



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)



स्वातंत्र्याचा अमृत महोत्सव

MWRRRA/2020/Legal/Case No. 23 (2018)/686

Date : 04/10/2023

Case No. 23 of 2018


In The Matter of

Petition filed by Late Rajabhau Tugar Sahakari Upsa Jalsinchin Sanstha Maryadit Shinde, Nashik through its Chairman Shri. Sanjay Pundalik Tugar and Prof. Mrs. Devayani Suhas Farande, MLA, Nashik in the matter to stay the effect, operation and implementation of the order dated 23/10/2018 issued by the Godavari Marathwada Irrigation Development Corporation.

Please find enclosed herewith a copy of MWRRRA Order No. 07/2023 dated 04/10/2023 in the above matter.

Encl : As Above



  
(Dr. Ramnath Sonawane)  
Secretary, MWRRRA

Copy for information & necessary action to :-

1. Late Rajabhau Tugar Sahakari Upsa Jalsinchin Sanstha Maryadit through its Chairman Shri. Sanjay Pundalik Tugar, Shinde, Nashik (Petitioner 1)
2. Prof. Mrs. Devayani Suhas Farande, MLA, Nashik Central, Ajinkyatara, Chopada Estate, Kalanagar, Ganagapur Road Nashik-422002 (Petitioner 2)
3. Principal Secretary (WRP & D), Water Resource Department, Government of Maharashtra, Mantralaya, Mumbai- 400032 (Respondent No. 1)
4. Secretary (WRM & CAD), Water Resource Department, Government of Maharashtra, Mantralaya, Mumbai- 400032 (Respondent No. 2)
5. Executive Director, Godavari Marathwada Irrigation Development Corporation, Sinchan Bhavan, Jawahar Colony, CADA Office, Near Akashwani Kendra, Jalna Road, Aurangabad - 431 001 (Respondent No. 3)



# महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण

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

## Maharashtra Water Resources Regulatory Authority

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ORDER NO. 07/2023

(Case No 23 of 2018)

In The Matter of

Petition filed by Late Rajabhau Tugar Sahakari Upsa Jalsinchin Sanstha Maryadit Shinde, Nashik through its Chairman Shri. Sanjay Pundalik Tugar and Prof. Mrs. Devayani Suhas Farande, MLA, Nashik in the matter to stay the effect, operation and implementation of the order dated 23/10/2018 issued by the Godavari Marathwada Irrigation Development Corporation

1. Shri. Sanjay Pundalik Tugar,  
Chairman Late Rajabhau Tugar  
Sahakari Upsa Jalsinchin Sanstha Maryadit, Nashik.
2. Prof. Mrs. Devayani Suhas Farande,  
Member of Legislative Assembly,  
State of Maharashtra, Nashik.

.....Petitioners

V/s.

1. State of Maharashtra, Maharashtra State Irrigation Department, Through its Principal Secretary, Mantralaya, Mumbai - 400 020.
2. Water Resources Department, State of Maharashtra, through its Principal Secretary, Mantralaya, Mumbai - 400 020.
3. Godavari Marathwada Irrigation Development Corporation, through its Executive Director, Near Akashwani, Jalna Road, Aurangabad, - 431001.

.....Respondents



*[Handwritten Signature]*

Adv. Pravartak Pathak, Advocate for Petitioners

Adv. Shankuntala Wadekar, Advocate for Respondents

**Coram : Dr. Sanjay Chahande, Chairperson**

**Shri. Sanjay D. Kulkarni, Member (WR.Engg.)**

**CA. Shweta A. Thakare, Member (Economics)**

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

**Date : October 4, 2023**

1. The Petitioner No.1 is the registered society working in the field of water irrigation and the Petitioner No. 2 - Prof. Mrs. Devyani Pharande is the Member of Legislative Assembly, State of Maharashtra from Nashik Constituency. The Respondent No. 3 - Godavari Marathwada Irrigation Development Corporation, Aurangabad, vide Order No. 1087 dated 23/10/2018, directed to release 8.99 Thousand Million Cubic feet (TMC) water from upstream of Paithan Water Reservoir as per standing orders of this Authority dated 19/09/2014 in Case No. 1 of 2014.
2. The Petitioners, being aggrieved and dissatisfied by the Respondent No. 3's Order dated 23/10/2018, have approached this Authority under Section 22 of the Maharashtra Water Resources Regulatory Authority (MWRRA) Act, 2005 by way of this Petition dated 16/11/2018.
3. The Petitioners further stated that Petitioner No. 2 from time to time had made several representations to deal and tackle with the issues of equitable distribution of water in Nashik Region, specially in Gangapur, Darna and Palkhed Reservoir Complexes. During the year 2018 - 2019, there is shortfall of rain water specially in Marathwada as well as a part of Nashik District and therefore, the State Government declared 'Drought like situation' for eight Talukas from Nashik District facing 'Drought like situation' by the Revenue and Forest Department's Government Resolution (GR) dated 23/10/2018.



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4. Further, as per the directions issued by the Hon'ble High Court, a review of all upstream reservoirs was expected before taking any a decision in respect of equitable distribution of water by the Respondent No. 3. However, the State Government taken a review only in respect of allocating water uses of Jayakwadi Reservoir and issued the Water Resources Department's (WRD) GR dated 12/09/2018. However, the said GR issued without any application of mind.
5. The Petitioners further submitted that the Respondent Authorities ought to have taken into consideration the required review in respect of entitlement of various sectors depending upon Gangapur, Darna and Palkhed Reservoir Complex and therefore, without taking into consideration of various persons and entitlement as well as dependence upon the said reservoir complex, the Respondent No. 3 arbitrarily have passed an Order dated 23/10/2018 to release 8.99 TMC water for Paithan upstream reservoir, which may ultimately result into inequitable distribution of water between the upstream and downstream reservoir. The State Government failed to implement various directions issued by the Hon'ble High Court in its Order dated 23/09/2016. Therefore, the intervention of this Hon'ble Authority is necessary.
6. The Petitioners further submitted that as per the Order dated 20/08/2007, the total entitlement of Nashik Municipal Corporation is around 6.50 TMC per annum whereas Godavari Study Group (GSG) Report considered only 4.90 TMC. In such circumstances, in the absence of any review giving a direction to release the water from Jayakwadi Reservoir, there will be unequitable distribution of water which may cause serious prejudice to the persons residing within the Nashik Municipal Corporation as well as other persons entitled to use water from Gangapur and Darna Reservoir Complex. Also, Anandi Dam is shown in Darna Reservoir Complex instead of the Gangapur Reservoir Complex. Anandi Dam is reserved for (Kharif) cultivation in Gangapur Project Report. However, due to encroachment on the Anandi Dam, the water cannot be utilized in Kharif season and therefore there is an error while taking into consideration of Anandi Dam in Darna Complex. Moreover, in absence of water from Anandi Dam, Gangapur Reservoir



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does not have any allocation or reservation of water for Kharif season. In such circumstances, the water usage in Kharif season may end up with the vulnerable situation.

7. The Petitioners further submitted that the GSG Report has not taken into consideration silt accumulated in Gangapur and Darna Reservoir Complex which has affected the storage capacity. Also, the carry Over Storage in Gangapur and Darna Reservoir Complex is not available whereas it is available in Jayakwadi Reservoir which is more than 26 TMC. In such circumstances, if there is any shortage of rainfall within the catchment area of Gangapur Reservoir the water could not be made available even for drinking purpose which is priority. Moreover, the water released in Jayakwadi could not be reversed into the Gangapur and Darna Reservoir Complex. As per the Hon'ble High Court's direction, State Government has to install the Gravity Pipelines to avoid loss of water due to evaporation. However, till date the Government has not considered the directions.
8. The Petitioners further submitted that as per clause No.15 of GSG Report, the review and updating of the principles may be done after lapse of 5 years or shorter period as decided by the Government. The Hon'ble High Court has also given the directions to do the necessary periodical review. However, till date the said review has not been carried out and without completing the said review, the impugned Order was issued by Respondent No. 3. The GSG Report has not considered the increased water usage in upstream dams of Jayakwadi Project. The Petitioners also submitted that in drought affected area, the farming of sugar cane is not at all advisable but huge amount of water used by Sugar Factory from Jayakwadi Reservoir. Respondent No. 3 erroneously reduced evaporation losses in WRD's GR dated 12/09/2018. Vide WRD's GR dated 21/11/2002, the water for the lift irrigation purpose has been allowed only upto the 9.25%, whereas the water usage of lift irrigation is shown in the WRD's GR dated 12/09/2018 is about 50%. State Government has ignored and bypassed the said provision in water planning and has allocated excess water for



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lift irrigation which is illegal, contrary to the provisions of the law and the equity.

9. In light of the facts and the grounds stated herein above, the Petitioners prayed for the following reliefs in their Petition;
- Be pleased to call for record and proceedings in respect of the order dated 23<sup>rd</sup> October 2018 issued by the Godavari Marathwada Irrigation Development Corporation by way of Office Order bearing No.1087 and after verifying the legality, propriety and authenticity thereof be pleased to quash and set aside the same.
  - Be pleased to direct the concerned authority to take review of the all the upstream reservoirs of Paithan reservoir specially all the reservoir complex in Nashik and Nagar District as suggested by the Godavari Study Group Report, 2013 and after taking the review of actual capacity of reservoir, increased requirement of Water and all such necessary factors and principles be pleased to set fresh standards for equitable distribution of water during the period of distress.
  - Be pleased to direct the concerned authority to take appropriate action in respect of the unauthorized water lifting from Jayakwadi Reservoir by sugarcane farmers and for other usage.
  - Be pleased to direct the State Government to revise the usage of Jayakwadi Reservoir as notified by GR dated 12th September 2018 in the light of GR dated 21st November 2002.
  - Any other and further order may be passed in favour of present Applicants as this Hon'ble Court may deem fit.
10. After filing the Petition before this Authority on 27/11/2018, the copy of the Petition served upon to Respondent No. 1 and 2 on 05/12/2018 and to Respondent No. 3 on 30/11/2018 by Post.

The Authority conducted the first hearing in the matter on 31/01/2019. During the hearing, the Petitioners submitted that as far as the issue concerning Prayer (a) has already been redressed and as such the Petitioners do not wish to press the said prayer. However, the Petitioners emphasized that the issues covered under and concerning to



the prayers (b), (c) and (d) constitute the main concerns in the Petition and therefore, the Petitioners want to press the same for redressal thereof in the interest of justice. After, filing of the Petition, some relevant developments have been taken place and as such these facts need to be brought on record for the better adjudication of the issues and therefore the Petitioners prayed for carrying out necessary amendments in the Petition. The Authority directed to the Petitioners to carry out relevant amendments in the Petition as deemed necessary, along with copies of the additional documents which Petitioners want to bring on record. The Authority also directed to Respondents to file their say and to the Petitioners to file Rejoinder, if required.

12. Pursuant to the directions given, the Petitioners amended the Petition on 07/03/2019. The Petitioners submitted that the GSG Report has not considered the subsurface water. The Strategies of equitable distribution will be applicable after 15<sup>th</sup> October wherein only 80% of Non-irrigation and Kharif irrigation is considered. But till 15<sup>th</sup> October, it cannot restrict the user to use water upto 80%. Water users associations are formed in Nashik District and the impact of distress on them has to take into consideration for equitable distribution of water. Water from minor irrigation tanks is not considered. In the absence of Rules, equitable distribution is arbitrarily followed without considering several facts raised in this Petition. There is overestimation of storage planning of Jayakwadi Dam and accordingly it is necessary to reduce it. The water is released to Jayakwadi 4 times till date and transit losses observed from 37% to 49%. Therefore, it is better to release water for drinking purpose in the scarcity time by gravity pipeline.

13. The Petitioners further submitted that no water use is planned from Dead Storage, but in exceptional cases when there is no water in live storage for drinking purpose. However, as per Water Audit Report of Jayakwadi Project, water used for irrigation from Dead Storage. As per WRD's GR dated 21/11/2002, permissible water use for lift irrigation on the project is 9.25% of the canal use. However, total lift quota sanctioned as per WRD's GR dated 12/09/2018 is 46%. Farmers around the periphery of Jayakwadi dam lift water illegally for sugarcane. Therefore,



the Petitioners prayed to direct State Government to restrict farmers in respect of unauthorized water lifting for the purpose of sugarcane production.

14. As per the directions of the Authority, the Respondent No. 3 filed an Affidavit in Reply dated 22/07/2019. The Respondent No. 3 submitted that the Respondent No. 3 conducted the meeting with concerned project authorities for collecting the storage data, water use, and related information of upstream as well as Jayakwadi Dam for equitable distribution of water for the Year 2018 and issued an order dated 23/10/2018 considering guiding principles issued by this Authority in their standing order dated 19/09/2014. Regarding various directions issued by Hon'ble High Court Bombay in PIL 173/2013 vide its order dated 23/09/2016, the State Government has already filed their Affidavits pointing out their difficulties in following few of the directions such as gravity pipeline. Hon'ble High Court Bombay is continuously monitoring the compliance of their directions. Even only consideration of sub-surface water will not differ the objective of equitable distribution of water. GSG Report is pending for Review before this Authority under Case No. 4 of 2017 filed by Shri Shankarrao Nagre & others. Regarding Alandi dam in Darna Complex, there is no restriction on Alandi dam for Kharif water use.
15. The Respondent No. 3 further submitted that the said water quantity as specified in Table - 5 and Table - 6 of GSG Report are certified by the concerned Chief Engineer. The water release quantum has been worked out excluding carryover and the minimum water requirements are considered in Table - 5 for each Complex. The Central Design Organization (CDO) Nashik Report 2004 is for academic purpose only, but GSG Report considered the water demand as per sanctioned water use. Regarding data pertains to sugar factories mainly located in upstream of Jayakwadi, the sugar cane supplied to these factories are from Mula command, Godavari right and left bank canals command, Jayakwadi back water etc projects and also the sugarcane grown on well irrigation is crushed in these factories. Hence 24 TMC of water utilized for sugar cane from Jayakwadi reservoir is baseless. The equitable





distribution of water is never based upon the Cropping Patterns. The WRD's GR dated 12/09/2018 is about re-planning of Jayakwadi water use and the actual evaporation data of Jayakwadi dams is submitted to MWRRA in review petition. Regarding WRD's GR dated 21/11/2002 about lift permissions, the area of lift schemes shown in the WRD's GR dated 12/09/2018 is well within the 20% of planned crop area and the lift schemes from Jayakwadi reservoir are executed and operated by Government for drought area. The said order of equitable distribution is to operate when there is a hydrological drought and only when in the first fortnight of October, the storage of Jayakwadi less than 65%

16. The Respondent No. 3 further submitted that as per revised Jayakwadi project report, prepared in year 1985, 75 % dependable annual virgin yield was work out as 5566 Million Cubic Meter (MCM) (196.56 TMC), out of this 3270 MCM (115.50 TMC) is for upstream utilization and 2565 MCM (90.57 TMC) for Jayakwadi Project including regeneration of 245.25 MCM (8.66 TMC) from upstream utilizations. The CDO report 2004 is purely for academic purpose. The applicant artificially works out the figures and shows that Jayakwadi Project was planned on overestimated yield. Actually upstream utilization are increased from 115.50 TMC to 160 TMC. The Jayakwadi Project planned by considering long data set 1927 to 1978 (51 year) it shows the realistic virgin yield series. In this case it required to restricted upstream utilization to sanctioned limit 115.50 TMC, so the Jayakwadi will be not in deficit. Presently due to climate change effect over all Yield is reduced and creating water distress in whole sub - basin. This water distress will be distributed amongst the reservoirs in sub- basin as per the provision of Act 2005.

17. The Respondent No. 3 further submitted that the State Government has taken all measures to minimize transit loss and the dead storage water of Jayakwadi is used for fulfillment of domestic demand. The water used from dead storage in year 2015-20016 is 264.73 MCM water including evaporation was used for domestic purpose. Only 20-25 MCM of water used by farmers for lift irrigation, which was penalized. The evaporation loss from reservoir is a dynamic quantity it may change from year to



year, and it mainly depends on weather condition of that year. The Jayakwadi reservoir lift schemes are legal and they are not unauthorized. To made restrictions on production of sugarcane crops is a policy decision and not in purview of Respondent No. 3. The rigorous action against unauthorized water lifting from Jayakwadi reservoir has been taken at field levels. The flying squad of officers from revenue, MSEB, police and water resources department were formed. The actions like disconnecting the electricity of illegal water pumps and ceasing instruments are taken. In an around vicinity of the Jayakwadi reservoir for 18 hours electric supply was stopped. Daily vigilance and patrolling are done to take action against unauthorized water lifting. The list of authorized farmers are uploaded on public domain, hence appropriate action in respect of the unauthorized water lifting has been taken. The most of the grounds made in this present petition are decided by Hon'ble High Court in different petitions and complied by the Respondents time and again as specifically admitted in above paras. Hence this Authority be pleased dismiss the petition.

18. The 2<sup>nd</sup> hearing in the matter was conducted on 23/07/2019. After hearing arguments by both parties, the Authority stated that the most of prayers in the Petition are now either redressed in the earlier orders in the Case No 17/2018 or become infructuous and directed that Petitioners may file Rejoinder, if any on the basis of the Affidavit in reply of Respondent No. 3. The Authority directed Respondent No. 1 & 2 to file their say within 15 days. The Petitioners are also directed to peruse and study this Authority earlier Order No. 4/2018 dated May 6, 2019 passed in Case No.17/2018 (Dr. Sanjay Lakhe Patil versus State of Maharashtra) so as to drop issues already dealt with by the Authority.

19. As per the directions given in the hearing, the Respondent No. 2 filed Affidavit in Reply dated 08/08/2019 and submitted that the Respondent No. 3 issued an order dated 23/10/2018 considering guiding principles issued by this Authority in their standing order dated 19/09/2014. Regarding the compliance of the various directions issued by Hon'ble High Court in PIL 173/2013 vide order dated 23/09/2016, the State Government has already moved Hon'ble High Court of Bombay seeking



extension of time in respect of compliance and Hon'ble High Court is monitoring it. The State Water Policy has adopted the principle of sub-basin wise water resources planning and sharing of water distress equitably amongst different sectors of water use and also amongst upstream and downstream uses. Hence only consideration of sub-surface water will not differ the objective of in equitable distribution of water. GSG Report is pending for review before this Authority. CDO's Report of 2004 is for academic purpose only but GSG Report considered the water demand as per sanctioned water use. Hence, GSG Report considered all the circumstances. The WRD's GR dated 12/09/2018 is nothing but compilation of changes made in the planning of Jayakwadi water use form time to time with the approval of Government as per the needs and there is no re-planning afresh.

20. The Respondent No. 2 further submitted that as per the WRD's GR dated 21/11/2002 the reservoir water lift is permissible up to 20% area of planned cropping area and the area of lift schemes shown in the WRD's GR dated 12/09/2018 is well within the 20% of planned crop area. As per this Authority's order dated 19/09/2014, the dead storage water of Jayakwadi is not allowed to be used for irrigation purpose but it is used for fulfillment of domestic demand. The State Government has taken all measures to minimize transit losses. Jayakwadi Reservoir Lift Schemes are legal being sanctioned by the Government in the light of provisions of Maharashtra Irrigation Act, 1976 and by GR issued from time to time in this behalf. Hence, they are not unauthorized. The Respondent No. 3 is an implementing authority of the order dated 19/09/2014 and said standing order was implemented properly. Therefore, the question of taking action as per section 26 of MWRRRA 2005 did not arise. The most of the grounds made in this present petition are decided by Hon'ble High Court in different petitions and complied by the Respondents. Hence this Authority be pleased dismiss the petition.

In reply to the Respondent No. 3's Affidavit dated 22/07/2019, the Petitioner No. 2 filed Rejoinder Affidavit dated 11/11/2019 and submitted that State Government has enacted Maharashtra Groundwater (Development and Management) Act, 2009 to resolve the



issue of groundwater. Also, Godavari Water Disputes Tribunal (1979) states the under ground waters need for equitable distribution of water, authority should consider the issue of Subsurface of water for the equitable distribution of water. As the rainfall in Marathwada is very less, explanation given that Sugarcane crop growing on well irrigation is inept and baseless. Equitable distribution is based on the yield available in the year on 15<sup>th</sup> October's dam storage, and the water should be distributed as per sanctioned cropping pattern of the project, and irrigation should be done as per the micro irrigation techniques specified in Act and state water policy. Vide WRD's GR dated 21/11/2002, the permissible water use for lift irrigation on the project is 9.25% of the canal water use. However, as per WRD's GR dated 12/09/2018, the proposed water use for lift on Jayakwadi project goes upto 567.309 Mcum i.e 46%. Thus this provision is illegal and should be revise.

22. The Petitioner No. 2 further submitted that the upstream utilization is increased from 115.50 TMC to 146.56 TMC, this is because of construction of large no of Minor Irrigation tanks (Storage 32.83 TMC) on upstream side. So it is injustice to the stakeholders of these old dams which were constructed or planed before the Jayakwadi dam. In world banks review and study of hydrological and simulation studies, it shows that the present system of Jayakwadi was failing to fulfil the demand planned over it. The yield study submitted by project authority at the time of sanctioning of administrative and revise administrative approval of project is misleading and wrong which were proven by World bank, Central Water Commission and Central Design Organization. The water is not used for fulfilment of domestic demand instead 20-25 MCM of water used by farmers for lift irrigation. The evaporation calculations are depends on the surface area and water use. The evaporation shown in the planning was almost double which will never happens due to any climatic changes whole the year.

The Petitioner No. 2 further submitted that though giving lift permission is a policy decision, the Respondent No. 3 should restrict the use of water for perennial crops like sugarcane in the scarcity where no use is permissible in Rabbi and Hot-weather as directed in the order of Hon'ble



Supreme court, High court as well as this Authority. But huge amount of water has been lifted from live storages as well as dead storage for sugarcane. As per Godavari Water Dispute Tribunal Report - 1979, sub-basins of Godavari in Maharashtra are Upper Godavari (G1) and Pravara (G2) whereas Mendhegiri study report has considered the sub-basin upto Paithan dam. As Pravara is independent sub-basin and upper Godavari is also a independent sub-basin the sub-basin considered upto Jayakwadi dam by the Mendhegiri committee is wrong.

24. The 3<sup>rd</sup> hearing in the matter was conducted on 14/11/2019. After hearing arguments by both parties, the Authority pointed out that the most of prayers in the Petition are now either redressed in Authority Order No. 4/2018 dated May 6, 2019 passed in matter under Dr. Sanjay Lakhe Patil versus State of Maharashtra or become infructuous due to flux of time. Regarding Prayer - c; the Authority vide its Resolution No. 24 dated November 20, 2018 directed Water Resources Department to publish individual lift irrigation entitlement database on the website & taking appropriate steps to prohibit the unauthorized lifting of water. If required, follow up can be taken to ensure the implementation of the same. Regarding Prayer - d; the Authority pointed out that the Authority will consider the Water Resources Department's WRD's GR dated 12/09/2018 regarding revised water planning of Jayakwadi Project during its data review of GSG Report. The Authority directed Petitioners to make submission in next hearing about the prayers in Petition which are yet to be addressed by this Authority.

25. Accordingly, the Petitioner No. 2 submitted a Rejoinder dated 01/01/2020 to the Affidavit in Reply of the Respondent No. 2 dated 08/08/2019. Some of the submissions made in said Rejoinder is nothing but a duplication of the submissions made in the earlier rejoinder to the reply affidavit of the Respondent No. 3. In addition, Petitioner submitted that as per revised water planning of Jayakwadi Project, there is saving in 761.79 MCM (26.90 TMC) of water due to Evaporation, High level bandharas and curtailment in use of Majalgaon water which should have fulfill the shortfall of Jayakwadi Project. But, as per WRD's GR dated 12/09/2018, a provision of 567.309 Mcum of water is made for Private,



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Cooperative, and individual lifts on dam storage. Vide WRD's GR dated 21/11/2002, the permissible water use for lift irrigation on the project is 9.25% of the canal use and as per WRD's GR dated 12/09/2018, the proposed water use for lift on Jayakwadi project goes upto 567.309 Mcum (46%). This provision is illegal and should be revise. As per the Order, a release of 12.84 TMC of water to Drinking purpose only in year of 2015. But apart from live storage, releases of upstream, 10 TMC of water is used from the dead storage of Jayakwadi for irrigation which is illegal, so an action has to take under Section 26 of MWRRA act 2005.

26. As per the instructions of this Authority, the Respondent No. 3 filed Affidavit in Reply dated 07/01/2020 to the allegations made in the Rejoinders. The Respondent No. 3 submitted that due to the scarcity of water in year 2015, all Lift Irrigation permissions were temporarily withdrawn vide Public Notice dated 04/11/2015. Vide WRD's GR dated 12/12/2018, the Respondent No. 1 and 2 has issued several directions for stopping illegal lifting of water. Vide Public Notice dated 02/11/2019 on behalf of Respondent No. 3 through Executive Engineer Jayakwadi Irrigation Division Published newspaper appeal to make Micro Irrigation compulsory for perennial crops in their area and to display the said directions at local government offices for public. A combine squad of Revenue, Water Resources, Police and Electricity (MSEDCL) Departments are formed as per WRD's GR dated 12/12/2019 for taking action against the illegal lifting of water. The State Water Policy has adopted the principle of sub-basin wise water resources planning and sharing of water distress equitably amongst different sectors of water use and also amongst upstream and downstream uses. Consideration of sub-surface water for equitable distribution is not considered and do not differ the objective of equitable distribution of water.

27. The 4<sup>th</sup> hearing in the matter was conducted on 02/01/2020. After hearing arguments by both parties, the Authority directed Respondents to file comprehensive Affidavit.

28. The 5<sup>th</sup> hearing in the matter was conducted on 09/01/2020. The Petitioners submitted that prayer (a) is now already become infructuous; moreover they are not pressing the issue in prayer (b). The prayers (c)

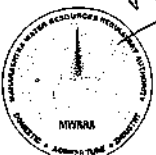


and (d) are related to unauthorized lifting of water and it is the issue to be addressed and necessary directions need to be issued. The Authority stated that most of the issues are already been dealt with in Dr. Sanjay Lakhe Patil under Case No. 17/2018. The present Petition arise out of Year 2018-19 equitable distribution. The issue of dead storage use & illegal lifting is already dealt with and actions are already been taken by the concerned Superintending Engineer. The process of review of data in Godavari Study Group Report is underway.

29. The Authority closed the proceedings for the Order. However, due to Covid-19 pandemic lockdown and subsequently, the expiry of the term of Chairperson & Member (WRE) on 15/05/2020, the Order could not be issued. Thereafter, the Authority on 23/07/2020 directed Respondent No. 3 to furnish status of the measures taken against unauthorized lifting / theft of water from the reservoirs and canals in the Upper Godavari Sub-basin on Affidavit within two weeks so as to enable the Authority to pass appropriate order. Accordingly, Respondent No. 3 filed an affidavit dated 22/09/2020 adopting their affidavit dated 10/02/2020 filed in PIL No. 3 of 2018 before Hon'ble High Court at Aurangabad Bench.
30. The Authority conducted 6<sup>th</sup> hearing through online mode in matter on 26/11/2020 with Corum of Member (Law) & Member (Economics) and closed the proceedings for the Order. However, the term of these two Members expired on 08/01/2021 and the Order could not be issued.
31. Thereafter, the State Government filled the post of Member (WRE) in November 2020, Member (Economics) in May 2021, Member (Law) in December 2021 and Chairperson in December 2022.
32. The 7<sup>th</sup> Hearing in the matter was conducted on 26/04/2023. After hearing both parties, the Authority stated that present Petition is of the Year 2018. In the earlier hearings, Affidavits & Rejoinders and detail submissions have already been made by the both parties and they are on record. Thus, this Authority may decide the matter on merit and directed both parties, if they want, may file additional written arguments by next hearing. However, none of the parties submitted the additional written arguments till next hearing.



33. The 8<sup>th</sup> hearing in the matter conducted on 03/05/2023 which was adjourned as per the request of the Petitioner.
34. The Authority conducted 9<sup>th</sup> hearing in the matter on 26/05/2023. During the hearing, Officers of Respondents submitted that they do not want to make any additional submissions. However, if the Petitioner files any submissions, then an opportunity to file reply may be given. The Authority directed both parties to file written submissions within 15 days and the matter to be closed for judgement accordingly.
35. As none of parties filed written submissions, the 10<sup>th</sup> hearing in the matter was conducted on 21/07/2023. During the hearing, it is brought to the notice of the Authority that the Petitioner No. 2 has submitted written say vide email dated 21/07/2023. The Petitioner, in their say, reiterated some of the important points raised in their Affidavits and Rejoinders in brief i.e. overestimation storage planning of Jayakwadi Dam, water releases to Jayakwadi till date, illegal water use from submergence of Jayakwadi dam, revised water planning of Jayakwadi dam, equitable distribution as per MWRRA Act, 2005 and State Water Policy, etc. During the hearing, the Authority granted Respondent's request and directed to file their reply within seven days and closed the matter for Orders. However, Respondent failed to file their say within stipulated time.
36. This Authority, after giving due consideration to the pleadings, submissions and evidence on record has adjudicated the issues. The findings of this Authority are as under:
37. Regarding maintainability of the present Petition, the Petitioners have approached this Authority pointing out the failures of the Respondents to comply with the standing orders of this Authority for the equitable distribution of the water in light of the distress situation in that particular water year. Though the Petitioners have approached this Authority under Section 22 of the MWRRA Act 2005, the present Petition cannot be considered as an Appeal under Section 22 of the MWRRA Act 2005 as it is not against the order of the Primary Dispute Resolution Officer in respect of issuance or delivery of entitlement. The Petitioners





have brought out a case arising out of the office order dated 23/10/2018 as issued by the Respondent No. 3 for release of the water from the upstream reservoirs in Upper Godavari Sub-basin to the Jayakwadi Project as per the standing order of this Authority dated 19/09/2014. As the dispute arising out of above, the Petition is maintainable as per the powers under Section 11 (b) and the Section 11 (c) read with the Section 13 of the MWRRA Act, 2005.

38. Regarding prayer clause (a) of quashing and setting aside of Respondent No. 3's Order dated 23/10/2018, the Petitioners filed the Petition before this Authority on 17/11/2018 and the Authority started conducting hearing in the matter from 31/01/2019. However, the Authority as already stated, in Case No. 17 of 2018 of Petition filed by Dr. Sanjay Lakhe Patil, Jalna the Authority dealt with the issue of release of water as per said order of 23/10/2018 and also had given directions for its implementation. The said order dated 23/10/2018 is already been implemented and the water has been released. Therefore, said prayer clause (a) becomes infructuous. 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 19/09/2014 were confirmed by the Hon'ble High Court at Bombay in its Order dated 23/09/2016 in PIL 173/2013 & other connected matters. Considering the above aspects, the said order dated 23/10/2018 is found to be proper and legal, even though the Petitioners are not pressing for it.

39. Regarding prayer clause (b) of review of GSG Report, it is seen from the Petition that most of the issues raised in the Petition and particularly those of Para 5 and 6 stated above, are issues which the Petitioners are of the opinion, that they were not considered by the Mendhegiri Committee and which the Petitioners are of the opinion need to be considered while releasing water to Jayakwadi. Therefore, the specific issue raised in the Petition in this context cannot be taken into the account at this stage while hearing and deciding this Petition. Meanwhile, State Government, vide WRD's GR dated 26/07/2023,



*[Handwritten signature]*



constituted a Study Group to prepare regulations for integrated management of reservoirs in the Godavari basin.

40. Regarding prayer clause (c) of taking action against unauthorized lifting, the Petitioners have submitted that as per the Water Audit Report for Year 2015-16, 10 TMC water was being lifted unauthorized and Jayakwadi Project's dead storage was being used. There are large numbers of Sugarcane fields on the periphery of the backwater of the Jayakwadi project. There is huge unauthorized lifting / theft of water from the submergence of the Jayakwadi reservoir or the canals. The Petitioners further submitted that the utter negligence on part of the Respondents in regulating and controlling unauthorized lifting of water from the reservoirs, even though they have been empowered to take strict action. Therefore, the Respondents should be prosecuted under Section 26 of the MWRRRA Act. However, the Respondents submitted that the State Government has already taken actions like Police Squad is formed, FIRs been lodged, individual lift owners information has been uploaded on the website and measures are being taken to prevent theft. The Authority already expressed its displeasure towards the inaction on the part of the Respondents and therefore, the Authority is of considered opinion that Respondents should ensure authorized lifting and take the stringent measures against unauthorized lifting in the interest of justice.
41. Regarding prayer clause (d) of directing State Government to revise the usage of Jayakwadi Reservoir as per WRD's GR dated 21/11/2002, it is seen that the said GR is about guiding principles for approval of lift schemes for irrigation projects. The Respondents in their affidavits submitted that as per WRD's GR dated 21/11/2002, water lift is permissible upto 20% area of planned cropping area and area of lift schemes shown in WRD's GR dated 12/09/2018 is well within the 20% of cropped area. It is seen that the WRD's GR dated 12/09/2018 pertains to the replanning of 1985 water planning of Jayakwadi Project based on the experience of 40 plus years. This replanning is for various aspects like irrigation, domestic and industrial water and also includes lift irrigation. Therefore, the Authority is of considered opinion that there is no need to interfere with the State Government's decision in this regard.



*[Handwritten signature]*



It needs to be mentioned here in this context that, the present petition is arising out of equitable distribution of water in Upper Godavari sub-basin and is being dealt under Section 11(b) of the MWRRA Act, 2005 to that extent.

### Order

42. 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, this Authority, hereby orders as under:

- 1) There is no need to pass any order with regard to the prayer clause (a), (b) and (d).
- 2) The Respondent No. 3 is hereby directed to ensure authorized lifting and to take stringent measures, for stopping and prohibiting unauthorized lifting of water from the Jayakwadi reservoirs or its canals. Respondent No. 1 and 2 are directed to give Respondent No. 3 necessary directions and support in this regard.
- 3) The Petition is accordingly disposed of with no order as to the costs.

Delivered on October 04, 2023.

Sd/-

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

Sd/-

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

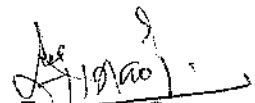
Sd/-

(Shri. Sanjay D.  
Kulkarni)  
Member (W. R. Engg.)



Sd/-

(Dr. Sanjay Chahande)  
Chairperson

  
(Dr. Ramnath Sonawane)  
Secretary  
Maharashtra Water Resources  
Regulatory Authority,  
9<sup>th</sup> Floor, Center-1, World Trade Center,  
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