuri Taluka.
- (xxiv) It is thus a fact that ED GMIDC Aurangabad - Respondent No. 3 has revised his original water release planning as mentioned in his Original Order by a simple letter No. 10407 dated November 02, 2018 written by him to Respondent No. 4. He should have issued reasoned office order, mentioning the reasons for such change and ensuring the same quantity of water to be released as that in his Original Order along with details thereof and put such office order in public domain. Lapses on part of Respondent No. 3, in this regard, have resulted into miscarriage of information and present petition came to be filed on November 2, 2018, on presumptions and assumptions that the quota of Jayakwadi Dam is being reduced.



(xxv) It is also the fact that many other citizens from upstream areas submitted letters / applications to this Authority as regards to same issue of release of water from upstream dams to the Jayakwadi Dam. The list of such letters / applications is as under:

1. Rajendra Gunjal, Harishchandra Sahakari Pani Purvatha Sanstheche Sahakari Fedration Ltd. Amrutnagar, Ahmednagar
2. Santu Patil Jhambre, Director, Krishi Utpanna Bazar Samiti, Yavla, Nashik
3. Suresh Pandurang Take, & Others Tal. Shrirampur, Dist. Ahmednagar
4. Sudhakar Roham, Tal. Kopargaon, Dist. Ahmednagar
5. Rajendra Bawke, Godavari Kalve Bachav Sangharsh Samiti
6. Bhaskar Kachru Kondhare, Shivsena Uapjilha Pramukh, Yevla, Nashik
7. Prof. Devyani Farande, Member of Legislative Assembly, Nashik (Central)
8. Kiran Mahske, Sahakar Maharashi Shankar Rao Kolhe Sahakari Karkhana, Tal. Kopargaon, Dist. Ahmednagar
9. Anilrao Prabhakar Aoutade, Chairman, Shetkari Sanghtana, Tal. Shrirampur, Dist. Ahmednagar
10. Bhausahab Nivrutti Mote, Aadarsh Water Users Association, Tal. Nevasa, Dist. Ahmednagar
11. Dr. Sanjay Lakhe Patil, Chairman, Marathwada Anushesh Nirmulan Aani Vikas Manch
12. Pradip Purnadare, Retired Asst. Professor, WALMI Auranbagad
13. Ramesh Gunjal, Pravara Uapkhore Pani Bachav Sangharsh Samiti
14. Hemant Tukaram Godse, Member of Parliament, Nashik
15. Rajendra Jadhav, Chairman Jalchintan Engineering Institute, Nashik
16. Vaibhavrao Madhukarrao Pichad, Member of Legislative Assembly, Tal. Akole, Dist. Ahmednagar



However, they were not considered here as the issue of release of water from upstream dams to Jayakwadi Dam was adequately adjudicated in Case No. 1/2014 before this Authority and the directions given by this Authority dated September 19, 2014 has been confirmed by the Hon'ble High Court at Bombay in its Order dated September 23, 2016 in PIL 173/2013 & other connected matters except the issue of blocks.

FRAMING OF ISSUES

45. This Authority, having considered the nature of the case, the contentions made in the submissions of the parties, the factual matrix based upon the documents placed on record as well as data submitted, felt it prudent to deal with following issues for better consideration:
- i) Whether the Petitioner has locus to file the present petition?
 - ii) Whether the Petition is supported by any substantial information and documents in support of the prayers made in the Petition?
 - iii) Whether the quota of water required to be released as per the Order of the ED, GMIDC, Aurangabad dated October 23, 2018 from Gangapur & Palkhed complexes for Paithan dam is actually released?
 - iv) Whether non release of requisite quantity of water from Gangapur & Palkhed complexes has caused or likely to cause any prejudice or loss to the Petitioner?
 - v) Whether the quota of water from the upstream reservoirs has been released as per the Order of the Respondent No. 3?
 - vi) Whether the expected quantity of water has reached to Jayakwadi dam? If not, what are the reasons thereof?
 - vii) Whether the issue raised by the Petitioner through his additional affidavit dated November 19, 2018 has any merit?
 - viii) Whether the instructions of the ED GMIDC Aurangabad in the Order dated October 23, 2018 were implemented by the Respondent No. 4 & 5 and other officials of the WRD in it's true spirit?
 - ix) Whether the prayers made by the Petitioner have become infectious or call for any relief?



- x) Whether any specific guidelines or directions are required to be given in light of the issues cropped up to impart transparency and to improve effectiveness of the process of equitable distribution of water in Upper Godavari sub-basin?

FINDINGS OF THE AUTHORITY

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

- i) Whether the Petitioner has locus to file the present petition?

The perusal of the Petition reveals that Petitioner though submitted his Petition in the individual / personal capacity on November 2, 2018, made hand written endorsement on the Petition that he is the President of Karmaveer Pratishtahan, Jalna Education Institute and Dalit Mitra Sansthan of which no resolution or supporting documents were filed with original petition. Moreover, the Petition though filed an Affidavit in the personal capacity, nowhere mentioned about the statement on fact to the extent that the Petitioner has filed the Petition for & on behalf of the organisation or the society of which he is claiming to be a President. However, the Petitioner, subsequently, has submitted the copy of the Resolution made by Karmaveer Pratishtahan, Jalna dated November 5, 2018, authorising him, to act in legal matters pertaining to this Petition, on behalf of the Karmaveer Pratishtahan, Jalna and rectified the defect.

Thus, the answer to the issue is in affirmative.

- ii) Whether the Petition is supported by any substantial information and documents in support of the prayers made in the Petition?

- a) As recorded in the Factual Matrix of the case, the present petition is came to be filed on November 2, 2018 on the basis of the information, which was gathered by the Petitioner, which he believed to be true & correct and sought an intervention in the matter arising out of the letter dated November 1, 2018 of Superintending Engineer & Administration, CADA, Nashik about not releasing water in Jayakwadi dam at Paithan from Upper Complexes viz. Gangapur & Palkhed and further prayed for immediate release of water as per the Original Order of the Respondent No. 3 - the ED GMIDC apart from several other prayers made in the Petition.



- b) It is observed from the facts on record that after the issue of the Original Order, certain relevant developments occurred in the Nashik district. The Collector Nagpur has issued the reservations in the dams in Nashik District for non-irrigation use, as finalised in the meeting dated October 19, 2018, vide his orders dated October 26, 2018. The Respondent No. 5, reviewed the water planning of the Gangapur & Palkhed Complexes in light of the reservations, made by the District Collector -Nashik and revealed that there is an overstress in the Gangapur & Palkhed Complexes. He was of the opinion that, water in the Gangapur & Palkhed Complexes will not be adequate to meet their own minimum needs. Hence, he proposed to review the decision to release water from these complexes for Jayakwadi dam vide his letter dated November 1, 2018. The Respondent No. 3 - ED, GMIDC, Aurangabad vide his letter No. 10407 dated November 2, 2018 has also approved the revised water planning proposed by the Respondent No. 4 & 5, keeping the total quantity of water to be released for Paithan Dam unchanged. However, this correspondence was not available to the public at large.
- c) Facts recorded in the Factual Matrix reveal that the issue has been cropped up due to failure of the Respondent No. 3, 4 and 5, in keeping the public at large, including the Petitioner, informed about the developments that happened after the issue of the Original Order. Petitioner could not get updated information which ought to have been placed in public domain by the Respondents for the sake of transparency. However, the Respondents failed to do so, resulting in the miscarriage of the factual information and as a result of which, the present Petition came to be filed by the Petitioner based upon the interpretation drawn by the him from intermediate correspondence dated November 1, 2018 as initiated by Respondent No. 5 to the Office of the Respondent No. 4 and assuming that Jayakwadi Dam will get less water if water from Gangapur & Palkhed Complexes is not released.
- d) The documents appended to the Petition do not disclose the true set of the entire issue. The documents as well as the information placed on record by the Respondents throw light on the entire subsequent development happened post issue of the Original Order. The entire quantity of water which is expected to be released from upstream complexes for Paithan reservoir has actually been released. As such,



this Authority is of considered opinion that the entire issue has been came to be raised on the basis of the miscarriage of the information as well as incomplete set of facts, which if seen in light of the complete facts brought on record, revealed that the prayers made by the Petitioner either do not call for any relief or have become infectious, as same have been made prematurely and based on incomplete set of facts.

Hence the answer to this issue is in negative.

iii) Whether the quota of water required to be released as per the Order of the ED, GMIDC, Aurangabad dated October 23, 2018 from Gangapur & Palkhed complexes for Paithan dam is actually released?

- a) ED GMIDC Aurangabad had issued the order for equitable distribution of water in Upper Godavari sub-basin on October 23, 2018. This Order directs the field officers to release 254.50 MCM (8.99 TMC) of water from upstream complexes (Mula - 54 MCM, Pravara - 109 MCM, Gangapur - 17 MCM, Godavari Darna - 57.50 MCM and Palkhed - 17 MCM).
- b) However, only 2.66 MCM (0.094 TMC) water has been released from Gangapur Complex & no water has been released from Palkhed Complex.

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

iv) Whether non release of requisite quantity of water from Gangapur & Palkhed complexes has caused or likely to cause any prejudice or loss to the Petitioner?

- a) The total quantity of water required to be released for equitable distribution of water as mentioned in the order of the ED GMIDC Aurangabad dated October 23, 2018 is 254.50 MCM (8.99 TMC).
- b) Thereafter, CE NMR Nashik - Respondent No. 4, considering overstress in the Gangapur & Palkhed Complexes, due to developments that has occurred after the issue of the Original Order, has submitted the revised planning, for release of water from upstream reservoirs vide his letter No. 6744 dated November 2, 2018.



He proposed to release more water from Darna complex instead of releasing water from Gangapur & Palkhed complexes.

- c) ED GMIDC Aurangabad – Respondent No. 3, vide his letter No. 10407 dated November 2, 2018, has given consent to this proposal and subsequently, he revised his Original Order and issued fresh order dated December 6, 2108.
- d) In the revised planning, Gangapur & Palkhed complexes were excluded from the list of complexes identified earlier for release of water for Paithan dam. However, the total quantity of water to be released for Paithan dam have been kept the same as that in his earlier order dated October 23, 2018 i.e. 254.50 MCM (8.99 TMC). The details of complex wise water to be released, as per the Revised Order, are Mula (54 MCM), Pravara (109 MCM) and Darna (91.50 MCM).
- e) As ED GMIDC Aurangabad, while revising his Original Order, has kept the total quantity of water intact by compensating the deficit due to non-release of water from Gangapur & Palkhed complexes, by additional quantity of water from Darna complex. Hence, in the opinion of this Authority, there is no prejudice or loss to the Petitioner due to non release of water from Gangapur & Palkhed complexes.

Thus, the answer to the question under consideration is in negative.

- v) **Whether the quota of water from the upstream reservoirs has been released as per the Order of the Respondent No. 3?**

- a) Total quota of water to be released from the upstream reservoir complexes, as per the ED GMIDC Aurangabad's original order dated October 23, 2018 and his subsequent order dated December 6, 2018 is 254.50 MCM (8.99 TMC).
- b) As per the Affidavit filed by Shri. Rajesh More – Respondent No. 5 on behalf of ED GMIDC Aurangabad – Respondent No. 3 dated December 18, 2018, the total quantity of water released from upstream complexes for Paithan dam is 255.78 MC (9.03 TMC) which is just more than the quota to be released.

Thus, the answer to the issue under consideration is in affirmative.



vi) Whether the expected quantity of water has reached to Jayakwadi dam? If not, what are the reasons thereof?

- a) As per the affidavit filed by Shri. Kiran Kulkarni - Respondent No. 4 on behalf of ED GMIDC Aurangabad - Respondent No. 3 dated January 16, 2019, the utilisable water in Jayakwadi dam as on October 15, 2018, after duly accounting for Kharif use was 1236.43 MCM i.e. 56.95% of the planned live storage.
- b) As per the Strategy III of Table 6, given in the order of this Authority dated September 19, 2014, there was shortfall of 172.57 MCM (6.09 TMC). To makeup this shortfall, ED GMIDC Aurangabad - Respondent No. 3, had given order to release 254.50 MCM (8.09 TMC) of water after considering 32% of transit loss, which was averagely observed in the year 2014 and 2015.
- c) However, the water actually reached to Paithan dam is 130.25 MCM (4.60 TMC) as against shortfall of 172.57 MCM (6.09 TMC).

Thus, the answer to the first part of the issue under consideration is partly in negative.

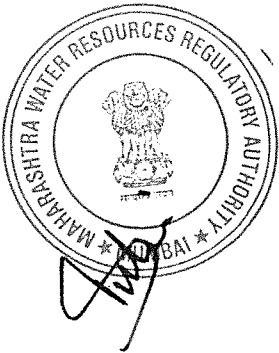
d) The reasons for less receipt of water in Paithan dam, as compared to anticipation made by the ED GMIDC Aurangabad while passing the order dated 23, 2018, as submitted by the Respondent No. 5 on affidavit, filed by on behalf of Respondent No.3, on December 18, 2018 are as follows;

d1) In the year 2018, there was less rainfall in later half of the monsoon i.e. in the month of August and September, in Godavari & Pravara rivers basins. Consequently, the river was dry, in many reaches and hence, the actual transit loss was more than that anticipated.

d2) Number of large size depressions were formed in the riverbed due to sand extraction, in 150 km stretch of river, downstream of Nandur Madhameshwar weir and Ozar weir, which intercepted some quantity of water from the flow.

d3) Almost all K.T. weirs were in dry condition and sill levels of these K.T. weirs are above river bed which also intercepted some quantity of water.

d4) At two locations, sill levels of the road bridges are above river bed which have also intercepted some quantity of water.



d5) Local beneficiaries of K.T. weirs on Godavari & Pravara River fixed the needles forcefully in the weirs and opposed to remove the needles. This has intercepted about 27 MCM (0.95 TMC) of water. In spite of continuous follow up, Police force was not available until November 16, 2018 and needles were removed thereafter. However, this has caused gap in the flow and consequently transit loss was increased.

d6) In Pravara complex, water has to be drawn from river sluices after water level goes below crest. Small discharging capacity of the sluices put limitation on discharge. Also, Bhandardara canals were in operation which resulted into still smaller discharge into river. The discharge being smaller, the transit loss was more.

In view of the Authority, the above said reasons for more transit loss are factual and reliable.

vii) Whether the issue raised by the Petitioner through his additional affidavit dated November 19, 2018 has any merit?

- a) The Petitioner, vide his additional affidavit dated November 19, 2018, has raised some doubts regarding the calculations made by the ED GMIDC Aurangabad - Respondent No. 3 while issuing order dated October 23, 2018 and claimed for release of more water.
- b) The Respondent No. 4 vide his affidavit dated January 16, 2019 has pointed out some arithmetical mistakes in the calculations provided by the Petitioner.
- c) This Authority, on scrutiny of the calculation, submitted by the Petitioner, noted some obvious calculation mistakes and conceptual errors. This Authority, on scrutiny of the order dated October 23, 2018 issued by the ED GMIDC Aurangabad - Respondent No. 3, is of the opinion that the said order is generally consistent with the guiding principles issued by this Authority in its Order dated September 19, 2014. Further, from the data & facts on record, this Authority has revealed that the field officers have implemented the order of ED GMIDC Aurangabad dated October 23, 2018, as amended on December 5, 2018 faithfully and honestly.



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



viii) Whether the instructions of the ED GMIDC Aurangabad in the Order dated October 23, 2018 were implemented by the Respondent No. 4 & 5 and other officials of the WRD in it's true spirit?

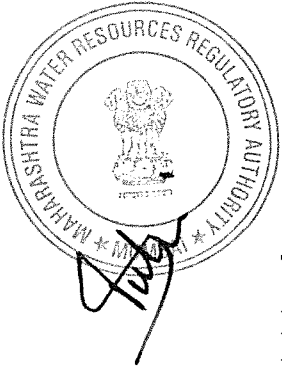
The Respondent No. 5, through his affidavit dated December 18, 2018 submitted the details of compliance of various directions given by the ED GMIDC Aurangabad in its order dated October 23, 2018. Also, Respondent No. 5 through affidavit dated January 19, 2019 has kept on record voluminous documents and site photographs. These photographs show that there was a stiff opposition of the beneficiaries of the upstream dams and enroute K.T. weirs for release of water from upstream reservoirs and its conveyance upto Jayakwadi Dam.

On perusal of the documents on record, it is revealed that;

- a) The beneficiary farmers of the upstream dams and enroute K.T. weirs were aggressively opposing to release water for Paithan reservoir.
- b) There are as many as 27 instances on record in which WRD staff has approached to the concerned jurisdictional Police Stations for police protection.
- c) Considering the public sentiments, Ld. Sub-Divisional Magistrate - Shrirampur has evoked Section 144(3) of the Criminal Procedure Code 1973 to avoid public intervention in the water release process and banned entry of any person excluding WRD staff in the Mula, Pravara and Godavari River stretches of Shrirampur & Rahuri Taluka
- d) The officials of the Respondents took adequate steps to snap electricity supply of the areas from where unauthorised lifting of water was going on.
- e) The filed officers have made all possible efforts to remove needles from the forcefully plugged K.T. weirs for smooth conveyance of water to Jayakwadi Dam.
- f) The field officers have kept proper record of water releases and communicated the same to the higher authorities.

Thus, the Authority is of opinion that, the filed officers have taken all possible efforts to implement faithfully & in true spirit, various instructions mentioned in the order of the ED GMIDC Aurangabad dated October 23, 2018.

Hence, the answer to the issue under consideration is in affirmative.



- ix) **Whether the prayers made by the Petitioner have become infectuous or call for any relief?**

As recorded herein above, this Authority is of considered opinion that the most of the prayers made by the Petitioner are based upon the incomplete set of facts. As now, full & complete set of facts are on record. The necessary quantity of water has already been released from upstream complexes for Jayakwadi Dam. Hence, this Authority is of opinion that the prayers made by the Petitioner have become either infectuous or do not call for any relief.

Hence, the answer to the issue is in affirmative.

- x) **Whether any specific guidelines or directions are required to be given in light of the issues cropped up to impart transparency and to improve effectiveness of the process of equitable distribution of water in Upper Godavari sub-basin?**

During the adjudication, this Authority has observed that specific directions are required on following issues to impart transparency and to improve the effectiveness of the process of equitable distribution:

- a) **River Gauging Arrangements** - There exists no proper arrangement for measuring the receipt of quantity of water at Jayakwadi Dam. Presently, in the absence of any flow measuring arrangement, the receipt of water at Jayakwadi Dam is being calculated from tank gauge data. However, in the absence of actual measurement of water being lifted from submergence of the Jayakwadi Dam, these calculations cannot be fully relied upon.

This Authority is of opinion that two river gauging stations need to be established one at Kamalapur to measure the quantity of water actually reached for Jayakwadi Dam out of the releases from Darna, Gangapur & Palkhed complex and another at Madhameshwar to measure the quantity of water reached for Jayakwadi Dam out of the releases from Mula & Pravara complexes. Further, these river gauging stations need to be maintained by the third party such as hydrology wing of the WRD.

- b) **Deployment of Necessary Police Force** - Experience of this year, as documented and submitted by the Respondent No. 4 & 5 reveals that



WRD staffs have to overcome stiff opposition from the beneficiaries of the upstream reservoirs and enroute K.T. weirs during the process of equitable distribution of water. The events such as mass gathering on dams and K.T. weirs, threatening & obstructing WRD staff from performing their legitimate duties, forcefully disrupting the river flow by putting needles in K.T. weirs, theft of released water were commonly observed during the process of equitable distribution. The WRD staff cannot alone handle such law and order situations. It is also observed that WRD staff had approached the concerned Police Stations for support. However, on few occasions, they could not get immediate support. This has delayed the process of equitable distribution. The process of releasing water from upstream dams is highly time sensitive. Further, if the process is delayed, the transit loss increases. Thus considering time sensitivity of the issue, this Authority is of the considered opinion that the State Government and the concerned Commissioner of Police and the District Collectors should give standing instructions to the Police stations under their jurisdiction, to give all necessary and timely support to WRD staff, for effective implementation of the orders related to equitable distribution of water issued under the provisions of the MWRRA Act 2005 and to ensure timely release of water from upstream reservoirs and its smooth conveyance upto Jayakwadi Dam.

- c) **Communication with Stakeholders** - The issue of equitable distribution is very sensitive for large number of beneficiaries of upper dams and also that of Jayakwadi Dam. This Authority feels that most of the misunderstandings and litigations can be avoided if all relevant information regarding equitable distribution of water is timely kept in public domain.

Hence, Authority is of the opinion that ED GMIDC Aurangabad should keep the stakeholders informed about day to day status of the implementation of his orders related to equitable distribution of water by posting all necessary information such as releases from upstream storages, quantity of water actually reached at Jayakwadi dam and any other important events related to equitable distribution of water.



DIRECTIONS

47. Having heard the parties to the litigation, and after giving due consideration to the documents as well as data on record, submissions made by the parties and having adjudicated the issues framed, this Authority, is of the opinion that although some delay has caused in the process of implementation of the Order of the Respondent No. 3 because of which the Petitioner has approached this Authority has now been implemented. Further WRD staff has made all possible efforts to implement the above said order. The delay caused was beyond their control. Adequate information pertaining to the implementation of the order has been made available to the Petitioner. In view of the above, the grievance raised by the Petitioner does not survive. Hence, the Authority dispose of this Petition with following orders, which in the opinion of the Authority are necessary for improving the process of equitable distribution and improving transparency;

A) ED GMIDC Aurangabad - Respondent No. 3 as under;

- (i) To establish two river gauging stations one at Kamalapur to measure the quantity of water actually reached for Paithan dam out of the releases from Darna, Gangapur & Palkhed Complexes and another at Madhameshwar to measure the quantity of water actually reached for Paithan dam out of the releases from Mula & Pravara Complexes.
- (ii) To keep the stakeholders informed about day to day status of the implementation of his orders related to equitable distribution of water by posting all necessary information such as releases from upstream storages, quantity of water reached at Paithan dam and any other important events related to equitable distribution.
- (iii) To estimate realistic river losses considering the dryness / wetness of the river, depressions in the riverbed, and quantity that can be obstructed against the sill of the K. T. Weirs etc.
- (iv) To identify the upstream reservoirs and decide the quantity to be released from them carefully considering their own minimum needs, so that order once issued, need not requires any amendments.



B) Chief Engineer (Planning & Hydrology) Nashik as under;

To maintain the river gauging stations at Kamalapur and Madhameshwar, measures the water received at these gauging sites and reports it to ED GMIDC Aurangabad and this Authority.

C) State Government, Commissioner of Police - Nashik City, Commissioner of Police - Nashik Rural Superintendent of Police, Ahmednagar and District Collector - Nashik, Ahmednagar & Aurangabad as under;

To give standing instructions to Police Stations under their control to provide all necessary support to WRD staff for effective implementation of the orders related to equitable distribution of water issued under the provisions of the MWRRA Act, 2005 to ensure timely release of water from upstream reservoirs and its passage upto Paithan dam.

The Appeal is accordingly disposed off with no costs.

Delivered on May 06, 2019.

S. T. Sangle
6/5/19

(S. T. Sangle)
Member (Economics)

Vinod J. Tiwari
06.05.2019

(Vinod J. Tiwari)
Member (Law)



V. M. Kulkarni
06.5.19.

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

