

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.36 OF 2016**

Dr. (Kum) Heta C. Shah & 3 Ors. ... Petitioners

vs.

The State of Maharashtra & 20 Ors. ... Respondents

**WITH
CONTEMPT PETITION (L) NO. 36 OF 2016
WITH
WRIT PETITION (L) NO. 1256 OF 2015**

Sanjay Lakhe Patil ... Petitioner

vs.

The State of Maharashtra & 3 Ors. ... Respondents

**WITH
PUBLIC INTEREST LITIGATION NO.154 OF 2015
WITH
CIVIL APPLICATION NO.50 OF 2016**

Hiralal Motilal Desarda ... Petitioner

vs.

The State of Maharashtra ... Respondents
through its Principal Secretary
Water Resource Dept. and Ors.

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Mr.Harish Pandya a/w. Mr.Aagam Doshi i/b. Mr.Raju R. Gupta for Petitioner
in PIL No.36/2016.

Dr Sanjay Nilkanthrao Lakhepatil for Petitioner in CONPWL/36/2016
present in person.

Dr. H.M.Desarda for Petitioner in PIL No.154/2015 present in person.

Ms.Swati Sawant i/b. M/s.S.K.Legal Associates for Respondent no.10 in PIL/154/2015.

Mr.H.C.Pimple for Respondent no.10 in PIL/36/2016.

Mr.G.H.Keluskar for Respondent no. 21 in PIL No.36/2016.

Mr.Rohit Deo, Acting Advocate General a/w. Ms.P.H.Kantharia, GP a/w.

Mr.Anurag Gokhale, AGP for Respondent no.1 and 5 to 9 in PIL/36/2016 and for Respondents in CONPWL/36/2016.

Mr.Rohit Deo, Acting Advocate General a/w. Mr.A.B.Vagyani, GP and

Mr.V.M.Mali, AGP in PIL/154/2015 for Respondent nos. 1 to 7 and 9.

Mr.S.A.Tatoo, Superintendent Engineer, Mr.Sawant, Dy.Secretary and

Mr.Rajendra Kuparange, Section Officer for Water Supply Department present.

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CORAM : B.R. GAVAI &

DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE :24 MAY, 2016

VACATION COURT

P.C.:

The present petitions have been directed to be placed before us as per order passed by Division Bench of this Court dated 5th May, 2016. Since all these three petitions raise a common concern with regard to the drought situation in the State of Maharashtra, we have heard these three petitions together and are passing a common order.

2. We have extensively heard Dr.Desarda and Dr.Sanjay Lakhe - petitioners in person in CAI/50/2016 and CONPWL/36/2016 in PIL No.154/2015.

3. It appears that the original PIL/154/2015 was filed by Dr.Desarda to bring to the notice of this Court the water being released for the purpose of Kumbh Mela, when there was not enough water for more important purposes.

4. However, as could be gathered from subsequent orders, the Court in all these petitions has taken notice of drought situation in the State of Maharashtra and severe drinking water problem in the various districts. Various orders have been passed from time to time. Last of such orders has been passed on 5th May, 2016.

5. Though arguments are advanced by the parties in person and the learned Counsel appearing for one of the petitioner on larger issues, since this Court is hearing the matter in pursuance of the order of 5th May, 2016, we will restrict ourselves to the direction issued by this Court on 5th May, 2016 as well as the issues which are of immediate concern.

6. In a nutshell the direction issued by this Court are as under :

(a) The Supply of water from Ujjani Dam and other dams to Jayakwadi dam and Maharashtra Water Resource Regulatory Authority (for short “MWRRA”) to ensure that water be supplied from Ujjani Dam to Jayakwadi Dam.

(b) The District Collector of all drought Districts of Marathwada and Vidarbha to monitor water level on weekly basis and issue direction to all concerned authorities to see that there is preservation of water.

(c) The District Collector to ensure that restriction is imposed on various Clubs and Public gardens where there is large scale supply of water.

(d) That the authorities should make provision for purification of water.

6. It is also been brought to our notice by Dr.Sanjay Lakhe that though in order dated 5th May, 2016 this Court has directed the MWRRA to ensure that water may be supplied from Ujjani Dam to Jayakwadi dam, after solving the technical problem, as a matter of fact the said authority has ceased to be in existence from 1st May, 2016. It is also submitted before us that there are various dams as well as bore wells owned by private individuals / Companies and that the water at such resources is being used for Industrial and other purposes and not made available for drinking purpose.

7. In the affidavit in reply filed on behalf of the State, in pursuance to order dated 5th May, 2016 the point wise reply is given on all the issues. The

perusal of the affidavit in reply would reveal that it is Marathwada region of the State which is worst affected by this drought situation, in as much as the water storage in the dams in Marathwada is only 2% of its capacity as on 20th May, 2016.

8. The perusal of the affidavit would reveal that the State has engaged services of 3817 tankers in Marathwada Regions and 313 tankers in Vidharbha Region so as to ensure the supply of water to all the villages as on 23rd May, 2015.

9. The affidavit would also reveal that the State has also provided for Cattle Camps for Beed, Latur, Osmanabad and Ahmednagar Districts. The affidavit also shows that major works are undertaken in Jalyukta Shivar Abhiyan. Dr.Desarda submits that this scheme is not designed and being implemented in a scientific manner on sound hydro geological principles. Mr.Deo, the learned Acting Advocate General appearing for the State of Maharashtra submits that the State is not taking present litigation to be an adverse litigation and concerns expressed by Dr.Desarda to be looked into by the State Government. However, since the said issue pertains to larger issues it will not be appropriate for us to consider the same at this stage and it would be appropriate that the Bench which is regularly monitoring this petition looks into it.

10. The affidavit also states regarding the employment scheme under Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MNREGA) as well as conversion / restructuring of crop loans is concerned.

11. In so far as direction regarding supply of water to Jayakwadi Dam through Ujjani Dam is concerned, it appears that there is some typographical mistakes in as much as both Ujjani and Jayakwadi dam are in different river basins. The Ujjani dam is in Bhima river basin whereas Jayakwadi dam is in Godavari river basin. It is now submitted that even if from the dams in Godavari basin, the water is released in Jayakwadi, on account of the heat and the long distance, the water will not reach Jayakwadi dam and as such no purpose would be served. We are of the view that we do not possess expertise in the field and we will have to go by the view of the experts in that matter.

12. However, we find that for ensuring equitable distribution of water to all the regions it is necessary that the MWRRA must exist. It is submitted by the learned Advocate General that an extensive amendment to the existing Act (Maharashtra Water Resources Regulatory Authorities Act, 2005) is in the offing and the new authority will have to be constituted after the amendment comes into effect. It is further submitted that the existing authority has ceased to exist since the term of the existing Chairman and Member has expired.

13. We are of the considered view that when the State is reeling under such a severe drought situation, the non-existence of an important Regulatory Authority will add to the existing problem. We direct the State Government to either constitute a new authority within a period of one week from today or to extend the term of the existing authority including Chairman and members , until the new authority under the amendment act is constituted.

14. We direct the MWRRA to immediately examine the availability of the water in the dams owned by private individuals as well as Companies and to ensure that the water available in such dams is used for drinking purpose on priority. It will not be out of place to mention here that natural resources are the property of the nation as a whole and not of any individual or Company. We are of the considered view that in such severe situation the water for drinking purpose must be given the topmost priority and water available in whatever resources must be diverted for the said purpose.

15. We further direct the Collector of all the Districts to requisition the borewells and open wells owned by private individuals and to use the water available in the said resources for the purpose of drinking.

16. In so far as the Bombay Municipal Corporation (BMC) is concerned, we direct the Commissioner of BMC to examine as to whether the water supplied for slaughter house can be rationalised so that the water saved from there is available for drinking purpose.

17. We further direct the Commissioner of BMC, Mumbai and the Collector of all drought affected districts to ensure that no water reserved for drinking purpose shall be diverted for construction activities.

18. We further direct the State Government to ensure that in several Districts wherein on account of Heat Wave the casualties have taken place, to establish the special wards in district Civil Hospitals for treatment of persons who are suffered or suffering on account of Heat Wave.

19. In PIL No.36/2016 it has been stated that the Water Resources Department in the State Of Maharashtra has issued Government Resolution wherein the requirement of quarterly inspection for untreated effluents in the water bodies by the Maharashtra Pollution Control Board has been relaxed. We do not find any rational behind issuing such a Government Resolution. The relaxation of inspection would add to the pollution of water in the water bodies and may cause serious health problems to the health of the persons who are drinking that water. We direct the State Government to explain the rational behind such a policy on the next date and also take into consideration as to whether the State

Government would withdraw such a irrational policy.

20. Another aspect that is brought to our notice is with regards to emergency operations in the hospital on account of scarcity of water. We therefore permit such of the hospitals which are in need of water for carrying out emergency operation to apply to the Collector of the respective districts. If such an application is made to the Collector, Collector after examining requirement of the hospital shall make necessary arrangement to supply water to such of the hospitals.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(B.R. GAVAI, J.)