



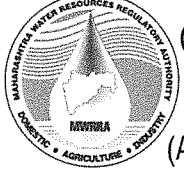
सत्यमेव जयते

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)



No. MWRRA/2019/Case No 6 of 2019/1050

Date : 14/11/ 2019


Case No. 6 of 2019

In the Matter of

Application filed by Hon'ble Shri. Balasaheb Murkute, MLA & Ors in the matter of getting information about Jayakwadi dam's water level

Please find enclosed herewith a copy of MWRRA Order No. 09/2019 dated 14/11/2019 in the above matter.

Encl : As above


(Rasik Chauhan)
Secretary

Copy for information to:

- 1) Hon'ble Shri. Balasaheb Murkute, MLA - Nevasa, Taluka Nevasa, District Ahmednagar - 414603.
- 2) Shri. Nanasaheb M. Karade, R/o Mukindpur, Taluka Nevasa, District Ahmednagar - 414603.
- 3) Shri. Dadasaheb C. Wagh, R/o Usthal Dumala, Taluka Nevasa, District Ahmednagar - 414603.
- 4) Shri. Pratap K. Chinghe, R/o Babhulveda, Taluka Nevasa, District Ahmednagar - 414603.
- 5) Executive Director, Godavari Marathwada Irrigation Development Corporation, 1st floor, Sinchan Bhavan, Jalna Road, Aurangabad-431 005.

- 6) Chief Engineer, Water Resources Department, Sinchan Bhavan, Jalna Road, Aurangabad - 431 005.
- 7) Superintending Engineer and Administrator, Command Area Development, Water Resources Department, Opp. Gajanan Temple Garkheda, Aurangabad - 431 005.



सत्यमेव जयते

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)



ORDER NO. 09 / 2019

In the Matter of

Application filed by Hon'ble Shri. Balasaheb Murkute, MLA &
Ors in the matter of getting information about Jayakwadi dam's
water level - Case No. 6 of 2019.

- 1) Hon'ble Shri. Balasaheb Murkute, MLA - Nevasa, Taluka Nevasa, District Ahmednagar - 414603.
- 2) Shri. Nanasaheb M. Karade, R/o Mukindpur, Taluka Nevasa, District Ahmednagar - 414603.
- 3) Shri. Dadasaheb C. Wagh, R/o Usthal Dumala, Taluka Nevasa, District Ahmednagar - 414603.
- 4) Shri. Pratap K. Chinghe, R/o Babhulveda, Taluka Nevasa, District Ahmednagar - 414603.
- 5) Mula Dam Water User's Association through Chairman, Vice-Chairman, Director & Members

Appellants

---Vs---

- 1) Executive Director, Godavari Marathwada Irrigation Development Corporation, 1st floor, Sinchan Bhavan, Jalna Road, Aurangabad-431 005.
- 2) Chief Engineer, Water Resources Department, Sinchan Bhavan, Jalna Road, Aurangabad - 431 005.
- 3) Superintending Engineer & Admin., Command Area Development, Water Resources Department, Opp. Gajanan Temple Garkheda, Aurangabad - 431 005.

Respondents



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

Date : November 14, 2019

BACKGROUND

1. The Appellants has approached the Respondent No. 1 through the Application dated January 14, 2019 and its corrected Application dated January 16, 2019 regarding analysis of controlling levels of Paithan Dam and seeking certain information pertaining to reservoirs in Upper Godavari sub-basin in the context of Godavari Study Group Report. As alleged by the Appellants, the Respondents were reluctant to give information. The Appellants No. 2 & 3 were also on hunger strike for information and when the Respondent gave information, the Appellants did not accept it as in the opinion of the Appellants, the said information was not related to what is asked for.
2. The Appellants earlier through Right to Information Act (RTI), 2005 filed an Application to the Respondent No. 3 seeking information pertaining to controlling levels of Paithan Dam. The Appellants were not satisfied on the provided information and raised doubts on the provided information. In this matter, a meeting was scheduled by the Respondent No. 2 on March 1, 2019 between Appellants and Respondent No. 3. During the meeting, the Appellants were not satisfied with the explanation given. At the end, the Respondent No. 2 directed Respondent No. 3 to give self explanatory informatary note to the Appellants. The minutes of the said meeting were issued by Respondent No. 2 on March 7, 2019. Accordingly, self explanatory information was provided by the Respondent No. 2 to the Appellants on March 19, 2019.

Being aggrieved by the approach of the Respondents, the Appellants filed an Appeal before this Authority on March 13, 2019 for not giving information as per the original records of Paithan Dam (1964 to 1985) & CWPRS Report.

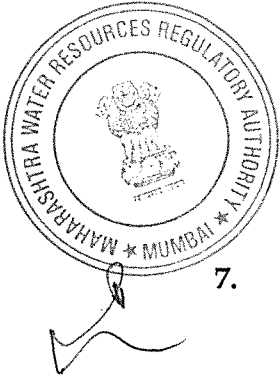


4. The Authority, having examined the Appeal, issued notices to the Respondents on June 3, 2019 and July 27, 2019 calling upon their say & reply on Affidavit. However, there was no compliance from the Respondents.
5. The Authority, from the documents on the record, observed that the Respondents were furnished two documents in which the river bed levels are different. The Appellants, out of confusion and presumption that the storage capacity of Paithan Dam is actually more than that considered for exercise of equitable distribution, has approached the Respondents & also to this Authority.

GIST OF THE PRAYERS

6. The Appellants, through their appeal before this Authority has prayed for following reliefs:

- १) सदरचे अपील खर्चासह मंजूर करण्यात यावे.
- २) CWPRS नुसार (केंद्रीय जल आणि विद्युत अनुसंधात शाला) जायकवाडी डॅमची मुळ रेकॉर्ड १९६४ ते १९८५ प्रमाणे उंची बाबत, एम.डी.डी.एल. पातळीबाबत, हॉयड्रोपावर गेट तळ पातळी ते कालवा एम.डी.डी.एल. चे पाणीसाठ्यास काय म्हणून संबोधल्यात येते? याबाबत, डावा कालवा व उजवा कालवा गेट तळ पातळी बाबत? व डॅमची बांधकामे झाले तेथील नदीची तळ पातळी ते टॉप बॉटम लेव्हल पातळी डॅमची उंची बाबत आपले कार्यालयात सुनावणी घेऊन वरील सर्व बाबींची माहिती अपेलेन्ट यांना देण्यात यावी.
- ३) अपील मध्ये दुरुस्ती करणेस परवानगी असावी.



THE PROCEEDINGS BEFORE THE AUTHORITY

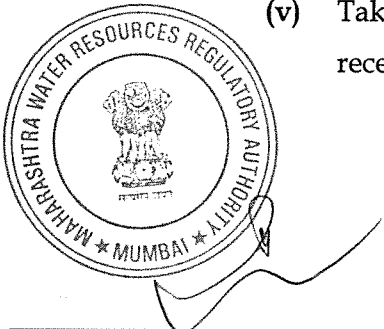
7. This Authority has conducted two hearings i.e. (A) on October 03, 2019 and (B) on October 10, 2019 and afforded fair & equal opportunities to the parties to present their case.



A) GIST OF THE FIRST HEARING ON OCTOBER 3, 2019

- (i) This hearing was attended by the Appellant No. 2, representative of Respondents and their Advocate. During the hearing, Appellant No. 2, Shri. Nanasahab Karade submitted the corrected application and read out the prayers. Based on the information received under the RTI Act, he pointed out discrepancy in some control levels of the Jayakwadi Project.
- (ii) Adv. Yashodeep Deshmukh pleaded that the Appellants Appeal is regarding the correctness of the information received under RTI Act and this Authority has no jurisdiction to deal with such appeal. The Section 22 of MWRRRA Act is regarding disputes of issuance or delivery of water entitlement. The Appellants application is regarding the information pertaining to control levels of the dam and not regarding entitlement. As such, the Appeal is not maintainable and need to be dismissed.
- (iii) Adv. Deshmukh further submitted that the Appellants have challenged the Respondent's letter dated March 7, 2019 which is not an Order under Section 22 of the Act, but the Minutes of the Meeting. The Appellants have filed application under RTI Act, 2005 and said information was given to the Appellants. If the Appellants are not satisfied with the information sought under RTI Act, they have an opportunity to file an appeal before appropriate appellate authority under RTI Act, 2005 and not before this Authority.
- (iv) Shri. Rajendra P Kale - Executive Engineer, JID, Paithan on behalf of Respondents submitted that as per Appellants various RTI Applications, the information from Jayakwadi Project Report 1965 (Original) and 1985 (Revised) was given. He further submitted that Jayakwadi Dam has reversible pumps and water release after power generation is taken back into the reservoir. Thus, there is no consumptive use of water released through Penstock.
- (v) Taking into consideration the pleadings made by the parties & the inputs received during the hearing, the Authority issued following Directions:

- (i) Respondent No. 2 - CE, WRD, Aurangabad should file an Affidavit stating silent features of the Project, as it is completed, which shall include control levels in meter and corresponding storages in Million Cubic Meter along-with the copy of the Report of the Central Water



Power & Research Station, Pune (CWPRS) as referred in the Application and submit all Volumes / Copies of original and revised Jayakwadi Project Reports by October 7, 2019.

(ii) *The next hearing will be held on October 10, 2019 at 4:00 PM*

B) GIST OF THE SECOND & FINAL HEARING ON OCTOBER 10, 2019

- (i) This hearing was attended by the Appellant No. 2, representative of Respondents and their Advocate. During the hearing, Appellant No. 2 submitted additional compilation of documents. Shri. Rajendra P Kale - Executive Engineer, Jayakwadi Irrigation Division, Paithan submitted the Affidavit in reply on behalf of Respondent No. 1 to 3, the Project Reports of Jayakwadi Project (1964, 1965 & 1985) & the CWPRS Report.
- (ii) Adv. Yashodeep Deshmukh submitted that the Appellants original application was filed under RTI Act and the sought information was given to the Appellants from time to time. If the Appellants feels that the information received is incorrect / incomplete, they have right to file an appeal before an Appellate Authority as prescribed under RTI Act not before this Authority. The Appellants referred to an Order dated March 7, 2019, is actually a minutes of meeting which cannot be challenged.
- (iii) The Authority, from the documents made available, observed that the CWPRS Report is regarding the status of siltation occurred in the Paithan dam between particular levels. It did not physically or through remote sensing measured the levels of the Paithan dam.
- (iv) Regarding outlet levels, Shri. Rajendra P Kale - EE, JID, Paithan submitted that Paithan dam has three outlets - power outlet and two canal outlets. The sill of the canal outlets are at RL 452.170 meter and the sill of the power outlet is at RL 446.337 meter. The MDDL is fixed at RL 455.52 meter and the storage below MDDL is considered as dead storage, which has not been considered in water planning.



- (v) The Appellants during the arguments alleged that the project authorities have manipulated the content table and the actual storage is more than that indicated. Thus, Project Authorities are using more water.
- (vi) The Appellants also pointed out that the Respondents are releasing the water into the canals even after the reservoir level drops below the MDDL.
- (vii) In reply, the representative of Respondents stated that in exceptional circumstances, part of the dead storage is made available for drinking purpose.

FRAMING OF ISSUES

8. This Authority, having considered the Application, the contentions made in the Appeal & submissions of the parties, the documents placed on record, framed the following issues for consideration and adjudication:
- (i) *Whether the Appellants have a locus to file this Appeal?*
- (ii) *Whether the present Appeal is maintainable as per the provisions in the MWRRA Act, 2005?*
- (iii) *Whether the river bed level documented in the Technical Report of CWPRS No. 4327 of April 2006 has material impact on storage capacity of Paithan Dam? And whether the Respondents have shown the storage capacity of Jayakwadi Dam on lower side than its actual storage capacity?*
- (iv) *Whether is it necessary to give any directions to the Respondents in the larger public interest?*

FINDINGS OF THE AUTHORITY

9. This Authority, after considering the pleadings, submissions & evidences on record, adjudicated the above issues. The findings of this Authority on the above issues are as under:



(i) *Whether the Appellants have a locus to file this Appeal??*

1) Clause 11(2) of the MWRRA (Conduct of Business) Regulations, 2013 ("Regulation" for short) reads as:

(2) *The following categories of Bulk Water Users only are eligible to petition the Authority: –*

(a) *Water User Associations at minor level, distributary level, canal level, project level, natural flow system;*

(b) *Domestic Water User Utilities such as the Maharashtra Jivan Pradhikaran, Maharashtra Industrial Development Corporation, Municipal Corporations, Urban Local Bodies, Gram Panchayats;*

(c) *Industrial Users such as Maharashtra Industrial Development Corporation privately owned industrial estates;*

(d) *Other individual Bulk Water users having an agreement with the Water Resource Department;*

(e) *Any registered organisation representing officially the interests of any of the above.*

2) Appellant No. 1 to 4 are the individuals but the Appellant No. 5 is a Mula Dam Water User's Association.

In view of provisions in clause 11(2) (a) of the Regulation, the Appellant No. 5 has locus to file this Petition

Thus, the answer to the issue is in affirmative.

(ii) *Whether the present Appeal is maintainable as per the provisions in the MWRRA Act, 2005?*

1) The Appellant has filed the present Appeal against the Respondent No. 2's letter dated March 7, 2019. However, the said letter is a minute of meeting held on March 1, 2019 between Appellants and Respondent No. 2 & 3 and not an order issued by the Primary Dispute Resolution Officer under the provisions of the MWRRA Act, 2005.

2) This meeting was conducted to discuss the information received under the RTI application of the Appellants filed before Respondent No. 3.



- 3) The Respondents argued that in the said matter, the provision of RTI Act, 2005 are attracted and not the provisions in MWRRA Act, 2005.

Inference : The Authority found it prudent to verify the contention of the Appellants as regards to wrong documentation of the control levels and manipulation of storage capacity of the Jayakwadi Project which are indirectly related to the equitable distribution and thus the entitlement of the Appellant No. 5.

(iii) *Whether the river bed level documented in the Technical Report of CWPRS No. 4327 of April 2006 has material impact on storage capacity of Paithan Dam? And whether the Respondents have shown the storage capacity of Jayakwadi Dam on lower side than its actual storage capacity?*

- a) After completion of the Jayakwadi Project, the first impounding was done in the year 1976. The CWPRS, Pune has carried out assessment of sedimentation in Jayakwadi reservoir by using Satellite Remote Sensing (SRS) technique. The assessment report has been published in April 2003.
- b) This Authority has scrutinised the said report and observed that the CWPRS has used satellite images from 1999 to 2003 for this study. As mentioned in Para 4.1 of this CWPRS Report, the area capacity curve of 1976 was taken as base for this study. This 1976 capacity table is reproduced in this report as 'Table 1'. As per this capacity table, the River Bed Level, MDDL, FRL and their corresponding storages were as below;

Level	Elevation (m)	Capacity (MCM)
River Bed Level	438.912	0.00
MDDL	455.524	738.106
FRL	463.906	2909.041
MWL	465.582	3648.339

- c) In Annexure II - Salient Features of the said Report, at Sr. No. 7 of Controlling Levels are given which are;

- i) River Bed Level 431.210 m
- ii) MDDL 455.524 m
- iii) FRL 463.906 m
- iv) MWL 465.583 m



- v) Top of Dam 468.940 m
- d) Thus, there is a contradiction in CWPRS Report, as regards to river bed level indicated at two different Paragraphs. The present petition has come out of this contradiction.
- e) Table - IV of this Report has given details of satellite data for different dates of pass along with reservoir water levels. On scrutiny of this data, this Authority has observed that CWPRS has used satellite imageries when reservoir water levels were between RL 455.183 m to 463.873 m. This indicates that the River Bed Level mentioned in salient features tabulated in the Report at Annexure II is just reproduced data. It is not finding of the CWPRS from its own study. Further, the lowest river bed level which is available in gorge portion of the dam has no material impact on storage capacity of major dams like Jayakwadi Dam. All the contents upto MDDL are considered as dead storage. These contents are consistent since 1976.
- f) This Authority has observed that there is no difference in Dead Storage, Live Storage & Gross Storage capacity of Jayakwadi Dam as per 1976 Area Capacity Curve (Table No. I of CWPRS Report), Salient features enclosed as Annexure - II of the CWPRS Report and Revised Project Report of 1985 are identical.

Inference : The Authority has come to conclusion that the Project Authorities have not done any manipulation in the Control Levels & Storage Capacities. The Appellants allegation in this regard is incorrect, baseless and not tenable.

Hence, the issue is answered in negative.

(iv) Whether is it necessary to give any directions to the Respondents in the larger public interest?

- a) This Authority has observed that after CWPRS Study, Maharashtra Engineering Research Institute (MERI) has also carried out siltation study of Jayakwadi Reservoir. As per the report of MERI dated May 29, 2014, the live storage capacity of Jayakwadi Reservoir is reduced by 178.948 MCM (8.27%). This is substantial reduction in Storage Capacity of the reservoir.



- b) MERI has also given the revised Area-Capacity curve for the live zone.
- c) The Authority is of opinion that the Project Authorities must revise their content table, after due validation of the Content Table proposed by the MERI and the same need to be made public to avoid confusion. Also, the updated storage capacities need to be considered for all reporting purposes.

Hence, the issue is answered in affirmative.

DIRECTIONS

10. 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, hereby directs as under:
- (i) Respondent No. 2 shall revise the content table on the basis of siltation studies carried out by MERI after due validation. Revised Storage Capacities of the Jayakwadi Dam corresponding to the various control levels shall be made public. Thereafter, these revised storage capacities shall be used for all reporting purposes.

The Appeal is accordingly disposed off with no order to the costs.

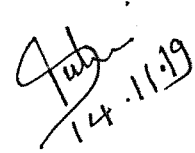
Delivered on November 14, 2019


14/11/19

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


14.11.2019

(Vinod J. Tiwari)
Member (Law)


14.11.19

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





(K. P. Bakshi)
Chairman

