



सत्यमेव जयते

# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण अधिनियम, 2005 चे कलम 3 अन्वये स्थापित वैधानिक प्राधिकरण

## Maharashtra Water Resources Regulatory Authority

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



स्वातंत्र्याचा अमृत महोत्सव

ORDER NO. 05/2023

(Case No 02 of 2020)

In The Matter of

Permission dated 26/11/2018 & Corrigendum dated 07/02/2019 by Godavari Marathwada Irrigation Development Corporation, Aurangabad and in the matter of fraud played by the Shirdi Sansthan, Shirdi Nagarpanchayat & Kopargaon Municipal Council.

1. Dilip Vithal Kasar  
R/ o Village Nimaj  
Tal. Sangamner, Dist Ahmednagar
2. Bhaskar Shankar Pansare  
R/ o Village Ghulewadi  
Tal. Sangamner, Dist Ahmednagar
3. Hangewadi Village Grampanchayat  
Through Nitin Sangle, R/ o Village Hangewadi  
Tal. Sangamner, Dist Ahmednagar

.....Petitioner

Versus

- 1) Principal Secretary (WRP & D),  
Water Resources Department,  
Mantralaya, Mumbai.

Executive Director,  
Godavari Marathwada Irrigation Development Corporation,  
Sinchan Bhavan, Jalna Road, Aurangabad.



- 3) Executive Engineer,  
Maharashtra Jeevan Pradhikaran,  
Sangamner, Taluka Sangamner, District Ahmednagar.
- 4) Chief Executive Officer,  
Shri Saibaba Sansthan Trust, Shirdi,  
Taluka Rahata, District Ahmednagar.
- 5) Chief Officer,  
Shirdi Nagar Panchayat, Shirdi,  
Taluka Rahata, District Ahmednagar.
- 6) Chief Officer,  
Kopargaon Municipal Council,  
Kopargaon, District Ahmednagar.

.....Respondents

Adv. R. L. Kute for the Petitioner

Adv. Shakuntala Wadekar along with Adv. Bhavana Punalekar for the  
Respondent Nos. 1 & 2

Adv. Vinod M Shah for the Respondent No. 4

Adv. Ajit D. Hon for the Respondent No. 5

Adv. Prashant Pandharikar for the Respondent No. 6



Coram : Dr. Sanjay Chahande, Chairperson  
CA. Shwetali A. Thakare, Member (Economics)  
Adv. Dr. Sadhana S. Mahashabde, Member (Law)

Date : July 06, 2023

- 1.0 Shri. Dilip Vithal Kasar Shri. Baskar Shankar Pansare and, Hangewadi  
Village Grampanchayat, Taluka Sangamner, District Ahmednagar  
have filed a Petition dated 16/09/2020 in the matter of permission  
dated 26/11/2018 and a Corrigendum dated 07/02/2019 by Godavari



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण  
Maharashtra Water Resources Regulatory Authority  
9th & 11th Floor, Centre-1 World Trade Centre, Cuffe Parade, Mumbai-400005.

Marathwada Irrigation Development Corporation (GMIDC), Aurangabad and in the matter of fraud played by the Shirdi Sansthan, Shirdi Nagarpanchayat and Kopergaon Municipal Council. The Petitioners stated that this Petition is filed under Section 11 and 13 of the Maharashtra Water Resource Regulatory Authority (MWRRA) Act, 2005.

2.0 The Petitioners, in the Petition, briefed the history of Mhaladevi (Nilwande) Dam, Bhandardara Dam and Ozar Pickup weir and submitted that Nilwande Project is an old project of Year 1882 and exclusively constructed for the villages which come under the rain shadow area. Till today, there are no canal systems constructed completely and therefore, agriculturist (including Petitioners) from Sangamner and Akola Talukas are deprived of water for last 120 years. After agitation, State Government, in Year 1989, took decision to allot 30% water from Bhandardara Dam for Sangamner and Akola Talukas.

3.0 The Petitioners, in the Petition, briefed further about the case of equitable distribution of water in Upper Godavari sub-basin filed before Hon'ble High Court and this Authority and submitted that this Authority disposed the matter before it under Case No. 01/2014 by its order dated 19/09/2014. This order was challenged before the Hon'ble High Court at Bombay in Public Interest Litigation (PIL) 173/2013 and others which was disposed of by the Hon'ble High Court's order dated 23/09/2016 upholding this Authority's Order dated 19/09/2014. Both these orders are challenged before Hon'ble Supreme Court and matter is still pending. Meanwhile, as per the Hon'ble High Court's direction, this Authority initiated review of guiding principles in its order dated 19/09/2014.

4.0 The Petitioner further submitted that some of the agriculturists in the command of Nilwande Dam had file a PIL No. 133/2016 in Aurangabad Bench of Hon'ble High Court at Bombay and prayed for early completion of canal system and release of funds for Nilwande Dam. The Petitioner in said PIL also prayed to restrain State Government, GMIDC & authorities for allocating any water to any institution outside the command of Nilwande Dam. The Petitioners also filed Civil Applications (CA) in support of said PIL.



5.0 The Petitioner further submitted that, Shirdi Sansthan, Shirdi Nagarpanchayat & Kopargaon Municipal Council are already allotted their drinking quota from Darna Dam. Then, State Government, as per the request of local public representatives, gave financial sanction to Shirdi Sansthan vide Government Resolution (GR) dated 01/09/2017 for laying direct pipeline from Nilwande Dam to Shirdi Sansthan. State Government cancelled this GR and issued new GR dated 07/02/2018 giving financial sanction for laying direct pipeline from Nilwande Dam to Shirdi Sansthan, Shirdi Nagarpanchayat & Kopargaon Municipal Council. This was also challenged before the Hon'ble High Court in above said PIL. The Hon'ble High Court, vide its order dated 08/06/2018 restrained the Respondents from taking any further steps in the absence of sanctioned quota and to decide the proposal in accordance with the law. Accordingly, GMIDC, Aurangabad, vide letter dated 26/11/2018 and corrigendum dated 07/02/2019 granted permission of water from Nilwande Dam to Shirdi Sansthan, Shirdi Nagarpanchayat & Kopargaon Municipal Council. These were also challenged before the Hon'ble High Court in above said PIL.

6.0 The Petitioners further submitted that a petition filed before this Authority under Case No. 07/2018 challenging GR dated 07/02/2018. This Authority disposed of the said matter vide Order dated 15/10/2018. However, this Petitioner argued that this was illegal, without hearing petitioners, collusive and per in curium. Further, this Authority treated representation of Shirdi Sansthan as *suo-moto* Petition under Case No. 13/2018 for enhancement of water use quota for floating population. This Authority vide Order dated 17/10/2018 disposed of the matter and ordered that the criteria for water supply relaxed from 70 LPCD to 135 LPCD for further population and floating population to Shirdi Sansthan and Shirdi Nagarpanchayat. On one hand, the Petitioners are waiting for benefits of Nilwande Dam for last 120 years and on other hand, Shirdi Sansthan and Shirdi Nagarpanchayat got permission for laying drinking water pipeline with 135 LPCD water use. This order is per *incurium*, discriminatory, in breach of principle of natural justice and against provision of law.

7.0 The Petitioners further submitted that almost 80 Thousand Million Cubic feet of water is going waste in Arabian Sea and more than 50



Thousand Million Cubic feet of water can be diverted in Godavari Basin. State Government has started taking steps in this regard and if this is considered, then huge quantity of water will be available in Darna Dam. Thus, there will not be scarcity of water as contemplated by Shirdi Sansthan, Shirdi Nagarpanchayat & Kopargaon Municipal Council. As there is alternate source available, this Authority's Order dated 15/10/2018 is illegal and contrary to State Water Policy and Integrated State Water Plan.

8.0 The Petitioners further submitted that there is very less rainfall in Sangamner Taluka and there is no other drinking source available to various villages. Thus, adequate water is required to be kept in Pravara complex to the villages coming under command of Nilwande Dam. Hon'ble High Court Order dated 19/12/2019 in CA 14845/2018 filed by Petitioners in PIL 133/2016 permitted to approach MWRRA. Thus, the Petitioners filed the present Petition before this Authority.

9.0 The Petitioner, through its Petition prayed for the following reliefs:

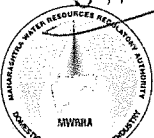
1. *That, this Hon'ble Authority may kindly modify/review/set aside the permission/order dt. 26/11/2018 & corrigendum dt. 07/02/2019 issued by GMIDC cancelling the already granted quota on darna dan & shifting entire drinking water quota of Shirdi Sansthan, Shirdi Nagar Panchayat and Kopargaon Municipal Council on Nilwande dam being illegal arbitrary, without jurisdiction per incurium & for that purpose issue necessary orders.*
2. *Modify / quash & set aside order dt. 15/10/2018 in MWRRA case no. 7/2018 passed by this Hon'ble Authority being collusive, per in curium and nullity due to fraud played by the parties therein and in breach of principles of natural justice for that purpose issue necessary orders.*
3. *Modify/quash & set aside order dt. 17/10/2018 in MWRRA case no. 13/2018 passed by this Hon'ble Authority being collusive, per incurium and nullity due to fraud played by the partied therein and in breach of principles of natural justice & for that purpose issue necessary orders.*
4. *Any other appropriate relief may kindly be granted in favour of the Petitioners*



*[Handwritten signature]*



- 10.0 After filing the Petition on 16/09/2020, the Authority scrutinised the Petition and vide letter dated 16/10/2020, directed the Petitioners to rectify the defects. After the defects are rectified by the Petitioners, the Authority vide letters dated 27/10/2020, 16/12/2020, and 12/09/2022, directed Respondents to file a para-wise Affidavit in Reply.
- 11.0 Accordingly, Chief Officer, Shirdi Nagar Panchayat, Shirdi - Respondent No. 5 filed a para-wise Affidavit in Reply dated 21/11/2020 and submitted that regarding Prayer Clause No. 1, Hon'ble High Court at Aurangabad has already refused to quash and set aside Order dated 26/11/2018 in CA 14845/2018. Regarding Prayer Clause No. 2 and 3, Petitioner cannot challenge the orders passed by this Authority before the same Authority. As none of the prayer survives, present petition filed without any jurisdiction. As per Hon'ble High Court Order dated 19/12/2019 in CA 14845/2018, Petitioners should approach this Authority only when canal work is completed. But there is nothing placed on record to modify or review the Order dated 26/11/2018 before this Authority, thus Petition is premature and liable to be dismissed.
- 12.0 Shri. Ravindra Namdeo Pathak, Municipal Councillor of Kopergaon Municipal Council's Intervention Application dated 24/11/2020 requesting to allow his intervention application. Shri Pathak stated that he is sitting Municipal Councillor of Kopergaon. If the reliefs sought by the Petitioners granted, people of Kopergaon and Shirdi towns will be adversely affected and will suffer irreparable loss, injury and hardship.
- 13.0 Chief Officer, Kopergaon Municipal Council - Respondent No. 6 filed a para-wise Affidavit in Reply dated 19/12/2020 and submitted same views as filed by Respondent No. 5 filed para-wise Affidavit in Reply dated 21/11/2020.
- 14.0 Executive Engineer, Upper Pravara Dam Division, Sangamner on behalf of Principal Secretary, Water Resources Department - Respondent No. 1 and Executive Director, GMIDC, Aurangabad - Respondent No. 2 filed an Affidavit in Reply dated 11/05/2021. He submitted that the work of Nilwande Dam 98% complete, 59% work of Upper Pravara Left and Right Bank Canals are completed and work of



distribution network is in progress. It is planning to complete the work by 2023-24. GMIDC, Aurangabad is competent authority to sanction water allocation, even outside command area of the project for drinking purpose. GMIDC's Order for water allocation from Nilwande Dam to Shirdi Sansthan, Shirdi Nagarpanchayat and Kopargaon Municipal Council dated 26/11/2018 and Corrigendum Order dated 07/02/2019 are as per norms and guidelines of this Authority. The water reservation on Darna Dam will be cancelled as soon as water supply from Nilwande Dam is available. The said Order dated 26/11/2018 is challenged before Hon'ble High Court of Aurangabad, Bombay Division and Hon'ble Supreme Court. Since the matter is *sub judice* before and pending before, Hon'ble Court, the Petition is not maintainable and it may be dismissed.

- 15.0 Chief Executive Officer, Shri Saibaba Sansthan Trust, Shirdi Respondent No. - 4 filed a para-wise Affidavit in Reply dated 09/12/2022. He submitted that present Petition is baseless, false, and frivolous, filed without any grounds and is liable to be dismissed. Petitioners cannot challenge proposal of drinking water supply to the above said agencies due to the deprived of water from Nilwande Dam. At present, water is supplied from Darna Dam through an open canal which is very old and dilapidated and fifty percent of water lost due to evaporation and theft. Due to severe water shortage, the Respondent is required to bring water through tankers from surrounding villages. Therefore, a proposal was submitted for water supply from Nilwande Dam which was sanctioned vide GR dated 07/02/2018. This Authority, on the representation of the Respondent, relaxed the water use norm for present and floating population vide Order dated 17/10/2018. As per the State Water Policy, water for drinking purpose has first priority. The Respondent is permitted to use funds for procuring water through private tankers as per Hon'ble High Court Order in CA No. 6541/2016 dated 05/05/2016. In the combined water supply scheme, water will be brought through pipelines and used water will be treated to be made available for agricultural use. As per Hon'ble High Court Order dated 19/12/2019 in CA 14845/2018, the Respondent has obtained sanction and work of Phase - I started. The



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Respondent given para-wise reply to the Petition and submitted that the Petitioners are not entitle for any relief and it is liable to dismiss.

- 16.0 The Authority conducted first and final hearing in the matter on 11/05/2023. During the hearing, the Authority heard both the parties mainly on jurisdiction and maintainability. After hearing arguments from both side, the Authority closed the proceedings for the Order.

### FINDINGS OF THE AUTHORITY

- 17.0 In the light of the provisions contained in the relevant Acts, GRs and this Authority's Orders, the observations of the Authority are as follows;

- (a) The Section 11 (a) and Section 16A of the MWRRA (Amendment and Continuance) Act, 2011 reads as follows;

*"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 16A - (1) Notwithstanding anything contained in section 11 or any Sectoral other provisions of this Act or in any other law for the time being in force, the State Government shall determine the sectoral allocation :*

*Provided that, sectoral allocation so determined shall ordinarily be reviewed at such intervals of not less than three years :*

*Provided further that, after publication of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Act, 2011, in the Official Gazette, the State Cabinet shall determine the sectoral allocation*

*(2) After the sectoral allocation, as provided in sub-section (1) is determined, the Authority shall determine the criteria for the distribution of Entitlements under clause (a) section 11."*



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- (b) As per above Sections, the Authority has to determine only criteria for the distribution of Entitlements and State Government shall determine the sectoral allocation.
- (c) As per the provisions under Section 16A and as per Para 2.0 of WRD's GR No. संकिर्ण-२०१५/(४४/१५)सि.व्य.(धोरण) dated 17/11/2016, GMIDC, Aurangabad, vide letter dated 26/11/2018 and corrigendum dated 07/02/2019 granted water reservation from Nilwande Dam to combined water supply scheme for Shirdi Sansthan, Shirdi Nagarpanchayat & Kopargaon Municipal Council. The total drinking water reservation of Nilwande Dam including above reservation is within the 15% of live storage of Dam i.e. within Sectoral Allocation limit.
- (d) The GMIDC, Aurangabad's above permission is with conditions and one of the condition is that after commencement of said water supply scheme from Nilwande dam, the earlier water reservation from Darna Dam will automatically be cancelled.
- (e) The Petitioner prayed to modify/quash and set aside this Authority's Order dated 15/10/2018 in Case No. 7/2018 and Order dated 17/10/2018 in Case No. 13/2018. However, this Authority can review its own Orders as per Regulation 30 (1) of the MWRRA (Conduct of Business) Regulations, 2013 which reads as follows;

*(1) Any person aggrieved by a decision or order of the Authority, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within such person's knowledge or could not be produced by such person at the time when the decision/order was passed by the Authority or on account of some mistake or error apparent from the face of record, or for any other sufficient reason, may apply for review of such order within 60 (sixty) days of the date of decision/ order of the Authority.*

The Petitioner has not submitted any documentary record in the Petition or brought before the Authority any new or important



evidence as per the above said Regulation. Therefore, there are no grounds to treat this Petition as 'Review Petition'.

- (f) Hon'ble High Court, in CA No. 14845 of 2018 filed in the PIL 133 of 2016, heard the matter and rejected it by Order pronounced on 19/12/2019. The Hon'ble High Court in Para 45 to 48 of its Order stated as follows;

45. For the reasons, as stated above, we do not see any cause to interfere with the impugned order dated 26/11/2018 and the challenge to the same, thus, stands rejected.

46. In so far as the relief as is claimed in prayer clause (C) of this civil application is concerned, it is always open for these 182 villages to approach the Authorities concerned in respect of any reservation / allocation / entitlements as made by the MWRRA and request for a change/review/revision or modification in them, for reasons as available then, as and when the distribution network for distribution of water from the Nilwande Dam is complete or is nearing completion.

47. The civil application is, thus, rejected.

48. In view of the above, we permit the respondents No. 10 to 12 to go ahead with the work of Phase II of laying the pipeline from Nilwande Dam to Shirdi town (including Kopergaon), so that the allocation of water made from Nilwande Dam, to the respondents No. 10 to 12, as of date, can be properly utilised. Needless to say, that it would be open to the Authorities under the MWRRA Act, 2005, to review or modify the order dated 26/11/2018, as and when the need for being so, is brought to its notice and it is satisfied that any modification or review is called for.

- (g) The Hon'ble High Court has rejected the CA No. 14845 of 2018 but the PIL 133 of 2016 is not yet disposed of. Thus, the matter is *sub-judice* before the Hon'ble High Court. Further, no grievance is made about villages as observed above in Para 46 of the above Hon'ble High Court Order.



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- (h) Regarding this Authority's Order in Case No. 7/2018 dated 15/10/2018 in a Petition filed by Grampanchayat Pimpri Nirmal, Taluka Rahata, District Ahmednagar through Shri. Dnyandev Ghorpade regarding grievance of the water reservation from Nilwande Dam to water supply scheme for Kopargaon Nagarpalika and Shirdi Devsthan. The Authority, while disposing of the matter, stated that State Government is competent to sanction drinking water entitlements within Sectoral Allocation to any water use entity even outside command area of the project.
- (i) Regarding this Authority's Order in Case No. 13/2018 dated 17/10/2018 in the matter about relaxing water use norms by reserving water with 135 lpcd norm from Nilwande project to combined water supply scheme of Shri. Saibaba Sansthan Vishwastha Vyavstha Shirdi, Shirdi Nagarpanchayat & Kopargaon City. The Authority, while disposing of the matter, prescribed water use norm.

### Order

18.0 Having heard the parties to the litigation, and after giving due consideration to the documents as well as data on record and, submissions made by the parties, this Authority, hereby orders as under:

- (a) Regarding Prayer 1 of the Petition, this Authority cannot decide the matter which is already decided by the Hon'ble High Court in CA 14845 of 2018 in PIL 133 of 2016 dated 19/12/2019. Further, PIL 133 of 2016 is not yet disposed of. Also there are other Petitions / Applications filed before the Hon'ble High Court and Hon'ble Supreme Court challenging the impugned Order dated 26/11/2018 i.e. the matter is still *sub judice* before the Hon'ble High Court and Hon'ble Supreme Court.

- (b) Regarding Prayer 2 and 3 of the Petition, the Petitioner should have filed the present Petition as 'Review Petition' as per



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MWRRRA (Conduct of Business) Regulations, 2013. However, Petitioners have not stated any grounds for review in the Petition or during hearing before this Authority. Thus, this Petition cannot be treated as 'Review Petition' and thus no relief in this context can be given.

(c) In view of above, the Petition is rejected.

Thus, the Petition and Intervention Application is accordingly disposed of with no order as to the costs.

Delivered on July 06, 2023.

Sd/-

(Adv. Dr. Sadhana S. Mahashabde)  
Member (Law)


Sd/-

(CA. Shwetal A. Thakare)  
Member (Economics)

Sd/-

(Dr. Sanjay Chahande)  
Chairperson



  
(Dr. Ramnath Sonawane)  
Secretary  
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