

महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण Maharashtra Water Resources Regulatory Authority

File No. MWRRA/2018/Legal/ Case No. 10(2018)/908

Date : 12/12/2018

In The Matter of

Petition filed by Ashti- Jalashay Shethi- Pani Niyojan Samiti (Prop.) in the matter of Appeal against the order of PDRO dated 06/04/2018 about regular release of water from Ujjani Project to Ashti Dam - Case No. 10 of 2018

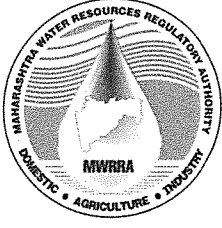
Please find herewith a copy of MWRRA Order No. 18/2018 dated December 12, 2018 in the above matter.

Encl : As above

(Dr. Suresh Kulkarni)
Secretary

Copy for information & necessary action to :-

1. *Ashti-Jalashay Shethi-Pani Niyojan Samiti (Prop.)* through Adv. Mahadev Choudhari, 3/A/003, Shradha CHS Ltd, Mhada Colony, Chandivali, Pavai, Mumbai - 400072. **(Petitioner)**
2. Superintendent Engineer and Administrator, Superintending Engineer & Administrator, Command Area Development Authority, Opposite Solapur Club, Solapur - 413003 **(Respondent No. 1)**
3. Executive Engineer, Bhima Development Division No. 2, Solapur - 413003 **(Respondent No. 2)**
4. Sub-Divisional Officer, Bhima Irrigation Sub-division, Tungat ,Taluka Pandharpur, District Solapur 413304 **(Respondent No. 3)**
5. Primary Dispute Resolution Officer and Chief Engineer (SP) Water Resources Department Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune - 411 011 **(Respondent No. 4)**



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण Maharashtra Water Resources Regulatory Authority

Order No. 18 /2018

In The Matter of

Appeal filed by Ashti- Jalashay Shethi- Pani Niyojan Samiti (Prop.) in the matter of Appeal against the order of PDRO dated 06/04/2018 about regular release of water from Ujjani Project to Ashti Dam - Case No. 10 of 2018

Ashti Jalashay Shethi- Pani Niyojan Samiti (Prop.)
Through its Chairman / Secretary
R/o Papri, Taluka Mohol, Dist. Solapur

.... Appellant

Versus

1. The Superintendent Engineer and Administrator, CADA, Solapur
2. The Executive Engineer, Bhima Vikas Vibhag- II, Solapur.
3. Sub-Divisional Officer, Bhima Part Bhandare Upvibhag, Tungat Taluka Pandharpur, Dist. Solapur
4. Primary Dispute Resolution Officer and Chief Engineer (PP) Jalshambada Vibhag, Pune
5. State of Maharashtra

....Respondents



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Coram : Shri. V. M. Kulkarni, Presiding Member (W.R. E.)
Shri.Vinod J. Tiwari, Member (Law)
Dr. Shivaji T. Sangle, Member (Economics)

Date : December 12, 2018

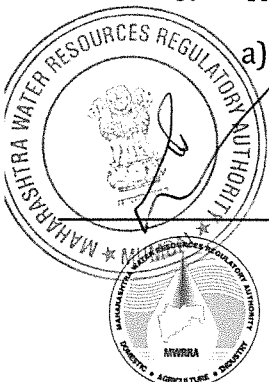
BACKGROUND

1. The Appellant for and on behalf of the Ashti Jalashay Shethi- Pani Niyojan Samiti, Papri (Prop.) approached this Authority on March 8, 2017 for redressal of their grievance. The Secretary of this Authority directed the Appellant to approach the Primary Dispute Resolution Officer ("PDRO" for short) first if still not satisfied, then can approach to this Authority.
2. Accordingly, the Appellant approached the PDRO on April 11, 2017. After conducting various hearings, the PDRO rejected the Appellant's claim and issued Order on April 6, 2018, which was received by the Appellant in 2nd week of June 2018
3. The Appellant had earlier approached the Chief Engineer (SP) Water Resources Department, Pune and the PDRO for Bhima basin vide his application dated November 16, 2017 with pray to release 1 TMC of water in each rotation into Ashti Medium Project from Ujjani dam
4. The PDRO has rejected the application of the Appellant on grounds that there is a provision in the project planning of the Ujjani project for releasing 1 TMC of water into the Ashti Medium Project for Ashti LIS and not 1 TMC in every rotation.
5. Having aggrieved by the decision of the PDRO, the Appellant has approached this Authority under Section 22(3) of the MWRRA Act, 2005 vide his application dated August 9, 2018 through its Chairman / Secretary.

GIST OF AN APPEAL

6. The gist of contents of the Appeal as alleged by the Appellant is as under :

- a) The Appellant is a proposed organization formed by the village farmers with a view to look into the various problems faced by farmers in the locality those completely depend on farming activities and mainly those



who are lifting water from Ashti dam by way of pipelines completed at their own cost.

- b) The Ashti dam of 1 TMC capacity was constructed in year 1883, for providing irrigation facility to nearby villages. After independence, the Government has constructed the Ujjani dam on Bhima River in the Solapur district. The Ujjani dam is having total capacity of 117.63 TMC.
- c) The Respondent Authorities since 1987 were releasing water from Ujjani Right Bank Canal during rotation period to Ashti dam. The Respondent Authorities issues Pani-Parvana to farmers in nearby villages who made their own arrangement of pipeline to lift water from Ashti dam.
- d) But from last 3 - 4 years, Respondent Authorities shows reluctance to release the water from Ujjani canal to Ashti dam mainly because of not having provision in Ujjani Project for such releases.

PRAYERS

7. The gist of the Appellant's pray is as under:

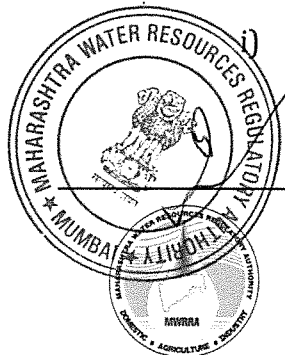
- a) Record and proceedings pertains to the impugned order dated 06/04/2018 passed by Respondent No.4 authority kindly be called for.
- b) After examining the validity and legality of the same by an order of this Hon'ble Authority, impugned order dated 06/04/2018 passed by respondent no.4, authority kindly quashed and set aside.
- c) By an appropriate order and/ or directions from this authority, the concerned respondent, officers kindly be directed to reserve/ allocate 5 to 6 TMC water from Ujjani dam for the Asti dam forever to be released from right bank canal of Ujjani dam.
- d) Pending the hearing and final disposal of this present appeal the respondent authorities kindly be directed to release about 1 TMC water into the Asti dam as and when water from Ujjani dam is released through right bank canal.
- e) Interim and ad-interim reliefs in terms of prayer clause (d) be kindly granted in favor of the appellant.
- f) Any other and further reliefs, which deem fit and proper in the circumstance of this case kindly, be granted in favor of the appellant.



THE PROCEEDINGS BEFORE THE AUTHORITY

8. Hearing was conducted by this Authority on September 26, 2018 and ample opportunity of hearing was granted to all the parties. This hearing was attended by the following in persons;
- 1) Adv. Mahadev Choudhari Appellant & Advocate for Appellant
 - 2) Shri. N. V. Joshi Executive Engineer, Bhima Development Division 2, Solapur for Respondent 2
 - 3) Shri. B. D. Ronge Sub-Divisional Engineer, Bhima Irrigation Sub- Division, Tungat for Respondent 3
 - 4) Shri. Balasaheb Jadhav Sub-Divisional Engineer, Ujjani Canal Division 8, Solapur for Respondent
9. The Appellant during the pleading raised the following issues and prayed for Orders to Respondent Authority to release 1 TMC water per rotation for Ashti dam through Ujjani canal.
- i) Ashti dam is constructed somewhere in the year 1883.
 - ii) Thereafter, Ujjani dam is constructed on Bhima River.
 - iii) Right Bank Canal of the Ujjani project is near Ashti dam.
 - iv) Respondent Authorities were releasing water from Ujjani canal to the Ashti dam since 1987.
 - v) Respondent Authorities have issued Pani-Parvana to individual farmers, which are renewed time to time, and farmers are paying the water charges.
 - vi) Farmers have constructed individual lifts by taking loans from financial institutes.
 - vii) Respondent Authorities, since last 3 to 4 years are showing reluctance to release water from Ujjani canal to Ashti reservoir.
10. Shri. N. V. Joshi, Executive Engineer, Bhima Development Division 2, Solapur for Respondent 2, submitted that;

- i) Original capacity of Ashti dam was 23.01 Million Cubic Meter (0.81 TMC), which is now reduced to 18.91 Million Cubic Meter (0.67 TMC) due to siltation.



- ii) The permissions for individual lifts are given from Ashti dam for lifting the water, which is drained into the dam through its catchment.
- iii) Most of the command of Ashti dam is now covered by the Right bank Canal of the Ujjani project.
- iv) There is no provision to release water from Ujjani canal to Ashti dam for lifts of individual farmers.
- v) However, now Ashti Lift Irrigation Scheme ("LIS" for short) is in progress, which will cover the areas of individual lifts. This LIS is yet to be commissioned. There is permission of releasing 1 TMC water from Ujjani canal into Ashti dam for Ashti Lift Irrigation Scheme (not for individual lifts).
- vi) After commissioning of Ashti LIS, the beneficiary area of this LIS and that of individual lift owners will superimpose to some extent.

11. The Respondent produced the copy of the Pani-Parvana given to the Appellant. The details of which are as follows;

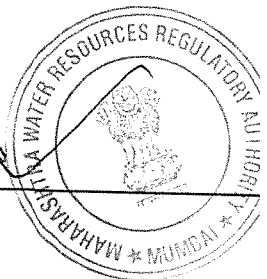
- i) Pani-Parvana is issued on April 22, 2015 & is valid upto February 28, 2033.
- ii) It is for 5 HP pump.
- iii) The permission is for use of 3488.38 Cubic Meter water in Kharif season and 4749.64 cubic meter water in Rabbi Season. Thus, the total permission is for 8238.02 Cubic Meter (0.00029 TMC)
- iv) The said Pani-Parvana is subjected to 20 different conditions. The important conditions are as follows;
 - a. The license holder has to provide meter for measurement of water use and maintain it properly. The Appellant has not followed this condition.
 - b. The quota sanctioned is subjected to 100% availability of live storage in the Ashti dam. If less water is available or the available water is reserved for drinking / industrial purpose, the canal officer can curtail the quota or prohibit lifting of water.
 - c. The condition No. 10 indicates that the license holder has to apply to the service provider for water in Form No. 7 (or any specified form) in response to notification.



- d. The provisions of Maharashtra irrigation Act 1976 with subsequent amendments, Rules, G. R. and guidelines issued by the State Government shall be applicable.

FACTUAL MATRIX

12. The Applicant is a member of the proposed Water User Association viz. Ashti Jalashay Shethi- Pani Niyojan Samiti, Papri (Prop.). However, the said Water User Association is yet to be registered. Thus, the Applicant has approached this Authority in individual capacity.
13. During the hearing held before this Authority on September 26, 2018, the Authority had given an opportunity to the Appellant to submit documents regarding registration of his Water User Association within two weeks. However, the Appellant failed to submit the same by the date of this Order.
14. The Appellant have been granted permission to lift 8238 cubic meter of water from Ashti reservoir subjected to various 21 various conditions. As informed by the Respondents, the said permissions are from the water drained from the catchment area of the Ashti dam.
15. Ashti LIS is under construction. One TMC of water annually is proposed to be released from Ujjani canal for this proposed Ashti LIS. The said LIS is yet to be commissioned. The beneficiary area of this Ashti LIS overlaps with the beneficiary area of some of the individual lift owners.
16. The Authority asked the Appellant to prove his *locus standii* to file this petition on behalf of Water Users Association. However, the Appellant could not produce the registration certificate of the Water Users Association. He clarified that the Water Users Association is only proposed & it is yet to be registered. The Appellant also could not produce the authority letter on behalf of which he has filed the Petition. The Appellant could not even produce his Pani-Parvana.
17. The Authority gave two weeks time from September 26, 2018 to the Appellant to submit relevant documents in support of his *locus standii*. However, he could not comply.



FRAMING OF ISSUES

18. From the arguments advanced in the Appeal and the replies of the Respondents, following issues are arises for consideration:
- i) Whether the Appellant has legitimate right to ask for release of 1 TMC of water from Ujjani dam through its canals into the reservoir of the Ashti Medium Project in each rotation?
 - ii) Whether the demand of Appellant to release 1 TMC of water per rotation from Ujjani dam through its canal into the reservoir of the Ashti Medium Project is logical?

FINDINGS OF THE AUTHORITY

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

- i) Whether the Appellant has legitimate right to ask for release of 1 TMC of water from Ujjani dam through its canals into the reservoir of the Ashti Medium Project in each rotation?

WRD has granted permission to the Appellant to lift 8238 cubic meter of water annually through 5 HP pump from the reservoir of Ashti dam. However, the said sanctioned quota is subjected to condition that the Ashti reservoir has 100% live storage. As per the condition No. 3 of the water permission, in case in any particular year, if the water available is less or water is reserved for domestic or industrial use, the canal officer has powers to curtail the quota. Further, the said permission is subjected to various 21 conditions. An important condition (Condition No. 1) is that the license holder shall install water meter at his own cost and he has to maintain in good condition. This condition is not fulfilled by the Appellant.

Further, the said permission is from the water naturally drained into Ashti reservoir from its catchment area and not by way of water made available by releasing water through canals of the Ujjani dam.

In light of the above observations, this Authority is of the opinion that the Appellant has no legitimate right to ask for release of water from Ujjani dam through its canals.



- ii) Whether the demand of Appellant to release 1 TMC of water per rotation from Ujjani dam through its canal into the reservoir of the Ashti Medium Project is logical?

The Permission granted by WRD to the Appellant to lift 8238 cubic meter of water annually whereas the demand of Appellant is to release 1 TMC of water from Ujjani dam in each rotation. One TMC of water is equal to 28.3168 Million Cubic Meter of water which is about 3450 times his annual sanctioned quota.

In light of the above observation, this Authority is of the opinion that the Appellant's demand of releasing 1 TMC of water in each rotation is not at all justifiable.

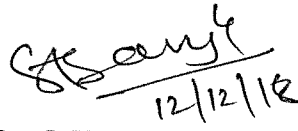
20. FINAL ORDER / DIRECTIONS :

Having heard the parties involved in the litigation, perusing documents as well as data on record, submissions made by the parties and the observations mentioned herein above Para, this Authority is of the opinion that the appeal liable to be disposed.

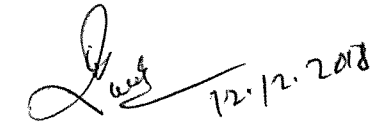
The Appeal is accordingly disposed off. Order passed by the PDRO is hereby upheld.

In the facts & circumstances, there shall not be any direction as to the costs

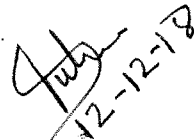
Delivered on December 12, 2018.


12/12/18

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


12.12.2018

(Vinod J. Tiwari)
Member (Law)


12-12-18

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

