

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

PUBLIC INTEREST LITIGATION NO.173 OF 2013

ALONG WITH

CIVIL APPLICATION NOS.241 OF 2013

CIVIL APPLICATION NO.242 OF 2013

CIVIL APPLICATION NO.243 OF 2013

CIVIL APPLICATION NO.244 OF 2013

CIVIL APPLICATION NO.257 OF 2013

CIVIL APPLICATION NO.262 OF 2013

CIVIL APPLICATION NO.274 OF 2013

CIVIL APPLICATION NO.191 OF 2014

CIVIL APPLICATION NO.194 OF 2014

IN

PUBLIC INTEREST LITIGATION NO.173 OF 2013

Marathwada Janta Vikas Parishad,

C/o. Swami Ramanand Teerth Smruti Kendra. .. Petitioner

Vs

The State of Maharashtra and Others. .. Respondents

—

Shri Pradeep Deshmukh along with Shri Yasdhodeep Deshmukh for the Petitioner.

Shri Milind Deshmukh for the Applicant in CA No.194 of 2014.

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh Prakash Mali for the Applicant in CA No.257 of 2013, 262 of 2013 and for the Respondent Nos.8 to 10 in PIL.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 and 2.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.3.

Shri B.R. Survase for the Respondent No.4.

Shri Pradeep J. Thorat for the Respondent No.7.

Shri Pramod Nanasaheb Patil for the Respondent No.11.

Shri P.K. Dhakephalkar, Senior Advocate along with Shri Vinayak Hon, Senior Advocate and Shri Prashant Darandale for the Applicant in CA No.244 of 2013.

—

WITH
WRIT PETITION NO.1422 OF 2014

Kondaji Punjaji Hon And Ors .. Petitioners
Versus
The State Of Maharashtra,
Through its Department of
Water Resources Development
and Ors .. Respondents

—
Shri Pramod Nanasaheb Patil for the Petitioners.
Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav, AGP and Ms. Tintina Hazarika for the Respondent
No.1.
Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms.
Swati Sawant i/b S.K. Legal Associates for the Respondent No.3.

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WRIT PETITION NO. 621 OF 2015

Shri. Gavnath S/o Kashinath Tambe And Anr. .. Petitioners
Versus
Godavari Marathwada Irrigation
Development Corporation And Ors. .. Respondents

--
Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav, AGP and Ms. Tintina Hazarika for the Respondent
State.

—

WITH
WRIT PETITION NO. 7725 OF 2013
ALONG WITH
CIVIL APPLICATION NO.2307 OF 2013

Shivaji S/o Waman Jadhav And Anr. .. Petitioners

Versus

The State Of Maharashtra,
Through its Principal Secretary,
Water Resources Department
and Others.

.. Respondents

--

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh Prakash Mali for the Petitioners.

Shri Pradeep Deshmukh along with Shri Yasdhodeep Deshmukh for the Applicant in CA No.2307 of 2013.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 3.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.3.

Shri B.R. Survase for the Respondent No.5.

—

WRIT PETITION NO. 10402 OF 2015

Padmashree Dr. Vithalrao Vikhe Patil
Sahakari Sakhar Kharkhana Limited

.. Petitioners

Versus

The State Of Maharashtra
Through the Principal Secretary,
Water Recourses Department And Ors.

.. Respondents

--

Shri PK. Dhakephalkar, Senior Advocate along with Shri Vinayak D. Hon, Senior Advocate and Shri Prashant Darandale for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent No.1.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.2.

Shri B.R. Survase for the Respondent No.3.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.2.

WITH
WRIT PETITION NO. 10475 OF 2015

Guruprasad Kalawa Stariya Paani
Vapar Sanstha, Rahuri
Through its Chairman,
Shri Dilip Dadeasaheb Ingle

.. Petitioner

Versus

The State Of Maharashtra
Through its Principal Secretary And Ors

.. Respondents

—

Shri Siddharth R. Karpe for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1
to 4.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms.
Swati Sawant i/b S.K. Legal Associates for the Respondent No.6.

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WITH
WRIT PETITION NO. 10483 OF 2015

Shri. Dadasaheb @ Balasaheb Damodar Murkute ..

Petitioner

Versus

The State Of Maharashtra
Through its Principal Secretary,
Water Resources Department And Ors.

.. Respondents

—

Shri Siddharth R. Karpe for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1
to 4.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms.
Swati Sawant i/b S.K. Legal Associates for the Respondent No.6.

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WITH
WRIT PETITION NO. 10574 OF 2015

Shri. Anil Nivrutti Dhikle .. Petitioner
Versus
The State Of Maharashtra
Through The Principal Secretary,
Water Resources Department And Ors. .. Respondents

—
Shri Rameshwar N. Gite along with Ms. Divya Parab and Ms. Arati Inamdar for the Petitioner.
Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 4 and 7.
Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.2.

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WITH
WRIT PETITION NO. 10714 OF 2015

Shri Daulatrao Malhari Pawar Ex-MLA
And Ors .. Petitioners
Versus
The State Of Maharashtra
Through its Principal Secretary,
Water Resources Department And Ors. .. Respondents

--

Shri Ashish Shivajirao Gaikwad for the Petitioners.
Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 4.
Shri B.R. Survase for the Respondent No.5.
Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.6.

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WITH
WRIT PETITION NO. 10808 OF 2014

Abhijit S/o. Durgadasrao Joshi (Dhanorkar) .. Petitioner

Versus

The Maharashtra Water Resources
Regulatory Authority And Ors. ..Respondents

—

Shri Pradeep Deshmukh alongwith Shri Yashodeep Deshmukh i/b Shri
Ramdas A. Shelke for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1
to 3.

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WITH
WRIT PETITION NO. 11240 OF 2014

Mr.Daulatrao Malhari Pawar And Ors. .. Petitioners

Versus

The State Of Maharsashtra And Ors. .. Respondents

—

Shri Ashish S. Gaikwad i/b Shri Ajay G. Talhar for the Petitioners.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1,
4 and 5.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms.
Swati Sawant i/b S.K. Legal Associates for the Respondent No.2.

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WITH
WRIT PETITION NO. 11241 OF 2014
ALONG WITH
CIVIL APPLICATION ST. NO.32235 OF 2014
ALONG WITH
CIVIL APPLICATION ST.NO.30762 OF 2015
ALONG WITH
CIVIL APPLICATION ST. NO.30766 OF 2015

Padmashree Dr. Vitthalrao Vikhe Patil

Sahakar Sakhar Karkhanan Ltd. .. Petitioners

Versus

The State Of Maharashtra And Ors. .. Respondents

—

Shri P.K. Dhakephalkar, Senior Advocate along with Shri Vinayak D. Hon, Senior Advocate and Shri Prashant Darandale for the Petitioner and for the Applicant in CA St. No.32235 of 2014.

Shri Pradeep Deshmukh along with Shri Yashodeep Deshmukh for the Applicant in CA St.30762 of 2015 and CA St. No.30766 of 2015.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1, 4 and 5.

—

WITH
WRIT PETITION (ST) NO. 28884 OF 2015

Shri. Bhausheb Malhari Kambale .. Petitioner

Versus

The State Of Maharashtra

Through its Principal Secretary,

Water Resources Department And Ors. .. Respondents

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None for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 4 and 6.

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WITH
PUBLIC INTEREST LITIGATION NO. 9 OF 2014

Balasaheb R. Khule And Ors .. Petitioners

Versus

The State Of Maharashtra,

Through its Principal Secretary,

Water Resources Department And Ors. .. Respondents

—

Shri Siddharth R. Karpe for the Petitioners.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent No.1.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.2.

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PUBLIC INTEREST LITIGATION NO. 254 OF 2014

Guruprasad Kalawa Stariya Paani
Vapar Sanstha, Rahuri,
Through its Chairman
Shri Dilip Dadasaheb Ingle.

.. Petitioner

Versus

The State Of Maharashtra
Through its Principal Secretary,
Water Resources Department And Ors.

.. Respondents

—

Shri Siddharth R. Karpe for the Petitioner.

Shri A.B. Vagyan, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1
to 4.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms.
Swati Sawant i/b S.K. Legal Associates for the Respondent No.6.

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**WITH
PUBLIC INTEREST LITIGATION NO. 78 OF 2014
ALONG WITH
CIVIL APPLICATION NO.44 OF 2014
ALONG WITH
CIVIL APPLICATION NO.58 OF 2014**

Madhav Balaji Gaikwad And Ors.

.. Petitioners

Versus

The State Of Maharashtra And Ors.

.. Respondents

—

Shri P.K. Dhakephalkar, Senior Advocate along with Shri Vinayak D.
Hon, Senior Advocate and Shri Prashant Darandale i/b Shri Ashwin V.
Hon for the Petitioners and for the Applicants in CA No.44 of 2014.

Shri A.B. Vagyan, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1,
4 and 5.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms.
Swati Sawant i/b S.K. Legal Associates for the Respondent No.2.

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**WITH
PUBLIC INTEREST LITIGATION NO. 170 OF 2013**

The Kopargaon Sahakari Sakhar Karkhana Ltd.

And Others.

.. Petitioners

Versus

The Principal Secretary, And Ors.

.. Respondents

—

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh P. Mali for the Petitioners.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos. 1 to 3 and 9.

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**WITH
PUBLIC INTEREST LITIGATION NO. 171 OF 2013 WITH
CIVIL APPLICATION NOS.235 AND 236 OF 2013**

Satnaming S/o Gobindsingh Gulati & Ors ..

Petitioners

Versus

The State Of Maharashtra,

Through its Chief Secretary and Ors ..

Respondents

—

None for the Petitioners.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent State.

Shri P.K. Dhakephalkar, Senior Advocate along with Shri Vinayak D. Hon, Senior Advocate and Shri Prashant Darandale for the Applicant in CA No.236 of 2013.

—

**WITH
PUBLIC INTEREST LITIGATION NO. 172 OF 2013
ALONG WITH
CIVIL APPLICATION NO.238 OF 2013**

Prashant S/o Bansilal Bumb

...Petitioner

Versus

The Chief Secretary & Ors.

...Respondents

—

Shri M.S. Bhandari i/b Ms. Pranjali Bhandari for the Petitioner.
Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent State.

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WITH
PUBLIC INTEREST LITIGATION NO. 174 OF 2013
ALONG WITH
CIVIL APPLICATION NO.14 OF 2015
ALONG WITH
CIVIL APPLICATION NO.239 OF 2013
AND
CIVIL APPLICATION NO.240 OF 2013

Pratap S/o Gangadhar Somwanshi And Ors .. Petitioners
Versus
The State Of Maharashtra,
Through The Secretary and Others. .. Respondents

--

Shri Pradeep Deshmukh along with Shri Yasdhodeep Deshmukh for the
Petitioners and for the Applicants in CA No.14 of 2015.
Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri
Kamlesh Prakash Mali for the Applicant in CA No.240 of 2013.
Shri P.K. Dhakephalkar, Senior Advocate along with Shri Vinayak Hon,
Senior Advocate and Shri Prashant Darandale for the Applicant in CA
No.239 of 2013.
Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP and Shri C.P. Yadav for the Respondent Nos.1, 3 to 6.

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WITH
PUBLIC INTEREST LITIGATION NO. 176 OF 2013
ALONG WITH
CIVIL APPLICATION NO.263 OF 2013
ALONG WITH
CIVIL APPLICATION NO.264 OF 2013

Adarsh Shetkari Pani Wapar Sanstha Ltd,
Through its authorized officer/Member,
Shri Bhausahab Nivrutti Mote .. Petitioner

Versus

The State Of Maharashtra,
Through Chief Secretary And Ors

.. Respondents

—

Shri Vijay Killedar for the Petitioner.

Shri Siddharth Karpe for the Applicant in CA No.264 of 2013.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP and Shri C.P. Yadav for the Respondent Nos.1, 3 to 6.

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WITH
PUBLIC INTEREST LITIGATION NO. 183 OF 2015
ALONG WITH
CIVIL APPLICATION NO.194 OF 2015
ALONG WITH
CIVIL APPLICATION ST. NO.29204 OF 2015
ALONG WITH
CIVIL APPLICATION ST. NO.29512 OF 2015

Balasaheb Deoram Ghumare And Anr.

.. Petitioners

Versus

The State Of Maharashtra,
Through its Principal Secretary,
Water Resources Department And Ors.

.. Respondents

—

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri
Kamlesh Prakash Mali for the Petitioners.

Shri Rajendra H. Jadhav, the Applicant in person in CA No.194 of 2015.

Shri M.S. Bhandari i/b Ms. Pranjal Bhandari for the Applicant in CA St.
No.29512 of 2015.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani,
AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1
to 5 State.

Shri B.R. Survase for the Respondent No.6.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms.
Swati Sawant i/b S.K. Legal Associates for the Respondent No.7.

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WITH
PUBLIC INTEREST LITIGATION NO. 184 OF 2015

Harischandra Pani Purwatha Sansthanche
Sahakari Federation Limited,
Through its Chairman

Shri Rajendra S/o Keruji Gunjal.

.. Petitioner

Versus

The State Of Maharashtra
Through its Principal Secretary,
Water Resources Department And Ors.

.. Respondents

—

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh Prakash Mali for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 5 AND 8.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.6.

Shri B.R. Survase for the Respondent No.7.

—

WITH
PUBLIC INTEREST LITIGATION NO. 197 OF 2015

Sharada Pratishthan

.. Petitioner

Versus

The State Of Maharashtra
Through The Principal Secretary (WRM & CAD)
Water Resources Department And Ors.

.. Respondents

—

Shri Sachin Suryakant Punde for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent No.1 State.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.2.

—

WITH
PUBLIC INTEREST LITIGATION NO. 211 OF 2013

Padmashree Dr. Vitthalrao Vikhe Patil Sahakari
Sakhar Karkhana Limited,
Through its Managing Director,
Dr.Shri Bhaskarrao Nivrutti Kharde Patil. .. Petitioner

Versus

The State Of Maharashtra,
Through Principal Secretary,
Water Resources Department And Ors .. Respondents

—

Shri PK. Dhakephalkar, Senior Advocate along with Shri Vinayak D. Hon, Senior Advocate and Shri Prashant Darandale i/b Shri Ashwin V. Hon for the Petitioners and for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1, 4, 5 and 6.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent -MWRRA.

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WITH
PUBLIC INTEREST LITIGATION NO. 228 OF 2014

Balasaheb Deoram Ghumare And Ors. .. Petitioners

Versus

The State Of Maharashtra
Through Principal Secretary,
Water Resources Department And Ors. .. Respondents

—

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh Prakash Mali for the Petitioners.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 5.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.6.

Shri B.R. Survase for the Respondent No.7.

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WITH
PUBLIC INTEREST LITIGATION NO. 253 OF 2014
ALONG WITH
CIVIL APPLICATION NO.195 OF 2014

Harischandra Pani Purwatha Sansthanche
Sahakari Federation Limited,
Through its Chairman,
Shri Rajendra S/o Keruji Gunjal. .. Petitioner

Versus

The State Of Maharashtra
Through Its Principal Secretary,
Water Resources Department And Ors. .. Respondents

--

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh Prakash Mali for the Petitioner.

Shri Sachin S. Punde for the Applicant in CA No.19 of 2014.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent State.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.7.

—

WITH
PUBLIC INTEREST LITIGATION NO. 256 OF 2014

The Snajivani (Takli) Shahkari Sakhar
Karkhana Ltd And Anr. .. Petitioners

Versus

The State Of Maharashtra And Ors. .. Respondents

--

Shri P.K. Dhakephalkar, Senior Advocate along with Shri Vinayak D. Hon, Senior Advocate and Shri Prashant Darandale i/b Shri Ashwin V. Hon for the Petitioners and for the Petitioner.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 5.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.7.

—

WITH
PUBLIC INTEREST LITIGATION NO. 258 OF 2014
ALONG WITH
CIVIL APPLICATION NO.13 OF 2015

Sahakarmaharshi Bhausahab Thorat
Sahakari Sakhar Karkhana Ltd.

At Amrutnagar And Ors

.. Petitioners

Versus

The State Of Maharashtra,
Through its Principal Secretary,
Water Resources Department And Ors.

.. Respondents

—

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh Prakash Mali for the Petitioners.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 5.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.7.

—

WITH
PUBLIC INTEREST LITIGATION (ST) NO. 30842 OF 2013
ALONG WITH
CIVIL APPLICATION NO.265 OF 2013
ALONG WITH
CIVIL APPLICATION NO.269 OF 2013

Shrirampur Municipal Council,
Through its Chairman

Sou. Rajashree Jayant Sasane And Ors.

.. Petitioners

Versus

The State Of Maharashtra,
Through the Principal Secretary,
Water Resources Department And Ors.

.. Respondents

—

Shri Vivek V. Salunkhe and Shri Vijay Killedar for the Petitioners and for the Applicants in CA No.269 of 2013.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent State.

—

WITH
PUBLIC INTEREST LITIGATION NO. 152 OF 2013 WITH
CIVIL APPLICATION NOS.231, 232 AND 256 OF 2013

Vishwas S/o. Laxmanrao Aher And Ors	..	Petitioners
<i>Versus</i>		
The State Of Maharashtra, Through its Principal Secretary, Water Resources Department And Ors	..	Respondents

—

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kute and Shri Kamlesh Prakash Mali for the Petitioners and for the Applicants in CA No.256 of 2013.

Shri Pradeep Deshmukh along with Shri Yasdhodeep Deshmukh for the Applicant in CA No.231 of 2013.

Shri P.N. Joshi for the Applicant in CA No.232 of 2013.

Shri A.B. Vagyani, Government Pleader along with Shri V.B. Thadhani, AGP Shri C.P. Yadav and Ms. Tintina Hazarika for the Respondent Nos.1 to 3.

Shri G.S. Godbole along with Shri Arjit Maitra, Shri S.B. Pawar and Ms. Swati Sawant i/b S.K. Legal Associates for the Respondent No.5.

Shri B.R. Survase for the Respondent No.4.

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CORAM: A.S. OKA & G.S. KULKARNI, JJ

DATE ON WHICH SUBMISSIONS	)	9TH MARCH 2016, 10TH
WERE HEARD	)	MARCH 2016, 11TH MARCH
		2016, 16TH MARCH 2016,
		2ND APRIL 2016 AND 16TH
		APRIL 2016.

<u>DATE ON WHICH JUDGMENT</u>	)	
<u>IS PRONOUNCED:</u>	)	<u>23RD SEPTEMBER 2016</u>

JUDGMENT (PER A.S. OKA, J)OVERVIEW

1. A well-known author Leonardo da Vinci once said “Water is the driving force of all nature. It is the water which gives life to everything.” Justice Holmes said “A river is much more than amenity, it is a treasure”. During last few decades, due to population explosion and climatic changes, the entire scenario has undergone a change. There has been unsustainable growth in many areas which has led to destruction of environment. Ever depleting green cover of the mother Earth and various other man made factors have brought about major climatic changes. The climactic changes have resulted into swings between floods and drought. There is an ever increasing demand of water supply for drinking and other domestic use, agriculture, industrial use etc. All this has made the water management as one of the most important and challenging issues of 21st Century. There is a huge challenge faced by the policy makers and the Governments when it comes to equitable distribution of water. The failure of the State to make equitable distribution of water is leading to serious conflicts. In fact, a leading author and economist Ismail Serageldin once observed in the year 1995 that the wars of 21st century will be fought over water. Though this observation may appear be exaggerated, during the past few years, the

State of Maharashtra has witnessed agitations near various dams in the State in protest against release of water for the benefit of other regions. This Court has dealt with legal battles between the groups of people belonging to different regions on sharing of water. This group of Petitions also is an instance of such a legal battle.

2. Even the National Water Policy (2012) takes a note of the situation. Clauses (i) and (ii) of Paragraph 1.2 of the Policy reads thus:

“1.2 The present scenario of water resources and their management in India has given rise to several concerns, important amongst them are;

- (i) Large parts of India have already become water stressed. Rapid growth in demand for water due to population growth, urbanization and changing lifestyle pose serious challenges to water security.
- (ii) Issues related to water governance have not been addressed adequately. Mismanagement of water resources has led to a critical situation in many parts of the country.”

3. This group of Writ Petitions and Public Interest Litigations raise very important issues concerning equitable distribution of water. That is why out of turn priority was given to the hearing of this group. The issues involved in this group revolve around the water supply to various parts of Western Maharashtra and Marathwada Region. This group also involves issue of release of water from upstream reservoirs in Godavari river sub-basin for the benefit of downstream Jayakwadi dam.

Unfortunately, in some of the Petitions, the dispute as projected is between the citizens of two regions of the State.

4. All the disputes will have to be decided within the four-corners of the principles laid down by the Constitution of India as well as various enactments. Before we go into the factual aspects of the cases, a brief reference to the history of the laws on the issue will have to be made. The first legislation in the field was the Bombay Irrigation Act, 1879 (for short “the said Act of 1879”). The preamble of the said Act will show that it was enacted for making a provision for the construction and maintenance of canals and for the supply of water therefrom. The definition of “canal” under Section 3 was very wide which included not only all the canals, channels and pipes, but the reservoirs constructed, maintained or controlled by any Government for the supply and storage of water. The said Act of 1879 covered practically all sources of supply and storage of water. Another object sought to be achieved by the said Act of 1879 was to regulate rights and obligations of owners of water courses which are not maintained at the cost of Government. The Bombay Canal Rules, 1934 (for short “the said Rules of 1934”) were framed in exercise of the rule making powers under the said Act of 1879. The said Rules dealt with the supply of water for the purposes of irrigation, construction and maintenance of bandhs, use of water, etc. The said Act of 1879 was repealed by the

Maharashtra Irrigation Act, 1976 (for short “the said Act of 1976”). An attempt was made to bring a comprehensive legislation dealing with the laws relating to irrigation in the State. The object of the said Act of 1976 is to unify and amend the laws relating to irrigation, to provide for charging water rates on lands under the irrigable command of canals. The said Act of 1976 also contains a similar exhaustive definition of “canal” which includes various sources of storage of water and water supply. It includes any part of a river including its tributaries. Thereafter, in the year 1993, the State legislature came out with another legislation in the form of the Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993 (for short “the said Act of 1993”). The said Act of 1879 and the said Act of 1976 broadly deal with the water above the surface of earth. The said Act of 1993 deals with the regulation of exploitation of groundwater for the purposes of protection of public drinking water sources. In the said Act of 1993, “groundwater” is defined to mean water existing in an aquifer below the surface of the ground at any particular location including the groundwater reservoirs. The said Act provides for declaring a particular area as water scarcity area and for regulation of extraction of water from wells in water scarcity areas. The said Act of 1993 also seeks to provide for prohibition on construction of wells within certain areas, for putting an embargo on extraction of water from the wells in scarcity area, for closing down existing wells etc.

5. Then came two enactments of the years 2005. Both the enactments are very relevant for the consideration of this group of Petitions. The first is Maharashtra Act No.XVIII of 2005. The said Act is Maharashtra Water Resources Regulatory Authority Act, 2005 (for short “the said Act of 2005”). The relevant part of the preamble of the said Act reads thus:

“An act to provide for the establishment of the Maharashtra Water Resources Regulatory Authority to regulate water resources within the State of Maharashtra, facilitate and ensure judicious, equitable and sustainable management, allocation and utilisation of water resources, fix the rates for use of water for agriculture, industrial, drinking and other purposes, and matters connected therewith or incidental thereto.

WHEREAS it is expedient to make a law **to provide for the establishment of the Maharashtra Water Resources Regularity Authority to regulate water resources within the State of Maharashtra, facilitate and ensure judicious, equitable and sustainable management, allocation and utilisation of water resources**, fix the rates for use of water for agriculture, industrial, drinking and other purposes, and matters connected therewith or incidental thereto, for the purposes aforesaid; it is hereby enacted in the Fifty-sixth Year of Republic of India as follows:-.....”

(emphasis added)

6. The second enactment is the Maharashtra Act No.XXIII of 2005. The said enactment is the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 (for short “the second Act of 2005”). The relevant part of the preamble of the said Act reads thus:

“An Act to provide for Management of Irrigation Systems by Farmers' and for matters connected therewith or incidental thereto

WHEREAS the National Water Policy, (2002) lays down that efforts should be made to progressively involve farmers, in the various aspects of management of irrigation systems;

AND WHEREAS the Maharashtra Water and Irrigation Commission (1999) has recommended that statutory provisions may be made for management by farmers, of irrigation systems by providing water from Public Canal System to Water Users' Associations on volumetric basis;

AND WHEREAS it is decided by the State Government to bridge the gap between the irrigation potential created and its actual utilisation and to optimise the benefits by ensuring proper use of surface and groundwater by increased efficiency in distribution, delivery, application and drainage of irrigation systems and for achieving this objective to give statutory recognition to the constitution and operation of Water Users' Associations so as to enable the farmers to act collectively to improve the productivity of agriculture;

AND WHEREAS both Houses of the State Legislature were not in session;

AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action, to make necessary provisions, for the purposes aforesaid; and, therefore, promulgated the Maharashtra Management of Irrigation Systems by Farmers Ordinance, 2004, on the 18th August, 2004;

AND WHEREAS it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Fifty-sixth Year of the Republic of India, as follows:-”

(emphasis added)

We have considered the provisions of both the Acts of 2005 in greater detail in the subsequent part of this Judgment

7. Broadly, it can be said that in the State, now there are four major enactments in force. They are (i) the said Act of 1976, (ii) the said Act of 1993, (iii) the said Act of 2005 and (iv) the second Act of 2005. As held in this Judgment, broadly, the said four enactments operate in different fields. There may be some overlapping of subjects in the said Act of 1976 and the second Act of 2005. In fact, some of the provisions of the said Act of 1976 were repealed by the second Act of 2005. For the sake of completion, we must note here that the Maharashtra Water Resources Regulatory Authority (Allocation and Monitoring of Entitlements, Disputes and Appeals and other Matters) Rules, 2013 (for short “the Regulatory Authority Rules”) were framed under the said Act of 2005. However, the said Rules were repealed by the Notification dated 18th February 2014. In addition to the aforesaid enactments, we must also note that there is National Water Policy, 2012 adopted by the Government of India. Apart from the said policy, there is Maharashtra State Water Policy, 2003 adopted by the State of Maharashtra.

8. In some of the matters in the group, there is a challenge to the constitutional validity of some of the provisions of the said Act of 2005. In most of the matters, the challenge is to the order dated 19th September 2014 passed by the Maharashtra Water Resources Regulatory Authority (for short “Regulatory Authority”) in Case No.1 of 2014 and the subsequent orders of the Regulatory Authority on the same issue being the orders dated 18th November 2014 and 10th March 2015. There is also a challenge to the order dated 17th October 2015 issued by the Godawari Marathwada Irrigation Development Corporation (for short “the said Irrigation Corporation”) by which release of 12.84 TMC¹ of water from the upstream dams to Jayakwadi reservoir was ordered. The basic order is dated 19th September 2014 passed by the Regulatory Authority which contains various directions issued in the purported exercise of the powers under Section 11(c) of the said Act of 2005 for regulating release of water from the upstream dam complexes to Paithan Dam (Jayakwadi Dam) in Marathwada Region during the period of scarcity. The Regulatory Authority issued the said directions with a view to achieve an equitable distribution of water in the upstream reservoirs between the upstream areas and the areas covered by the Marathwada Region.

1 **TMC** is the abbreviation for one thousand million cubic feet (1,000,000,000 = 10⁹ = 1 billion), commonly used in reference to **volume** of **water** in a **reservoir** or **river** flow. **Cusec** is a measure of flow rate of water and is abbreviation for cubic feet per second (which is equivalent to a flow of 28.317 litres per second) and 11,000 cusecs flow for a day amounts to 1 **TMC** (thousand million cubic feet) water.

9. Some of the Petitions forming a part of this group were placed before this Court on 23rd October 2015 and 26th October 2015 essentially for considering the prayer for interim relief for preventing release of quantity of water of 12.84 TMC from upstream dams to downstream dams. By a detailed order dated 30th October 2015, this Court while issuing Rule in some of the Petitions, declined to grant ad-interim stay of operation of the aforesaid order dated 17th October 2015. However, this Court accepted the statement made by the State Government that the water released from the upstream reservoirs shall be used only for the drinking purposes. The group of the Petitions in which the aforesaid order dated 30th October 2015 was passed was kept for hearing as to interim relief on 17th December 2015. It appears that the said order was challenged before the Apex Court. Though the Apex Court by an order dated 3rd November 2015 did not interfere with the order of this Court, certain directions were given to the Authorities as well as to the Chief Secretary of the State to ensure that the water released from the upstream dams to Jayakwadi dam is used only for drinking purposes. It appears that on the basis of the order dated 17th October 2015, the water having quantity of 10.746 TMC was released from the upstream dams.

10. The Petitions were listed before the Court on 17th December 2015. By an order passed on that date, this Court observed that on the earlier occasion, time was granted to the State Government to place on record the latest figures of levels of water in upstream dams and downstream dams. This Court in the order dated 17th December 2015 noted that the State Government did not come out with the figures and, therefore, directed that the balance quantity of water out of 12.84 TMC (2.09 TMC) ordered to be released earlier shall not be released. Therefore, this Court passed an order of interim relief directing that no further quantity of water shall be released from upstream dams on the basis of the order dated 17th October 2015 without seeking leave of this Court. We may note here that on 18th December 2015, the PIL No.183 of 2015 was placed on board. In the said PIL, an allegation was made by the Petitioners that in breach of the orders of the Apex Court, the water was allowed to be used for the purposes other than drinking purposes. This Court in the order passed on that date observed that the State Government has not replied to the said allegation. It is in these circumstances that this Court directed that out of turn priority should be given to the hearing of this group of the Petitions.

BRIEF FACTS OF THE CASES

11. Now we propose to make a brief reference to the facts of each case.

PUBLIC INTEREST LITIGATION NO.173 OF 2013
AND COMMON ORDERS PASSED BY THIS COURT

While setting out the facts of the case in this PIL, we also propose to make a reference to various orders passed by this Court from time to time. This PIL is filed by the Marathwada Janta Vikas Parishad essentially for espousing the cause of the people from Marathwada Region. The first prayer in this PIL is for issuing a writ of mandamus directing the State Government and the Regulatory Authority to make available and release at least 27 TMC water for the benefit of Jayakwadi Reservoir at Paithan in Marathwada Region from upstream dams so as to ensure equitable distribution contemplated under Clause (c) of Sub-section (6) of Section 12 of the said Act. The second prayer is for challenging the validity of Rule 11 of the Regulatory Authority Rules . The third prayer is for issuing a writ of mandamus directing the State and the Regulatory Authority to ensure adequate supply of water to the reservoirs in Marathwada Region and to ensure that adequate supply of water for drinking purposes to Marathwada is made by implementing a time-bound scheme.

12. Various orders were passed from time to time by the Bench at Aurangabad before its transfer to the main seat of this Court. We may make a reference to some of the material orders passed by this Court in the present PIL along with the connected PILs. On 5th May 2014, this Court passed an order recording that Shri Prashant B. Bumb (Petitioner in PIL No.172 of 2013) and one Shri Y.R. Jadhav had filed Applications before the Regulatory Authority for release of water from upstream dams into Jayakwadi Reservoir. The order also noted the names of the persons who are opposing the said Applications. Under the said order, the Regulatory Authority was directed to hear the said Applications after giving an opportunity to all the concerned to file a reply. While directing the Regulatory Authority to pass an order, this Court continued the ad-interim orders passed on 31st October 2013 and 5th November 2013. On the basis of the said directions, the Regulatory Authority passed the said order dated 19th September 2014 which is impugned in many petitions. Directions were issued in Paragraph 10 of the said order dated 19th September 2014 which read thus:

“10 DETERMINATIONS:

In view of the above background, we are of the view that the following directions are required to be given to achieve an equitable distribution of water as contemplated under section 11(c) of the 2005 Act:

- (a) The upper reservoirs need to be regulated as per the above guiding principles after taking a review of the storage position in upstream complexes and in the Paithan dam and also after taking into account the likely effect of the return rainfall. This needs to be done in the first fortnight of October so that an approximate equitable distribution of available water among upstream and downstream users is achieved by the end of October. **We feel that the operating strategy should be chosen for regulating reservoirs by observing the storage position at Paithan dam in the first fortnight of October and also considering the storage position in the upstream complexes, duly accounting for planned Kharif use.**
- (b) **An approximate equitable distribution is to be resorted to when hydrological drought occurs. This is to be achieved through a step-by-step synchronization of the storages in the upper reservoirs upto Strategy-III as given in Table 6 (enclosed) provided that requirement of Strategy-I is first met fully for all the upper complexes of reservoirs.** If sufficient storage is available in the upstream reservoirs, then Strategy-II will come into play and likewise Strategy-III. While doing so uniform cut (say, 5%/ 10%/ 15% as the case may be) in the utilizable water of all upstream storages shall be applied to meet the requirement of storage of the lower reservoir for the chosen strategy which is in consonance with the principle of “Sharing Distress by All”. Water is to be made available in all the reservoirs for meeting the drinking water requirement, for the growing of bare minimum food crop for people in the command areas of all the projects and for minimum of industrial use (but limited to 80% of the industrial requirement) so as to prevent the migration of population. K.T. weir needles which obstruct the flow of water should not be placed in position until an equitable distribution is achieved by October end.

- (c) **If any reservoir on the upstream is short of water to meet its own minimum needs, no release of water from that reservoir is to be made.**
- (d) However, it must be ensured that there is no drawl of water from the dead storage for irrigation purposes from the Jayakwadi reservoir.
- (e) **If the natural storage at Paithan dam in the first fortnight of October is above or equal to 65% of the live storage (Strategy-III) then the question of releasing water from the upstream storages does not arise.**
- (f) The water requirement for the crop is to be worked out scientifically with giving due consideration to overall ground water conjunctive use taking into account the actual soil moisture condition.
- (g) On the upstream projects in Nashik & Ahmednagar Districts, the diversion of monsoon flows through canals, flood canals, rivers and streams for Kharif use outside the project command, or for filling tanks and farm ponds is to be allowed only after the Paithan reservoir reaches its full design capacity.
- (h) During the period of floods, the normal reservoir operation will switch over to flood regulation.
- (i) **These guiding principles will be reviewed each year and a report thereon made to MWRRA.**
- (j) The Executive Director of the GMIDC will be responsible for the operation of all upstream reservoirs as per the operating strategy stated above.

- (k) The role of the canal advisory committee will begin at the project level after the reservoir operation has been completed.
- (l) **The question of the authorized “block” holders has to be addressed at the project level only after the completion of the reservoir operation.**
- (m) Farmers at the tail end of canal system should be assured of enough water.
- (n) **The share of water of the tail end users should be decided at the start of the Rabi season by conducting meetings of the Canal Advisory Committees including representatives of the WUAs.** Minutes of the meetings at the start of the season with the WUAs be drawn up and kept on the Government Website with copies to the MWRRA and WUAs.
- (o) The proportionate share of the Majalgaon Project as planned be decided at the start of the season and releases be made on time.
- (p) The WRD should ensure that the canal system is well maintained so as to ensure that the tail end receives sufficient water.
- (q) **The orders of Government banning new projects upstream of the Paithan Dam, issued vide letter dated 6/9/2004, be strictly observed.**
- (r) Drip irrigation has to be strictly enforced on upstream perennial crops and horticulture. Ground water conjunctive use with drip irrigation will help in increasing water use efficiency.

- (s) There must be an upper limit to the diversion of irrigation water to non irrigation purposes. The restoration of the resulting curtailed irrigated area be carried out by Government in a time bound manner. Government should give a schedule for this to the MWRRA in 8 weeks from the date of this order.
- (t) Most of the major and medium projects in the Godavari Sub-basin have been completed 10-15 years ago. They need to be reviewed and the new parameters like the command area and water availability need to be decided.
- (u) **The suggestion regarding the use of a closed pipe line for drinking and industrial water supply is as per the provision in the State Water Policy. This should be considered by the Government on a priority basis.**
- (v) The lifting of water from the backwaters of any project has to be limited to the approved water use planning. **Government has to exercise rigorous controls on the unauthorized pumping on Jayakwadi back water. Action taken to be reported to MWRRA.**
- (w) **Government should give a schedule and a road map for the delineation of the Jayakwadi command and the formation of WUAs under the MMISF Act, 2005 to the MWRRA within 8 weeks of the date of this order.”**

(emphasis added)

TABLES 5 and 6 which are appended to the order read

thus:

Table : 5

Distribution of Utilizable Water Available in the Upper Godavari (upto Paithan dam) Sub-basin among the various complex / systems of Reservoirs under different conditions of Probabilities of Inflows in Paithan dam

Strategy No.	Scenario						Utilizable water including Kharif / Mansoon Use (Mcum)						
	Complex						Mula	Pravara	Gangapur	Godavari-Darna	Palkhed	Paithan	
	Dams / Systems in complex						Mandhol, Mula	Bhandardara, Nilwande, Adhala, Bhojapur	Gangapur, Kashyapi, Gautami	Alandi, Kadwa, Bham, Bhawali, Waki, Darna, Mukane, Waldevi	Karanjwan, Waghad, Puneगाon, Ojharkhed, Palkhed, Tisgaon	Paithan	
	Design Live storage (Mcum)						617.59	570.77	308.56	718.38	350.34	2170.94	
	Carry Over (Mcum)						28.32	0.00	11.64	0.00	0.00	381.70	
	Design Water Use (Mcum)						717.78	835.84	324.81	1220.04	456.52	2618.59	
	Paithan observed Net Inflow at	% Demands											
		D-NI	I-NI	K-I	R-I	HW-I							
1	100% dep. Year	80	80	80	0	0	331.45	320.33	198.50	460.69	253.98	1178.67	
2	90% dep. Year	80	80	80	32	0	430.04	425.38	238.76	604.00	253.98	1554.62	
3	75% dep. Year	80	80	80	52	0	517.28	500.44	263.61	736.26	287.41	1790.43	
4	50% dep. Year	80	80	80	72	0	604.56	574.96	288.43	870.26	345.36	2027.12	
5	Average yield	80	80	80	80	0	639.39	605.16	298.15	917.52	368.54	2119.94	
6	Good year	100	100	100	100	100	717.78	835.84	324.81	1220.04	456.52	2618.59	

Table : 6

Upper Reservoirs' Storages to be synchronized with the state of Paithan dam storage for different Operating Strategies during filling (Monsoon) period

Complex	Paithan	Mula	Pravara	Gangapur	Godavari-Darna	Palkhed
Dams / Systems in complex	Paithan	Mandhol, Mula	Bhandardara, Nilwande, Adhala, Bhojapur	Gangapur, Kashyapi, Gautami	Alandi, Kadwa, Bham, Bhawali, Waki, Darna, Mukane, Waldevi	Karanjwan, Waghad, Puneagaon, Ojharkhed, Palkhed, Tisgaon
Strategy – I	797 (37%)	303 (49%)	320 (56%)	187 (61%)	461 (64%)	254 (73%)
Strategy – II	1173 (54%)	402 (65%)	425 (74%)	227 (74%)	604 (84%)	254 (73%)
Strategy – III	1409 (65%)	489 (79%)	500 (88%)	252 (82%)	736 (102%)	287 (82%)
Strategy – IV	1645 (76%)	576 (93%)	575 (101%)	277 (90%)	870 (121%)	345 (99%)
Strategy – V	1738 (80%)	611 (99%)	605 (106%)	287 (93%)	918 (128%)	369 (105%)
Strategy – VI	2237 (103%)	689 (112%)	836 (146%)	313 (101%)	1220 (170%)	457 (130%)

13. Thereafter, the Petitions appeared before the Court on 17th December 2014 including the subsequent Petitions filed for challenging the said order dated 19th September 2014 of the Regulatory Authority. In the meanwhile, on 5th December 2014, the said Irrigation Corporation passed an order directing the release of water from the upstream dams into the river basin of Mula and Pravara rivers. By the orders passed on 17th December 2014, this Court declined to grant stay to the order dated 19th September 2014 passed by the Regulatory

Authority and the order dated 5th December 2014 passed by the said Irrigation Corporation.

14. We must also note here that on 18th November 2014, the Regulatory Authority passed a clarificatory order by observing that the order of the Regulatory Authority ought to have been implemented by the said Irrigation Corporation in the month of October itself.

15. By the order dated 2nd February 2015 passed by the First Court in this group of Writ Petitions and the Public Interest Litigations, the First Court directed the Regulatory Authority to hear the parties on the question whether the order dated 19th September 2014 has been properly implemented by the said Irrigation Corporation and pass appropriate order.

16. Accordingly, on 10th March 2015, the Regulatory Authority passed a detailed order holding that the order dated 19th September 2014 has not been implemented in its true letter and spirit. By the said order, the Regulatory Authority had issued the following directions:

“However, we would like to give the following directions to the ED, GMIDC for implementation of our order dated 19 September 2014 in future:

- (A) The ED, GIMDC should undertake a review of the storage position of Jayakwadi reservoir and all upstream storages on the 15 October every year.

- (B) Considering the storage position of Jayakwadi reservoir as on the 15 October, he should decide the appropriate strategy of equitable distribution from Table 6 vide Para 10 (b) of MWRRA Order.
- (C) In case of any difficulty in implementation, he should approach the Authority directly and not later than 4 days after the 15 October and seek our clarification.
- (D) He should complete the exercise of equitable distribution by the end of October every year of hydrological drought.

Any act of omission on the part of the ED, GMIDC will attract the action under Section 26 of the MWRRA Act.

6.0 MWRRA Direction :-

In view of the above background we are of the view that the following direction is in order: no further release of water from any of the upstream reservoirs is to be made to Jayakwadi reservoir during the current water year (till 31 May 2015).

With the above, the matter stands disposed of.”

GMIDC is the said Irrigation Corporation.

17. Thereafter, the Petitions were placed before this Court on 30th April 2015. On that day, this Court considered the order dated 10th March 2015 passed by the Regulatory Authority. This Court called upon the Water Resources Department, the said Corporation, the Collector of Aurangabad and the Municipal Commissioner of Aurangabad to show cause as to why appropriate directions should not

be issued to all the concerned authorities to take necessary steps to ensure that water for domestic purposes be supplied to the people of Aurangabad and to the people of Parbhani, Jalna and Beed for 45 minutes on the alternate day, if not everyday. The Commissioner of Nashik Municipal Corporation was also called upon to submit a report setting out the extent of water supply made to the residents of Nashik.

18. Thereafter, in terms of order dated 19th September 2014, the order dated 17th October 2015 was passed by the said Irrigation Corporation directing release of water of quantity of 12.84 TMC from upstream dams to the downstream dams. This Court declined to grant interim relief of stay of the said order. On the basis of the said order, the quantity of 10.746 TMC was released. However, further quantity has not been released in the light of the interim order of this Court. There was no application made by any party thereafter for release of the balance quantity of water from upstream dams to the downstream dams. On the basis of the order of this Court dated 30th October 2015 declining to grant stay of the operation of the order dated 17th October 2015 of the said Irrigation Corporation, the Regulatory Authority considered various Applications made before it. By an order dated 9th November 2015, the Regulatory Authority clarified that the quantity of 12.84 TMC of water ordered to be released under the order dated 17th October 2015 of the said Irrigation Corporation was inclusive of

evaporation losses. A finding was recorded that the said order was legal and therefore, should be fully implemented.

19. In PIL No.173 of 2013, there are various affidavits filed on record. We are making a reference only to the material affidavits on record and the stand taken therein. The first material affidavit is dated 27th November 2012 filed by Shri S.V. Sodal, the then member of the Regulatory Authority. This affidavit is to the unamended Petition. Apart from dealing with the various challenges, Shri S.V. Sodal invited attention to the Maharashtra Ordinance No.11 of 2010 issued for amending the said Act of 2015.

20. An affidavit was filed by Shri Eknath Bapurao Jogdande, the Superintendent Engineer and Administrator Command Area Development Authority, Aurangabad which is dated 18th December 2012. Apart from dealing with the factual and legal challenges, details of live storage capacity of upstream and downstream dams has been set out in the said affidavit. It is contended in the said affidavit that Jayakwadi/Paithan Reservoir has gross storage capacity of 102.73 TMC. Initially, out of the gross capacity, the live storage was of the quantity of 76.67 TMC and the dead storage was of the quantity was 26.06 TMC. It is contended that during 37 years of operation, the dead storage has been reduced to about 20.05 TMC because of silt accumulation. It is

stated that up to 31st July 2013, the quantum of 3.76 TMC will be treated as utilizable dead storage. It is pointed out that the total catchment area of Jayakwadi dam is 21,774 sq. kilometers. It is pointed out that the catchment area in Nashik and Ahmednagar Districts is located in the western ghats on Sahyadri hill ranges which generally receive heavy rainfall. The sizable catchment area of Jayakwadi is intercepted by the upstream major and medium dams.

21. Shri Prakash Vaze, the Deputy Superintending Engineer of the said Corporation has also filed the affidavit. Reliance is placed on the decision taken in the meeting dated 31st December 2012 which is chaired by the Hon'ble Chief Minister. There is a rejoinder filed by the Petitioners which is dated 10th January 2013. Additional affidavit was filed by Shri Eknath B. Jogdande on behalf of the State Government laying down the schedule for finalizing the Rules.

22. There is a Civil Application being Civil Application No.262 of 2013 filed by the Respondent Nos. 8 to 10 in this PIL. With the passage of time, the said Application will not survive.

23. Civil Application No.244 of 2013 has been filed by Dnyaneshwar Gangadhar Gondkhar and 2 Others. The prayers made in the said Application will not survive by the reason of lapse of time. The

same is the case of the Civil Application No.241 of 2013 filed by Mrs. Minaltai Ashokrao Khambekar.

24. Civil Application No.257 of 2013 has been filed by the Respondent Nos.8 to 10 in the PIL seeking a direction against the Respondents to release water from Darna Dam Complex through Godavai Right and Left Bank Canals. Even the said Application which was filed on 18th October 2013 is on the basis of the requirements existing at the relevant time, and therefore, may not survive.

25. There is also a Civil Application No.274 of 2013 filed by Shri Sanjay Bhaskarrao Kale for Intervention who claims to be a farmer by birth and RTI Activist. In the said Application, the contention raised is that due to the orders passed in the companion PIL No.100 of 2012, Kopergaon Taluka has faced the shortage of water. Various activities conducted by him have been set out in the said Application.

26. Civil Application No.191 of 2014 has been filed by Shri Yadavrao Ramrao Jadhav for Intervention, who is claiming to be a Social Activist and is the Executive Director of Marathwada Institute of Development & Research, Aurangabad. Apart from seeking intervention, there is a second prayer for setting aside the order dated 19th September 2014 passed by the Regulatory Authority.

27. Civil Application No.194 of 2013 has been filed by a Company by the name Dodson Lindblom Hydro Power Private Limited. The Applicant Company claims that it is running Bhandardara Power House-1 using water from Bhandardara Dam. It is alleged that the water released from Bhandardara Dam is used by the said company for generation of power. It is contended that the water from Bhandardara Dam can be released to Jayakwadi dam with specific planning so that it can be used to generate cheapest electricity.

PUBLIC INTEREST LITIGATION NO.170 OF 2013

28. This PIL is filed by Kopargaon Sahakari Sakhar Karkhana Limited, a Co-operative Sugar Factory, three Village Panchayats and a citizen of Taluka Kopargaon, District-Ahmednagar. This PIL was initially filed before the Bench at Aurangabad which has been transferred to the principal seat at Mumbai. The first substantive prayer is for a declaration that the Government decision dated 21st November 2012 to the extent of releasing 3 TMC water from Darna Irrigation Project into the river bed of Godavari river is illegal, arbitrary and violative of Articles 21, 14 and 19(1)(g) of the Constitution of India. The second prayer is for issuing a writ of prohibition against the Respondents from implementing the said decision dated 21st November 2012. These two

prayers have been worked out with the passage of time. The next prayer is for issuing a writ of mandamus directing the Respondents to supply the water for the benefit of sugarcane crop of the agriculturists in Kopergaon Taluka after the drinking water need is fulfilled. The next prayer is for issuing a writ of mandamus directing the Respondents to take steps to prevent over flow of water from Vaitarna, Narpar, Damanganga and Ulhas basins. There are two prayers added by way of amendment. The first amendment to the prayer is for seeking a direction against the Union of India to decide the proposal for diverting the water flowing in Arabian Sea from western ghat of Sahyadri to the east of Godavari basin. It is pointed out that a proposal to that effect has been forwarded by the State Government to the Central Government. Another prayer added by way of amendment is for issuing a writ of mandamus directing the Union of India to immediately implement the report of 2001 along with the report dated 5th November 2011 on urgent basis and to divert water from west flowing rivers in Narpar, Ulhas, Damanganaga and Vaitarna basin to Godavari basin. There is an additional affidavit filed by Shri Balasaheb Vitthalrao Abhale dated 30th March 2016 for the purposes of bringing on record a project report of August 2001 submitted by the said Corporation. The report has been prepared the Chief Engineer (I.D.) North Maharashtra Region, Nashik and the Superintending Engineer & Administrator Command Area Development Authority, Nashik. The said report is on

the project of diversion of west flowing rivers into Godavari and Tapi basins. By amending the Writ Petitions, as referred to above, implementation of the said report is sought by the Petitioners. There is a Civil Application No.197 of 2014 filed by the Kopargaon Sahakari Sakhar Karkhana Limited for intervention.

PUBLIC INTEREST LITIGATION NO.171 OF 2013

29. This PIL is filed by three citizens of Aurangabad. The first prayer is for issuing a writ of mandamus directing the Respondents to release 25 TMC water for Jayakwadi Dam from the Projects situated on Pravara, Godavari and Mula River basin. The second prayer is for directing the Respondents to take a decision on the Petitioners' representation dated 20th October 2012. The said representation is made on behalf of a political party the Maharashtra Navnirman Sena containing prayer for release of 25 TMC water for the year 2012-2013. There are Civil Applications for intervention being Civil Application No.235 of 2013 made by Shri Arjun Prabhakar Kale and Another Civil Application No.236 of 2013 by Sanjivani (Takli) Sahakari Sakhar Karkhana Limited and Another.

PUBLIC INTEREST LITIGATION NO.172 OF 2013

30. The PIL No.172 of 2013 is filed by one Shri Prashant Bansilal Bumb. We must note here that the said Petitioner vide letter

dated 15th January 2014 made a representation to the Regulatory Authority seeking directions regarding equitable distribution of water in Godavari basin so as to meet the scarcity of water in Jayakwadi Dam. As pointed out earlier, the first Court passed an order dated 5th May 2014 directing the Regulatory Authority to decide the said Application along with the Application dated 26th April 2014 made by one Shri Y.R. Jadhav. The first substantive prayer is for a declaration that the Regulatory Authority Rules, more particularly Rule 11 thereof may be held as illegal. We must note here that as the Rules have been repealed, the said prayer does not survive. The second prayer is for issuing a writ of mandamus directing the Respondents to regulate the water supply to the various projects since inception of monsoon pending the framing of the Rules. The third prayer is for a writ of mandamus restraining the Respondents from sanctioning any further irrigation projects in Nashik and Ahmednagar Districts. The Petitioner in this PIL relied upon a communication dated 6th September 2004 (Exhibit-D to the PIL) issued by the Irrigation Department of the State Government addressed to the Chief Engineer at Nashik. In the said letter, it is stated that the State Government has decided not to grant any approval to the projects which are in the upstream of Jayakwadi Dam. Another prayer in the PIL is for restraining the Respondents from proceeding with the ongoing projects which were sanctioned in breach of the said decision dated 6th September 2004.

31. There is an affidavit-in-reply filed on behalf of the Maharashtra Industrial Development Corporation (MIDC). There is a reply filed by Shri Eknath Bapurao Jogdand, Superintending Engineer and Administrator, Command Area Development Authority, Aurangabad. Even in the said affidavit, live and dead storage capacity of water from upstream and downstream reservoirs has been set out. In this PIL, Civil Application No.238 of 2013 has been filed by three citizens from District Ahmednagar.

PUBLIC INTEREST LITIGATION NO.174 OF 2013

32. This PIL is filed by the citizens of Taluka Vaijapur of District Aurangabad. The first prayer is for implementation of the Resolution dated 18th November 2003. It is prayed that as per the Resolution dated 18th November 2003, the reservation of 7.5 TMC water be made in all dams. The next prayer is for issuing a writ of mandamus directing the Respondents to divert water from Mukane Dam including 2.62 TMC of water which will be made available by increase of the height of Dam by 10 feet to Kopargaon Taluka. A writ of mandamus is prayed for directing the State to complete the construction of Bham Dam by giving utmost priority and by sanctioning the necessary funds. A writ of mandamus is prayed for directing the Respondents to expedite the process of diversion of overflow water from Vaitarna Valley. It is prayed

that the overflow water in addition to the supply of 3 TMC water be made available to Vaijapur and Gangapur Talukas without diverting the same to Kopargaon Taluka. It is further prayed that no permission to lift any water from Nandur Madhameshwar Express Canal be given to the agriculturists of Kopargaon Taluka.

33. There is an affidavit-in-reply filed by Shri Arun Ramchandra Kamble, Superintending Engineer, Aurangabad Irrigation Circle, Aurangabad. The status of various dams including the Bham Dam is stated in the said affidavit. It is stated that the work was delayed due to project affected persons. It is stated that the work resumed in the year 2011 and is likely to be completed in March 2015. It is stated that even the work of Waki Dam will be undertaken and completed.

34. There is an affidavit-in-reply filed by Shri Ashok Nanasaheb Mhaske, the Executive Engineer, Nashik Irrigation Division, Nashik. There is a rejoinder filed by the Petitioners. Civil Application No.240 of 2013 has been filed by three citizens of Ahmednagar District for intervention. There another Civil Application being Civil Application No.14 of 2015. The prayer made in the said Application is for directing the Respondents to release 1 TMC water from Mukane or Bhavali dam for rabi crops .

PUBLIC INTEREST LITIGATION NO.78 OF 2014

35. This PIL No.78 of 2014 has been filed by the citizens residing at different Talukas of Ahmednagar District. This PIL was originally filed before the Aurangabad Bench which was subsequently transferred to the principal seat at Mumbai. The first prayer in this PIL is for issuing a writ of mandamus directing the Regulatory Authority to pass necessary order under Section 11 of the said Act for protecting the interests of the upstream agriculturists. Further directions were sought enjoining the State Government to exercise the powers under Section 23 of the said Act and issue directions to the Authorities for regularly supplying the water to the left and right bank canals of Pravara, Mulla and Godavari rivers basins.

Civil Application No.44 of 2014 has been filed for amendment of the Petition which was not pressed. There is a Civil Application being Civil Application No.58 of 2014 for intervention filed by Marathwada Jantavikas Parishad Aurangabad and one Shri Hiralal Motilal Desarda. The said Application was filed for protecting the interests of the citizens in the downstream agriculturists and in particular Aurangabad District.

PUBLIC INTEREST LITIGATION NO.9 OF 2014

36. This PIL No.9 of 2014 has been filed for a declaration that Clauses (a), (b) and (c) of Section 11 and Sub-Section 6(c) of Section 12 of the said Act of 2005 are unconstitutional. Challenge was also to the some of the Rules in the Regulatory Authority Rules. The said challenge to the Rules does not survive in view of the repeal of the Rules.

PUBLIC INTEREST LITIGATION NO.176 OF 2013

37. This PIL has been filed by Adarsh Shetkari Pani Watar Sanstha Limited, District- Ahmednagar. The prayer in this PIL is for a declaration that Section 12 of the said Act of 2005 be declared as ultra vires. There is prayer for issue of a writ restraining the Respondents from releasing water from Mula Dam to any other reservoirs. In the said PIL, there is a Civil Application being Civil Application No.264 of 2013 filed by the citizens of Taluka Rahuri in District – Ahmednagar wherein, apart from the intervention, the order dated 29th October 2013 directing the release of water from the upstream dams of Jayakwadi is challenged.

PUBLIC INTEREST LITIGATION NO.183 OF 2015

38. This PIL has been filed by the two Petitioners. The first Petitioner is a resident of Taluka- Sinner, District – Nashik, and the second Petitioner is a resident of Kopargaon, District – Ahmednagar. The first challenge is to the order dated 19th September 2014 passed by the Regulatory Authority for releasing the water from upstream dams to downstream dams. Various contentions regarding defects in the construction of Jayakwadi dam have been raised in this PIL. There is an Application being Civil Application Stamp No.29204 of 2015 for intervention made by the Applicant who is a resident of Parbhani District. There is an additional affidavit filed by the second Petitioner in support of the plea for setting aside the order dated 17th October 2015. The order dated 17th October 2015 has been substantially implemented and that there is no question of further implementation of the said order. This prayer made in this PIL is now academic.

PUBLIC INTEREST LITIGATION NO.184 OF 2015

39. This PIL has been filed by Harischandra Pani Purwatha Sansthanche Sahakari Federation Limited, having its office in Taluka Sangamner, District – Ahmednagar. The first two prayers are for challenging the order dated 17th October 2015 issued by the said

Irrigation Corporation. The said prayers have worked itself out with the passage of time. There is a prayer added by way of amendment for challenging the subsequent order dated 9th November 2015 of the Regulatory Authority which holds that the order dated 17th October 2015 of releasing 12.84 TMC water from upstream dams to Jayakwadi Reservoir is perfectly legal.

PUBLIC INTEREST LITIGATION NO.197 OF 2015

40. This PIL has been filed by Sharada Pratishtan which is claiming to be a non-Government Organization, having its office at Taluka – Georai, District – Beed. The substantive prayer in this PIL is for issuing a writ of mandamus directing the Respondents to make an equitable distribution of water every year in the Godavari basin from upstream reservoirs to the Jayakwadi Reservoir. A prayer is made for modification of the orders dated 19th September 2014 and 18th November 2014 passed by the Regulatory Authority. The contention is that the said orders proceed on the footing that the equitable distribution of water is required only during the period of scarcity. The submission is that the orders need to be modified by issuing a direction for equitable distribution of water every year as there is an acute short-fall of rain in Marathwada Region every year.

PUBLIC INTEREST LITIGATION NO.211 OF 2013

41. This PIL is filed by Padmashree Dr. Vitthalrao Vikhe Patil Sahakari Sakhar Karkhana Limited, a Co-operative Sugar Factory. The first substantive prayer in this PIL is for directing the Regulatory Authority to pass necessary orders under Section 11 of the said Act for protecting the interests of upstream agriculturists and thereby directing the supply of water to the upstream agriculturists as per the requirements. The second substantive prayer is for directing the State Government to exercise the powers under Section 23 of the said Act and to issue necessary general or special directions to the Authorities for regularly supplying the water to the left and right bank canals of Pravara, Mula and Godavari river basins. The third prayer in this PIL is for issuing a writ of mandamus directing the Respondents to release overflow water in the left and right bank canals on Godavari, Mula and Pravara rivers as per the prevailing practice. There is a challenge to the Order Nos.462 of 2013 to 465 of 2013 issued by the Irrigation Department, Ahmednagar. The first order is as regards the appointment of a member of the staff for ensuring that there is a smooth flow of water released from Nilvande dam into Pravara river upto Jayakwadi dam. Various directions were given under the said order for ensuring free flow of water upto Jayakwadi dam. The Order No.465 of 2013 dated 31st October 2013 is for modifying the earlier order No.463 of

2013 dated 29th October 2013. The said orders relate to the release of water in the year 2013 and hence, the challenge in this PIL to these two orders is now academic.

PUBLIC INTEREST LITIGATION NO.228 OF 2014

42. This PIL is filed by the residents of various Talukas of Nashik and District Ahmednagar. The first prayer in the PIL is for challenging the order dated 19th September 2014 passed by the Regulatory Authority on the ground that the same is illegal, arbitrary and violative of the provisions of the Constitution of India and the provisions of the said Act of 1879, the said Rules of 1934, the said Act of 1976 as well as the second Act of 2005. The second prayer is for issuing a writ of prohibition preventing the Respondents from implementing the report of the study group appointed by the State Government known as “Mendhegiri Committee Report” dated 8th August 2013. The next substantive prayer added by way of amendment is that the order dated 18th November 2014 passed by the Regulatory Authority be quashed and set aside on the ground of breach of the principles of natural justice and violation of Article 14 of the Constitution of India. Another prayer is added by way of amendment for challenging the order dated 10th March 2015 passed by the Regulatory Authority directing the release of water from upstream dams in the year 2015-

2016. This prayer may not survive with the passage of time. To this PIL, there is a detailed reply filed by Dr. Suresh A. Kulkarni on behalf of the Regulatory Authority which is the Respondent No.7 in the said PIL. Dr. Kulkarni is the Secretary of the Regulatory Authority.

PUBLIC INTEREST LITIGATION NO.253 OF 2014

43. This PIL has been filed by Harischandra Pani Purwatha Sansthanche Sahakari Federation Limited. The prayers in this PIL are similar to the prayers made in PIL No.228 of 2014. In this PIL, there is a Civil Application being Civil Application No.195 of 2014 filed by Sharada Pratishthan seeking an intervention.

PUBLIC INTEREST LITIGATION NO.254 OF 2014

44. This Petition has been filed by Guruprasad Kalawa Stariya Paani Vapar Sanstha in Taluka Rahuri, District – Ahmednagar. The prayers in this PIL are similar to the prayers made in PIL No.228 of 2014.

PUBLIC INTEREST LITIGATION NO.256 OF 2014

45. This PIL is filed by Sanjivani (Takli) Sahakari Sakhar Karkhana Limited which is a Co-operative Sugar Factory in Taluka

Kopargaon, District–Ahmednagar. There are only two substantive prayers in this PIL. The first prayer is for challenging the order dated 19th September 2014 passed by the Regulatory Authority. The second substantive prayer is for issuing a writ of prohibition restraining the Respondents from acting upon the Mendhigiri Committee Report.

PUBLIC INTEREST LITIGATION NO.258 OF 2014

46. This PIL is filed by Sahakarmaharshi Bhausaheb Thorat Sahakari Sakhar Karkhana Limited, a Co-operative Sugar Factory at Taluka – Sangamner in District – Ahmednagar and two citizens of Taluka – Sangamner, District – Ahmendnagar. There are prayers made for challenging the orders dated 19th September 2014 and 18th November 2014 passed by the Regulatory Authority. There is a prayer made challenging the Mendhigiri Committee Report dated 8th August 2013. Lastly, there is a prayer for challenging the order dated 10th March 2015 passed by the Regulatory Authority. In this PIL, there are certain allegations made against Shri S.V. Sodal, the then Member of the Regulatory Authority. We may note that subsequently Shri Sodal has resigned from the Regulatory Authority.

PUBLIC INTEREST LITIGATION STAMP NO.30842
OF 2013

47. This PIL has been filed by (i) Shrirampur Municipal Council, (ii) the Agriculture Produce Market Committee, Shrirampur, District – Ahmednagar and (iii) the Belapur Vividh Karyakari Seva Society, Taluka – Shrirampur, District – Ahmednagar. The first prayer is for issuing a writ of mandamus directing the Regulatory Authority to pass necessary orders under Section 11 of the said said Act for protecting the interests of the Petitioners and for supplying water to the Petitioners as per their requirements. The second prayer is for issuing a writ of mandamus enjoining the State Government to exercise the powers under Section 23 of the said said Act thereby directing the Respondent Authorities to release regular supply of water to the areas in Ahmednagar District. A writ of prohibition is prayed for releasing the water from upstream projects viz. Bhandardara and Nilwande dams to the Jayakwadi dam till the rights of release of water from upstream project are not determined by the Committee constituted in accordance with the said said Act. Civil Application No.265 of 2013 has been filed in the said PIL by Padmashree Dr. Vithalrao Vikhe Patil Sahakari Sakhar Karkhana Limited and another for intervention and for seeking stay of the order dated 29th October 2013 directing the release of water from upstream dams to Jayakwadi dam. Obviously, the said Application will

not survive with the passage of time. There is another Civil Application being Civil Application No.269 of 2013 filed by Shrirampur Municipal Council and 2 others for seeking amendment. The prayer made in this Application will not survive with the passage of time.

PUBLIC INTEREST LITIGATION NO.152 OF 2013

48. This PIL is filed by three citizens residing in Taluka -Yeola and Sinnar of District Nashik. The only substantive prayer in this PIL is for declaring that the provisions of Clauses (a), (b) and (c) of Section 11 and Sub-Section 6(c) of Section 12 of the said Act of 2005 as well as Rule 2(c) of the Regulatory Authority Rules are illegal, arbitrary and violative of Article 14 of the Constitution of India. Civil Application No.231 of 2013 has been filed by a citizen of Aurangabad for intervention. Civil Application No.232 of 2013 has been filed by Godavari Kalve Pani Bachao Sangharsha Samiti at Ahmednagar and 7 others.

49. There is an additional affidavit filed by one of the Petitioners on 15th March 2014 pointing out that there is a huge rain fall in Marathwada Region. There is a Civil Application being Civil Application No.3 of 2014 seeking stay of the order dated 29th October 2013 directing the release of water from upstream dams to Jayakwadi

dam. Obviously, the said Application will not survive with the passage of time.

WRIT PETITION NO.1422 OF 2014

50. This Writ Petition has been filed by the Petitioners who are the residents of Taluka Kopergaon, District – Ahmednagar. The first prayer in this Petition is for a declaration that the Clauses (a), (b) and (c) of Section 11 and Sub-Section 6(c) of Section 12 as well as Sub-sections (1) and (2) of Section 16A of the said Act of 2005 are ultra vires the Constitution of India. The prayer as regards the Sub-sections (1) and (2) of Section 16A of the said Act of 2005 has not been pressed at the time of final hearing. The second prayer is for issuing a writ of mandamus enjoining the State Government not to release water from Darna and Gangapur Dam Complexes apart from the other upstream dam complexes. A writ is claimed for compelling the State Government to undertake the scheme for diversion of water from hilly areas of Vaitarna, Narpar and Daman Ganga Rivers to the Godavari river basin.

WRIT PETITION NO.7725 OF 2013

51. This Petition has been filed by the Petitioners who are the citizens of Taluka Niphad in District-Nashik where the challenge is to

the Clauses (a), (b) and (c) of Section 11 and Sub-Section 6(c) of Section 12 of the said Act of 2005 as well as Rule 2(c) of the Regulatory Authority Rules. Another prayer is made for restraining the Respondents from releasing the water from upstream dams to Jayakwadi dam for any purpose except for drinking purpose. In this Petition, there is a detailed affidavit filed by Manohar Kisan Pokale, the Superintending Engineer & Administrator of Command Area Development Authority, Nashik. In the said affidavit, various details of various dams have been set out. There are additional affidavits filed by the Petitioners for placing various factual details on record. A citizen of Taluka Gangapur, District – Aurangabad, has filed Civil Application No.2307 of 2013 for intervention.

WRIT PETITION NO.621 OF 2015

52. This Petition has been filed by the citizens of Taluka Rahata, District – Ahmednagar. The challenge in this Petition is to the order dated 5th December 2014 passed by the Irrigation Corporation and the consequential order dated 6th December 2014. The prayers have been worked out with the passage of time and therefore, no submissions were canvassed on the same.

WRIT PETITION NO.10402 OF 2015

53. This Petition is filed by Padmashree Dr. Vithalrao Vikhe Patil Sahakari Sakhar Karkhana Limited essentially for challenging the order dated 17th October 2015 passed by the said Irrigation Corporation. The said prayer is now worked out. A writ of mandamus is prayed for enjoining the Regulatory Authority to take appropriate decision in relation to the distribution of water in accordance with law. In this Petition, reliance is also placed on the additional affidavit of the Petitioner placing on record a data and certain photographs for contending that how the water released from upstream dams for the benefit of Jayakwadi dam is being illegally lifted and misused.

WRIT PETITION NO.8129 OF 2013

54. This Petition has been filed by the Petitioners who are citizens of Talukas- Sinnar and Igatpuri in District Nashik. In this Petition, reliance is placed on the report which is at Exhibit-B to the Petition which provides for diverting the waste water of various rivers such as Narpar, Damanganga, Ulhas, etc which is releasing in Arabian Sea, to the basin of Tapi and Godavari rivers. The second prayer is for a declaration that Section 11(a), 11(b), 11(c) and 12(c)(c) of the said

Act of 2005 and Rule 2(c) of the Regulatory Authority Rules are ultra vires. The last substantive prayer is for restraining the Respondents from releasing the water from upstream dam to Jayakwadi dam for any purpose except for drinking purpose. Civil Application No.2660 of 2013 has been filed for seeking interim relief.

WRIT PETITION NO.10464 OF 2015

55. This Petition has been filed by Sanjivani (Takli) Sahakari Sakhar Karkhana Limited wherein the challenge is to the order dated 17th October 2015 passed by the said Irrigation Corporation. The only other prayer is for directing the Regulatory Authority to take appropriate decision for equitable distribution of water.

WRIT PETITION NO.10475 OF 2015

56. This Petition has been filed by Guruprasad Kalawa Stariya Paani Vapar Sanstha in Taluka Rahuri, District – Ahmednagar. The challenge in this Petition is confined to the order dated 17th October 2015 passed by the said Corporation. As stated earlier, the said challenge will not survive now.

WRIT PETITION NO.10483 OF 2015

57. This Petition is filed by the Petitioner who is a Member of Legislative Assembly from Taluka Newasa, District – Ahmednagar. The challenge in the said Petition is confined to the order dated 17th October 2015 which has now become academic.

WRIT PETITION NO.10574 OF 2015

58. This Petition is filed by the Petitioner who is a resident of Nashik wherein the challenge is again confined to the order dated 17th October 2015 of the said Corporation which has now become academic.

WRIT PETITION NO.10714 OF 2015

59. Even in this Writ Petition filed by a resident of District Ahmednagar, the challenge is confined to the order dated 17th October 2015 passed by the said Irrigation Corporation and the said challenge will not survive now.

WRIT PETITION NO.10808 OF 2014

60. This Petition is filed by a resident of Parbhani wherein the challenge is to a part of the order dated 19th September 2014. A prayer made is that the Respondents be directed to release the water from upstream dam to Jayakwadi dam in such a manner that as on 31st October of every year, the percentage of live storage in all the dams is the

same as contemplated by Sub-Section 6(c) of Section 12 of the said said Act of 2005. The last substantive prayer is for enjoining the said Corporation to release water from upstream dam to Jayakwadi dam within 15 days in such a manner that Jayakwadi has a minimum live storage of 65% by 30th November 2014.

WRIT PETITION NO.11240 OF 2014

61. This Petition is filed by the Petitioners who are the residents of various Talukas of District Ahmednagar for challenging the order dated 19th September 2014 passed by the Regulatory Authority. The other substantive prayer is for directing the Respondents to carry out the revised Hydrology of Jayakwadi sub basin. In this Petition, there is an affidavit filed by Shri Subhash Namdeo Koli, the Executive Engineer in Ahmednagar Irrigation Division.

WRIT PETITION NO.11241 OF 2014

62. This Petition contains an additional challenge apart from the challenge to the order dated 19th September 2014 passed by the Regulatory Authority and the challenge to the validity of the provisions of the said said Act. There is an additional prayer made in this Petition to carry out the review of storage capacity and hydrology of all the dams in Godavari basin and to do proper delineation of the Jayakwadi

command area through an agency like Central Water Commission (CWC). In this Petition, the prayer is made for restraining the Respondents from implementing Mendhegiri Committee Report dated 8th August 2013. There is an affidavit filed by Shri Sanjay Pralhadrao Bhargodeo, the Executive Engineer in Jayakwadi Irrigation Division which deals with the figures of water storage position as of 15th October 2014. There is also an affidavit of Shri Subhash Namdeo Koli, the Executive Engineer in Ahmednagar Irrigation Division. In this Petition, Civil Application No.30762 of 2015 for intervention has been filed by the Applicant who is a resident of Parbhani. There is also a Civil Application being Civil Application No.30766 of 2015 filed for intervention by Marathwada Janta Vikas Parishad, having its office at Aurangabad. There is also a Civil Application being Civil Application Stamp No.32235 of 2014 filed by Padmashree Dr. Vitthalrao Vikhe Patil Sahakari Sakhar Karkhana for seeking reliefs prayed for.

WRIT PETITION STAMP NO.28884 OF 2015

63. This Petition is filed by the Petitioner who is a Member of Legislative Assembly from Taluka Shrirampur, District – Ahmednagar. The challenge in the said Petition is confined to the order dated 17th October 2015 passed by the said Corporation. As stated earlier, the challenge has become academic with the passage of time.

SUBMISSIONS OF THE PETITIONERS

PUBLIC INTEREST LITIGATION NO.173 OF 2013
AND
WRIT PETITION NO.10808 OF 2013

64. The learned counsel appearing for the Petitioner in PIL No.173 of 2013 and in Writ Petition No.10808 of 2013 has made extensive submissions. The learned counsel appearing for the Petitioner relied upon the decisions of the Apex Court *in Cauvery Water Disputes Tribunal, re¹*. He relied upon the observations of the Apex Court in Paragraph 71 and submitted that the right to the use of flowing water is common to all the riparian proprietors. He relied upon the final order passed by the Cauvery Water Disputes Tribunal. He has invited our attention to the various provisions of the said Act. He invited our attention to the various documents on record. He urged that the water from Godavari Valley is the main source of water for the Districts Aurangabad, Beed, Jalna and Parbhani and generally for Marathwada Region. He submitted that there are large number of dams/projects in upstream of Jayakwadi project. He pointed out particulars of the said projects. He pointed out that since 1976, Jayakwadi dam became full to its capacity only during 6 to 7 years as there is a continuous shortage of rain in Marathwada Region. His submission is that out of 196 TMC water available in upstream dams,

¹ (1993)SUPP(1) SCC 96(2)

81 TMC water is for Jayakwadi project. He submitted that as per the provisions of Sub-section 6(c) of Section 12 of the said Act of 2005, the Jayakwadi Project is entitled to get 27.5 TMC water every year. His submission is that by the end of monsoon, the water stored in reservoirs in Godavari basin or sub-basin is required to be controlled in such a manner that in all the reservoirs, the percentage of water should be approximately the same. He submitted that the said exercise was never carried out. He laid emphasis on the principle that distress has to be shared. He invited our attention to the provisions of Sections 15 and 16 of the said Act and submitted that the meetings of the State Water Board and State Water Council have never been held. He submitted that availability of drinking water in the District of Marathwada is always a matter of worry. He submitted that apart from equitable distribution, it must be borne in mind that the right to water is a part of right to life guaranteed by the Constitution of India. He submitted that there is no equitable distribution of water which is available in the upstream dams. He relied upon a chart which is a part of Mendhegiri Committee Report which would show the manner in which the water is being distributed. He also invited our attention to the orders dated 19th September 2014 and 10th March 2015 passed by the Regulatory Authority. He pointed out those parts of the orders by which the Petitioners have been aggrieved. He submitted that adjudication ought to have been made by the Regulatory Authority in terms of Sub-section 6(c) of Section 12 of

the said Act of 2005. By inviting our attention to the provisions of the said Act of 2005 and the second Act of 2005, he submitted that the stand taken that it is not possible to make adjudication as per Sub-section 6(c) of Section 12 of the said said Act is completely erroneous. He urged that the farmers in the upstream area cannot claim any vested right on the basis of the blocks under the various enactments which are already repealed. He urged that the water which is available in upstream dams or in Godavari basin is not the property of any individuals or citizens from a particular area but the water is the property of the State which has to be equitably distributed. He submitted that in view of the contention of the Petitioners that the direction ought to be under Sub-section 6(c) of Section 12 of the said said Act, the challenge to the orders dated 19th September 2014 and 10th March 2015 is to that limited extent. He pointed out various findings recorded by the Regulatory Authority in the order dated 19th September 2014.

65. Laying emphasis on Sub-section 6(c) of Section 12 of the said Act of 2005, the learned counsel appearing for the Petitioners urged that it is obligatory duty of the Regulatory Authority to see that the percentage of utilizable water including for kharif use in all reservoirs in a basin or sub-basin should be approximately the same. He submitted that the said Section works for the benefit of all

downstream projects not confined to Jayakwadi. He relied upon Clause (c) of Article 39 of the Constitution of India.

66. Invited our attention to the said Act of 2005 and especially Section 31A thereof, he urged that the provisions of the second Act of 2005 have nothing to do with Sub-section 6(c) of Section 12 of the said said Act of 2005 . He submitted that the object of the second Act of 2005 is to ensure the involvement of beneficiary farmers in irrigation management and the same has nothing to do with the equitable distribution of water amongst all the reservoirs in a basin. He submitted that delineation of the command area is not at all necessary for exercise of powers under Sub-section 6(c) of Section 12 of the said said Act of 2005. He criticized the order dated 19th September 2014 to a limited extent by contending that there was no reason to give a go-bye to the mandate of Sub-section 6(c) of Section 12 of the said said Act of 2005. He submitted that the command area of Jayakwadi is meant to provide irrigation for an area of 2.78 lac Hectares. If water is released as per the order dated 19th September 2014, the area will be reduced to 1.8 lac Hectare. He submitted that though Mendhegiri Committee Report may not have been accepted, there is nothing wrong if the same was considered by the Regulatory Authority.

SUBMISSIONS IN WRIT PETITION NO.10808 of 2014

67. In support of Writ Petition No.10808 of 2014 wherein the challenge is to the order dated 19th September 2014 on the ground of the failure to implement the provisions of Sub-section 6(c) of Section 12 of the said Act, it was contended that in the upstream of Jayakwadi, number of new dams have been constructed and, therefore, in the upstream area reservoirs, more than 40 TMC excess water is stored which adversely affects the storage of Jayakwadi dam from the year 2012 onwards. He pointed out that Majalgaon reservoir is in the downstream of Jayakwadi reservoir and is a part of Jayakwadi project itself. He submitted that as per the approved plan, storage capacity of Jayakwadi is 102.73 TMC. It is stated that out of the storage, Majalgaon area is entitled for 12 TMC water. His submission is that a direction should be issued that after 65% water is made available to Jayakwadi dam, 12% water should be released to Majalgaon project.

SUBMISSIONS IN PUBLIC INTEREST LITIGATION
NO.172 OF 2013

68. In support of PIL No.172 of 2013 filed by Shri Prashant Bansilal Bumb who was one of the Applicants before the Regulatory Authority, the learned counsel appearing for the Petitioner contended that regulation of water needs to be done in the first week of October

and the work of regulation/release of water from upstream dam should be completed by the end of October every year. It was submitted that strategies which are formulated by the Regulatory Authority in the order dated 19th September 2014 are not exhaustive. It was pointed out that though there is a decision of the State Government dated 6th September 2004, the work of construction of additional dams/reservoirs in upstream area continues and therefore, the same deserves to be completely stopped in view of the fact that till today, the direction dated 6th September 2004 is not modified. It was, therefore, submitted that the Regulatory Authority ought to have exercised the powers under Sub-section 6(c) of Section 12 of the said Act of 2005 on the basis of the Application made by the Petitioner himself. It was urged that there was no impediment, legal or factual, for exercise of the said power.

SUBMISSIONS IN PUBLIC INTEREST LITIGATION
NO.174 OF 2013

69. As far as PIL No.174 of 2013 is concerned, the learned counsel appearing for the Petitioner made a grievance regarding failure to complete the work of dam known as “Bham”. It is submitted that the said project in Nashik District sanctioned after 1990-2000 has been completed in all respect, but the work of Bham project is complete only to the extent of 30%. The submission is that a substantial part of water from Mukane dam cannot be supplied to Nashik Municipal Corporation

in view of the administrative approval of Nandur-Madmeshwar Express Canal Scheme which consists of four dams namely Mukane, Bhavali, Waki and Bham. The submission is that overflow water from Vaitarna could have been taken to Mukane dam by spending small amount.

SUBMISSIONS IN PIL NO.171 OF 2013

70. We have already referred to the reliefs claimed in the said PIL. Most of the submissions in this PIL have been canvassed in the PIL No.173 of 2013.

SUBMISSIONS IN WRIT PETITION NO.7725 OF 2013

71. Shri R.M. Dhorde, the learned senior counsel has made detailed submissions in support of Writ Petition No.7725 of 2013, Public Interest Litigation Nos.170 of 2013, 183 of 2015, 184 of 2015, 228 of 2014, 253 of 2014, 258 of 2014 and 152 of 2013. In PIL No.170 of 2013, the submission is that as there is a shortage of water in Marathwada Region, even in Ahmednagar and Nashik Districts, there is an acute water shortage. The contention is that though huge amounts are being spent by the State Government on the irrigation projects, a report of the Government Committee prepared in 2001 proposing to divert the water on the western side of Sahyadri Range which goes

waste has not been considered. It is contended that both the Governments should be directed to consider the said aspect.

SUBMISSIONS IN PUBLIC INTEREST LITIGATION
NO.228 OF 2014.

72. The learned senior counsel appearing for the Petitioners pointed out that the Application dated 15th January 2014 filed by Shri Prashant Bumb on which an order dated 19th September 2014 was passed by the Regulatory Authority was made in the year 2013-2014 and no prayer was made therein for issuing the directions for the subsequent period. He pointed out that by the said Application made by Shri Prashant Bumb and by other three Applications dated 29th October 2013, 18th March 2013 26th April 2014 made by Shri Y.R. Jadhav, the implementation of Sub-section 6(c) of Section 12 of the said Act of 2005 was sought. He pointed out that the order dated 19th September 2014 is passed by the Regulatory Authority on the said Applications invoking Sub-section 6(c) of Section 12 of the said Act of 2005 by exercising the power under Section 11(c) of the said Act of 2005. He pointed out that a dominant role has been played by Shri S.V. Sodal, the then member of the Regulatory Authority in the proceedings before the Authority. He pointed out that without disclosing to the contesting parties that there was a proposal to exercise the powers under Section 11(c), an order was passed under the said

provision and therefore, there is a breach of the principles of natural justice. He pointed out that the arguments were advanced only before two members viz. S.V. Sodal, who was a Technical Member and Mrs. Chitkala Zutshi, who was a Member (Economy). He urged that the proceedings went on according to the dictates of only one member Shri S.V. Sodal. He criticized the Regulatory Authority for relying upon Mendhegiri Committee Report though it was not accepted by the State Government. He submitted that there was no reason for the Regulatory Authority to import certain definitions and the concept of hydrological drought. He submitted that under Section 77 of the second Act of 2005, all earlier rights have been protected. He also relied upon Section 31B of the said Act of 2005 in support of this contention. He also pointed out that while passing a clarificatory order, the Regulatory Authority has relied upon totally incorrect data. It is submitted that the word “hydrological drought” is not at all defined in the said Act of 2005. It is submitted that in view of Section 77 of the second Act of 2005, it will have overriding effect over the provisions of the said Act of 2005 and accordingly, Sub-section 6(c) of Section 12 of the said said Act is invalid.

73. While dealing with the submissions made in PIL No.173 of 2013 and in support of Writ Petition No.7725 of 2013 and PIL No.152 of 2013, the learned senior counsel Shri Dhorde urged that the Sub-

section 6(c) of Section 12 of the said Act of 2005 and Clauses (a) to (c) of Section 11 thereof are arbitrary and violative of Articles 14 and 21A of the Constitution of India. His submission is that there cannot be an equitable distribution of water because it flows by gravitational force from one reservoir to another reservoir. He relied upon the storage capacity of Darna Dam Complex, Gangapur Dam Complex and Pravara River Complex. He submitted that if we compare the total capacity of Jayakwadi dam with all upstream dams, it is impossible to have equitable distribution of water even percentage wise in each dam inasmuch as the total capacity of Jayakwadi dam is 102 TMC and the total capacity of the upstream dams if taken together is 85.153 TMC. He urged that Jayakwadi project was not at all viable and was undertaken for political reasons. Though there was no possibility of adequate water being made available, a bigger dam having the capacity of 102 TMC water has been constructed. His submission is that considering unnecessary large size of the said dam, the evaporation loss is almost 17 TMC for one season which is equivalent to entire storage capacity of Darna and Gangapur Dam Complexes. He urged that from Nandur-Madhmeshwar Left Bank Canal, the water is supplied to Aurangabad District and Jayakwadi Command Area throughout the year. He urged that Sub-section 6(c) of Section 12 of the said Act of 2005 and Clause (c) of Section 11 thereof are illegal and arbitrary as they cannot take away the right vested in the agriculturists in Nashik

and Ahmednagar Districts who were getting the water supply from the year 1915. He also pointed out the decree passed in Special Civil Suit No.91 of 1993 by the Civil Court directing the supply of water by upholding the rights of the farmers from Kopargaon Taluka to get the water. He pointed out that an Appeal is pending against the said judgment and decree. He submitted that PIL No.173 of 2012 has been filed at the instance of certain distilleries in Aurangabad District which manufacture a large quantity of beer. He contended that for manufacturing one litre of beer, 22 litres of water is required. He pointed out that there is an arbitrary decision of the State Government to supply large quantity of water from upstream dams to India Bulls Private Limited for which, separate proceedings are pending. The learned senior counsel relied upon the decisions of the Apex Court in the cases of *State of M.P. and another v. Baldeo Prasad*,² *B.B. Rajwanshi v. State of U.P. and Others*³, and *Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi and Others*⁴ in support of his challenge to the validity of the provisions of Sub-section 6(c) of Section 12 of the said Act of 2005 and Clauses (a) to (c) of Section 11 thereof. In support of his submission that the right to receive water which is accrued earlier to the agriculturists of Ahmednagar and Nashik Districts is saved under the said Act of 2005 and the second Act of 2005, he relied upon the decisions of the Apex Court in the cases of

2 AIR 1961 SC 293

3 (1988)2 SCC 415

4 (2003)7 SCC 151

Commissioner of Income-tax, U.P. v. M/s. Shah Sadiq and Sons,⁵ and *M/s. Gurcharan Singh Baldev Singh v. Yashwant Singh and Others*⁶.

In support of his submission that the vested right cannot be taken away by the subsequent legislation, he also relied upon the decisions of the Apex Court in the cases of *Garikapati Veeraya v. N. Subbiah Choudhry and Others*⁷, *Mohan Raj v. Dimbeswari Saikia and Another*⁸, and *Union of India and Others v. M/s. Asian Food Industries*⁹. Relying upon a decision of the Division Bench of this Court in the case of *Goa Cricket Association and Another v. State of Goa and Others*¹⁰, he urged that only two members of the Regulatory Authority could not have heard the Applications and, therefore, the Applications were not heard by the Regulatory Authority which was properly constituted. Relying upon a decision of the Apex Court in the case of *Press Council of India v. Union of India and Another*¹¹, he would urge that the Regulatory Authority could not have passed the orders which travel beyond the scope of the Applications. He relied upon the decisions of the Apex Court in support of his submission that a direction will have to be issued to the State Government as well as the Union of India to take effective steps for finding out the ways to sort out the issue of acute water shortage.

5 AIR 1987 SC 1217

6 AIR 1992 SC 180

7 AIR 1957 SC 540 (1)

8 AIR 2007 SC 232

9 AIR 2007 SC 750

10 2013(3) ALL MR 833

11 (2012)12 SCC 329

SUBMISSIONS IN PUBLIC INTEREST LITIGATION
NO.78 OF 2014

74. The grievance in this PIL is that the Regularity Authority and the State Government are not protecting the interests of the agriculturists in the upstream area. It is stated that the Petitioners are agriculturists are having the lands in the upstream area. Their grievance is that due to release of water from upstream dams to Jayakwadi dam, they have lost their crops. Moreover, it is contended that the release of water is creating acute shortage of drinking water. It is contended that instead of releasing water into the canals of upstream dams, the same is being released from the upstream dams into the river. It is contended that in breach of the order passed by the Apex Court on 8th May 2013, for the relevant year, the Authorities released the water from upstream dams to the downstream dams. It is submitted that as a result of scarcity of water in the catchment area, hardly any water is being released in the canals. It is contended that there is 25,444 Hectares of land used for perennial, kharif, rabbi and seasonal blocks. The blocks were allocated to the farmers of command area of Godavari and Bhandardara canals from the year 1963. It is contended that due to the diversion of water from upstream dam and more particularly by supply of water to the company India Bulls, the number of block holders have been reduced on both the canals. It is submitted that the

Government must exercise the power under Section 23 of the said Act of 2005 by issuing necessary directions. It is submitted that the Regulatory Authority may be directed to exercise the power under Section 11 for ensuring equitable distribution.

SUBMISSIONS IN WRIT PETITION NO. 11241 OF
2014

75. This Petition is filed for challenging the order dated 19th September 2014. A contention has been raised that the hearing before the Regulatory Authority was conducted only by two of its members. It is submitted that though the State Government has not accepted the report of the Mendhegiri Committee, the same was illegally acted upon by the Regulatory Authority. It was submitted that the recommendations in the report of Mendhegiri Committee are not correct as there was no proper representation given in the said Committee to the Ahmednagar District. It was submitted that the Regulatory Authority could not have decided any issue in absence of statutory Rules. It was submitted that the decision to construct Jayakwadi dam was taken on the basis of the incorrect data. It is submitted that the size of Jayakwadi dam is such that it can never be filled to its capacity. It is submitted that the same was done under the influence of the then Hon'ble Minister of the Irrigation Department who hailed from Marathwada Region. It is submitted that for bringing Jayakwadi dam upto 65% of live storage every year, all the upstream dams will have to be emptied. It was

pointed out that under the new project viz. Nandur-Madhmeshwar Express Canal, the water is released to Vaijapur and Gangapur Talukas in Aurangabad District for agricultural purposes. This aspect has not been considered by the Regulatory Authority. It is submitted that on the basis of Mendhegiri Report which is totally biased, the impugned orders have been passed by the Regulatory Authority which are arbitrary and, therefore, are in violation of Article 14 of the Constitution of India.

SUBMISSIONS IN WRIT PETITION NO.1422 OF 2014

76. The learned counsel appearing for the Petitioners contended that the agriculture lands of the Petitioners have been compulsorily acquired under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961 on the pretext that they are holding other lands which are perennially irrigated. Therefore, now they cannot be deprived of their legitimate right of supply of water for irrigation. The grievance made in the Petition is also about the diversion of huge quantity of water from upstream to the power generating companies like India Bulls. It is contended that Darna and Gangapur Dam Complexes have been constructed only for the purposes of providing water for irrigation of agricultural lands in the Kopergaon Taluka through Godavari Left Bank Canal and Right Bank Canal and, therefore, the water from the said Dams cannot be diverted to the downstream area. It is contended that from the year 1915 onwards, the

farmers in the benefited zone of Darna and Gangapur Dam Complexes were provided water under the Blocks System. It is contended that the right of the Block Holders are protected under Sections 31B and 31C of the said Act of 2005. The learned counsel pointed out that the designed storage capacity of all the upstream reservoirs taken together is 79.897 TMC and on the other hand, the designed storage capacity of only Jayakwadi reservoir is 102 TMC. It is contended that the designed storage of Majalgaon Reservoir which is a downstream of Jayakwadi is also calculated for the purposes of considering the designed storage capacity of Jayakwadi. He urged that in case of farmers whose lands were found to be perennially irrigated under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 as well as similar enactments applicable to Marathwada Region, the land holding of the farmers was brought down to the minimum slab as the perennial water supply was available to the lands allowed to be retained. He urged that Sub-section 6(c) of Section 12 and Clause (c) of Section 11 of the said Act of 2005 are violative of Article 14 of the Constitution of India.

SUBMISSIONS IN WRIT PETITION NO.10402 OF 2015

77. In Writ Petition No.10402 of 2015, Shri Dhakephalkar, the learned senior counsel appearing for the Petitioner also criticized the action of the Regularity Authority of relying upon the Mendhegiri

Committee Report which is not accepted by the State Government. He pointed out that in view of the repeal of the statutory Rules which defined the word “scarcity”, there is an absence of definition of the word “scarcity” and, therefore, the Regularity Authority could not have recorded any finding regarding any such scarcity. It is pointed out that once the water from upstream dams is released to the downstream dams, the same cannot be taken back as the process cannot be reversed. It is submitted that the total 22.50 TMC of water is not at all required for satisfying the need of the areas which depend on Jayakwadi reservoir. His submission is that the need is hardly of 4 to 5 TMC for drinking water. His submission is the provisions of the said Act of 2005 cannot be implemented only for the benefit of the “downstream people” without considering the need of the “upstream people”. It is urged that when the water is released to Jayakwadi dam for drinking purpose, it is being lifted from the downstream by use of electric motor and by use of generators. Therefore, it is submitted that the orders of the Regulatory Authority are completely illegal.

SUBMISSIONS IN WRIT PETITION NO.10714 OF 2015

78. The learned counsel appearing for the Petitioners pointed out that Bhandardara dam was constructed by the British Government with the object of providing water to drought prone area of Shrirampur, Nevasa, Rahuri, etc. in the upstream area. His submission is that from

the said dam, water was provided to the aforesaid areas from the said dam through Ozar right and left canal. The contention is that equal distribution of water is a wrong criteria for the utilization of water in the basin. Due to release of water from upstream dam to downstream dam, the legitimate requirement of water for the purposes of poor farmers and their rights are jeopardized by the operation of the provisions of the said Act of 2005 . He pointed out that considering the extent of catchment area, the British Government constructed Bhandardara dam having the capacity of 11.49 TMC. His contention is that the water from the said dam was provided to Rabbi crop and the excess overflow water was utilized for irrigation of Kharip crop. His contention is that Nilawande dam has been constructed ahead of Bhandardara dam and as the Nilawande dam depends on the excess water of Bhandardara dam, the excess water which was earlier made available to the farmers for kharip crop is no longer available to them. He pointed out that the D+ranking/zone has been issued to the various areas as per the industrial policy. His contention is that the distribution of the subsidies for the D+Industrial Zone like Marathwada Region is comparatively on the higher side than the B-Zone like Ahmednagar. The submission of the learned counsel is that the provisions of the said Act of 2005 and in particular the relevant clause of Sections 11 and 12 were completely against the poor farmers in Ahmednagar District and upstream area. His submission is that the legitimate demand of water

in the command area of Bhandardara dam cannot be fulfilled as the water is being released from Bhandardara dam for the benefit of Jayakwadi dam under the guise of implementation of the said Act .

79. The learned counsel relied upon a Draft Project Report prepared for Jayakwadi project and contended that unnecessarily a very large dam has been constructed and, therefore, the quantity of silting sand and/or mud in the said dam is more than 35% of the actual capacity of water. His submission is that the capacity could have been only 69.71 TMC which was unnecessarily increased. He pointed out that the farmers in the command area of Jayakwadi dam are taking various crops like cotton, groundnuts, sunflower, soyabean, etc which is a cash crop, but the farmers in the command area of the Bhandardara dam are depending only on the crops like wheat, jawar, etc. His submission is that while considering the issue of equal distribution of water, crop quality has to be considered by the Regulatory Authority which in the facts of the case has not been done. Therefore, the submission is that the relevant provisions of the said Act be struck down is unconstitutional.

SUBMISSIONS IN PIL NO.172 OF 2013

80. The learned counsel representing the Petitioners in PIL

No.172 of 2013 invited the attention of the Court to the State Water Policy and in particular Chapter III thereof. He submitted that Godavari, Pravara and Mula should be considered as upstream reservoirs.. He relied upon a tabular form which gives the figures of designed live storage of water used for domestic and industrial requirement, irrigation requirement and minimum annual requirement. His submission is that the water levels in all reservoirs should be monitored on 15th July of every year and the water should be released from upstream dams between 15th July to 31st July of every year so that the water evaporation loss could be minimum. His contention is that the second water monitoring should be on 15th August of every year and water should be released from 15th August to 31st August of every year. The third water release should be between 15th September to 30th September of every year and the fourth water release should be between 15th October to 31st October so that Jayakwadi dam may achieve the level of water between 78% to 100%.

81. Detailed submissions were made by Shri Rajendra Jadhav in support of Civil Application No.194 of 2015 in PIL No.183 of 2015. He has relied upon Article 39 of the Constitution of India. He pointed out several aspects of facts. His submission is that the orders of the Regulatory Authority need modification in terms of Clause 2.2.3 of the State Water Policy. He pointed out that though there was no reservation

of water for Sinhastha Kumbhmela, a large quantity of water was released for Sinhastha Kumbhmela. He has submitted a compilation of various documents for consideration of the Court.

PUBLIC INTEREST LITIGATION NO.87 2012

82. The attention of the Court is invited to the fact that the work of Nandur-Madmeshwar Express canal is still incomplete. It is pointed out by the learned Counsel for the Petitioners that Bham dam is only 30% complete and as far as work of field-channels, outlets etc of Nandur-Madmeshwar Express canal project are concerned, no work is carried out since the year 2010. It is submitted that the decision taken to use the water from Mukane dam for the Nasik Municipal Corporation is contrary to the administrative approval granted for Nandur-Madmeshwar Express canal project. Another submission is that a direction be issued to divert the overflow water of Vaitarna to Mukane Dam.

SUBMISSIONS IN PIL 211 OF 2013

83. The learned Counsel for the Petitioners pointed out that in the year 2001, block system was renewed. It is contended that 25,444 Hectares of blocks of various kinds have been allotted to farmers in command area of Godavari and Bhandardara canals from the year 1963. However as a result of diversion of water to the cities, number of

blocks have been reduced. It is urged that there is no utilization of water of about 1600 TMC which flows into the Arabian sea. The submission is that the said water needs to be diverted.

SUBMISSIONS OF REGULATORY AUTHORITY

84. Shri Godbole, learned counsel representing the Regulatory Authority has made detailed submissions dealing with the grounds of challenge in each and every Petition. He relied upon Entry 17 of List II of Seventh Schedule of the Constitution of India for pointing out the legislative competence for enacting Sections 11 and 12 of the said Act. As far as the challenge to the said Section based on Article 19(1)(g) is concerned, he urged that Sub-Article (6) of Article 19(1) itself empowers the State to make any law imposing reasonable restrictions. He submitted that the said Act of 2005 is enacted for establishment of the Regulatory Authority to regulate water resources within the State to facilitate equitable and sustainable management, allocation and utilization of water resources. He pointed out that basically the challenge is on the basis of the alleged rights created in favour of blocks for supply of water under the said Act of 1879, the said Rules 1934 and the said Act of 1976. He submitted that neither in the said Act of 1879 nor in the said Rules of 1934, there is a provision for a binding statutory contract entitling the agriculturists to receive assured supply of water for irrigation. He also pointed out that Section 77 of the second Act of

2005 specifically repeals various sections of the said Act of 1976 including Sub-sections (1) and (2) of Sections 46, 47, 48, 55, 57, 58, 60 and 61 to 74 of the said Act of 1976. He submitted that no such statutory right for supply of water can be claimed by any of the agriculturists on the basis of the repealed enactments. He submitted that the exercise of powers under Section 11 of the said Act of 2005 is to be made only during the period of scarcity. He submitted that the said Act does not contemplate that the scarcity should be defined by the State Government. He pointed out the operating strategies in the order dated 19th September 2014. He submitted that a Mendhegiri Committee Report is a technical report prepared by the experts in the field. He pointed out the powers of the Regulatory Authority under the said Act which empower it to require any person to produce any document or any evidence. He pointed out that the said Act itself provides that the Regulatory Authority may take assistance of experts in the field. He submitted that the Regulatory Authority provided an opportunity to the parties to respond on the said study report. He submitted that none of the parties except one objected to it. He submitted that in any case, the said report containing the opinion of the experts in the field could have been always taken into consideration. He submitted that it is not the case that the State Government has rejected the said report.

85. The learned counsel pointed out that the Maharashtra Water Resources Regulatory Authority (Conduct) of Business Regulations, 2013 (for short, “the Regulations”) and in particular Regulation 11 which provides that the quorum for the meeting shall be of two members. He, therefore, submitted that the two members of the Authority could have always heard the parties and passed appropriate orders. He submitted that the said Act of 2005 provides for four levels of decision making viz. Sectoral Allocation, Entitlement, Allocation and Quota. He submitted that these four levels of decision making are put into operation by an expert body like Regulatory Authority. He pointed out the quantity of water (volumetric quantity) made available to an entitlement holder can also be fixed by the Regulatory Authority under Section 12(6) of the said Act of 2005 and, therefore, the quota can be changed to meet exigencies. He also dealt with the submissions based on the provisions of the Maharashtra Agriculture Lands (Ceiling on Holdings) Act, 1961. He submitted that the said Act nowhere contains an assurance that a person whose land is considered perennially irrigated will continue to get perennial supply of water for irrigation. He submitted that this Court cannot interfere with the decision of the Regulatory Authority which has been taken to deal with the situation created by the scarcity. He urged that in any case, it is a policy decision taken by the experts in the field and, therefore, the Writ Court cannot

interfere in the said decision especially when no perversity is pointed out.

SUBMISSIONS OF THE STATE GOVERNMENT

86. The learned Government Pleader supported the orders of the Regulatory Authority. He relied upon Clause (b) of Article 39 of the Constitution of India. He pointed out various figures in relation to the upstream and downstream dams. He also invited our attention to the water policy of the State Government and urged that the impugned order is in terms of the said water policy. He elaborated on the principle of “sharing distress” and the term “Hydrological drought”. He relied upon the principle of “Co-operation Federalism”. He also relied upon the doctrine of “public trust”. He submitted that if the statute does not define certain words or phrases, a recourse can be taken of the commonsense meaning available for the said words. As regards the submission regarding diversion of west flowing river water, he referred to the report submitted by a Co-ordinating Committee of Chief Engineers. He submitted that the Government of Maharashtra sanctioned 23 gravity flow diversion schemes, out of which, 6 schemes have been completed. He submitted that after the schemes are completed, it will divert the quantity of 2.24 TMC water to Gadavari basin. He submitted that the State Government has requested the National Water Development Agency (NWDA) to prepare a new project

of Damanganga to Godavari basin river link project which can divert 5.05 TMC of water to Godavari river basin. He submitted that the decision to provide recycled water to India Bulls Plant is in consonance with the State Water Policy as the plant is helpful to deal the shortage of electricity. He submitted that the decision of the State Government is the subject matter of a pending suit. He submitted that the decision has been taken prior to the commencement of the Amended Act of 2011 and therefore, the said decision is saved by virtue of Section 31(B) incorporated in the said Act of 2005 by the said Amended Act of 2011. He submitted that a draft policy of sectoral allocation of water in the irrigation projects is already prepared which is in the process of being placed before the State Cabinet. He submitted that a road map for the delineation of command area including the formation of Water User's Association in the command area in Jayakwadi project has been submitted to the Regulatory Authority on 29th April 2015 in terms of the clarificatory order passed by the Regulatory Authority. He submitted that the provisions of the said Act are being implemented. He submitted that even the State Water Council has been constituted. He relied upon the minutes of the meeting of the State Water Council. He stated that even the Water Board is constituted. He urged that as far as the statutory rules under the said said Act are concerned, the State Government proposes to come out with the amendment to the said said Act and after the amendment is carried out, the Rules will be framed.

After the Judgment was reserved, the learned Government Pleader has placed on record, additional submissions inviting the attention of this Court to the provisions of the Maharashtra Water Resources Regulatory Authority (Amendment) Ordinance, 2016 promulgated on 17th June 2016.

OTHER SUBMISSIONS

87. We must note here that the learned counsel representing the various parties have made very detailed submissions. Some of the submissions were not at all relevant. Some of the submissions were repetitive in nature. Moreover, written submissions are on record which we have taken into consideration. For the sake of brevity, we are not reproducing the entire written submissions. Therefore, we have made a reference only to the relevant submissions made by the learned counsel representing the parties. The submissions which have not been reproduced are also being dealt with in this Judgment.

CONSIDERATION OF SUBMISSIONS

88. We have given careful consideration to the submissions. We must record here that essentially the dispute is about the sharing and distribution of water from the upstream dams in Godavari sub-basin and river water in Godavari sub-basin. The challenge is to the orders passed by the Regulatory Authority. The challenge is also to the constitutional validity of Sections 11 and 12 of the said Act of 2005.

89. A river basin is the land on which water flows across or under on its way to a river. A river basin sends all the water falling on the surrounding land into a central river and out to an estuary or the sea. Maharashtra State is divided into 5 river basins. The said basins are of Godavari, Krishna, Tapi, Narmada and west flowing rivers. A sub-basin is a hydrologic sub-unit of a river basin in the State. The river Godavari originates near Trimbakeshwar in Nasik District in Sayadri Hill ranges. It further flows through Ahmednagar, Aurangabad and Nanded Districts into the State of Andhra Pradesh. The catchment area of Godavari up to Jayakwadi dam is designated as upper Godavari sub-basin. Total geographical area of this sub-basin is 21,774 sq. Km. The Jayakwadi dam is located at the border of the said sub-basin. There are large number of major, medium, minor irrigation projects and K.T. (Kolhapur Type) Weirs in the sub-basin. A weir is a barrier across a river designed to alter the flow characteristics. In most cases, weirs take the form of obstructions smaller than most conventional [dams](#), pooling water behind them while also allowing it to flow steadily over their tops. The prominent reservoirs/complexes in the sub-basin are Gangapur, Mula, Pravara, Darna, and palkhed. The main tributaries in the sub-basin are Mula, Pravara and Darna.

RIGHT TO WATER AND PUBLIC TRUST DOCTRINE

90. Considering the fact that some of the submissions were made across the bar claiming existence of vested rights to get a particular quantity of water from the dams/reservoirs/irrigation schemes on the basis of block system, it is necessary to consider the law on this aspect. During the last 25 years, the law on the doctrine of “public trust” has been evolved in India. The ancient Roman Empire developed a legal theory of doctrine of “public trust”. It was founded on the idea that certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Under the Roman Law, these resources were either owned by no one (Res Nullious) or by every one in common (Res Communious). The doctrine of public trust has been dealt with by the Apex Court in *M.C. Mehta v. Kamal Nath and Others*¹². Paragraph 25 of the said decision reads thus:

“25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature. They should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit then- use for private ownership

¹² (1997)1 SCC 388

or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third, the property must be maintained for particular types of uses.”

91. Thereafter, the Apex Court proceeded to discuss the American cases including the famous Mono Lake Case decided by the Supreme Court of California in the case of *National Audubon Society v. Superior Court of Alpine County (Mono Lake Case)*¹³. The said Court was dealing with the second largest lake in California. Paragraph 32 of the decision in the case of *M.C. Mehta* reproduces the conclusions drawn by the Supreme Court of California, which read thus:

“32. We may at this stage refer to the judgment of the Supreme Court of California in *National Audubon Society v. Superior Court of Alpine County*. The case is popularly known as "the Mono lake case, Mono lake is the second largest lake in California, the lake is saline. It contains no fish but Support a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gails, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura (sic) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the city of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing

13 33 California 3d 419

into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of the Mono Lake were imperiled. The plaintiffs environmentalist - using the public trust doctrine - filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge's request for clarification on the States public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

“By the law of nature these things are common to mankind - the air, running water, the sea and consequently the shores of the sea.” (Institutes of Justinian 2.1.1.) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign own "all of its navigable waterways and the lands lying beneath them 'as trustee of a public trust for the benefit of the people.”

(emphasis added)

92. The American Court explained the objective of the public trust as under:

“The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in *Marks v. Whitney*, supra, , "(public trust easements [were] traditionally defined in terms of navigations commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses-navigation, commerce and fishing-did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that "The public uses to which tidelands are

subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another. There is a growing public recognition that one of the most important public uses of the tidelands-a use encompassed within the tidelands trust-is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area."

Mono Lake is a navigable waterway. It supports a small local industry which harvest brine shrimp for sale as fish food, which endeavor probably qualifies the lake as a "fishery" under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological - the scenic views of the lake and its shore, the purity of the air and the use of the lake for nesting and feeding by birds. Under *Marks v. Whitney*, supra, it is clear that protection of these values is among the purposes of the public trust."

93. The Court summed up the powers of the state as trustee in the following words:

"Thus, the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust..."

(emphasis added)

94. The Supreme Court of California, inter alia, reached the following conclusion:

“The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this state shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriate water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests, (See Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, some Reflections on Environmental Considerations in Water Rights Administration, 2 Ecology L.Q. 695, 710-711 (1972); Comment, 33 Hastings L.J. 653, 654) As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see United Plainsmen v. N.D. State Water Cons. Comm'n. At pp.4620463, and to preserve, so far as consistent with the public interest, the uses protected by the trust.”

The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.”

(emphasis added)

95. In Paragraph 33, the Apex Court after referring to the public trust doctrine under the English Common Law observed that

there is no reason as to why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.

Paragraph 34 of the said decision reads thus:

“34. Our legal system - based on English Common Law- includes the public trust doctrine as part of its jurisprudence. **The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.**”

(emphasis added)

96. In the case of *Cauvery Water Disputes Tribunal, Re*

(supra) the Apex Court in Paragraph 72 held thus:

“72. Though the waters of an inter-State river pass through the territories of the riparian States such waters cannot be said to be located in any one State. They are in a state of flow and no State can claim exclusive ownership of such waters so as to deprive the other States of their equitable share. Hence in respect of such waters, no state can effectively legislate for the use of such waters since its legislative power does not extend beyond its territories. It is further an acknowledged principle of distribution and allocation of waters between the riparian States that the same has to be done on the basis of the equitable share of each State. **What the equitable share will be will depend upon the facts of each case.** It is against the background of these principles and the provisions of law we have already discussed that we have to examine the respective contentions of the parties”.

(emphasis added)

The same principle should apply to the territories within a State. Merely because a river flows from a particular region, or a reservoir or a dam is in a particular region, the residents of that region cannot claim exclusive ownership over the flowing water or the stored water.

97. Thus, as far as the water flowing through the rivers and the water which is stored in the reservoirs/dams is concerned, it must be held that the State is the trustee of the same and the public at large is the beneficiary of the same. It follows that as the State is a trustee of the water, no citizen or entity is entitled to claim any preferential right in respect of the supply of water in a particular manner and of a particular quantity. No one can claim a vested or preferential right to get water from a particular reservoir or river or source of water.

IMPORTANCE OF ARTICLE 39(b) OF THE
CONSTITUTION OF INDIA

98. In this context, it will be necessary to make a reference to the Article 39 of the Constitution of India which is in the Part IV containing the Directive Principles of the State policy. The clause(b) thereof provides that the State must secure that the material resources of the community are so distributed as best to sub-serve the common good. As the water flowing through the river or the water which is accumulated in reservoirs is the property of the State being a trustee,

while dealing with the water, it must act fairly in the interests of all the beneficiaries. In view of Clause (b) of Article 39 of the Constitution of India, the duty of the State is to ensure that the water is distributed so as to sub-serve the common good. This can be achieved only by equitable distribution of the water which is the object of establishing the Regulatory Authority under the said Act of 2005. We must note here that there is a difference between equitable distribution and equal distribution. Equal distribution may not necessarily sub-serve the common good. The basic principle is that by treating two unequals as unequal, there is no violation of Article 14 of the Constitution of India. Only if equitable distribution of water is made, it will achieve the object underlying Article 39(b). From the preamble of the said Act of 2005, it is apparent that one of the objects of the said Enactment is to give effect to clause (b) of Article 39. While distributing the water so as to sub-serve the common good, the State Government has to act fairly and justly. Equitable distribution is the one which is fair and just. These aspects will have to be borne in mind while dealing with the challenge in the Petitions.

THE ROLE OF THE DIRECTIVE PRINCIPLES OF THE
STATE POLICY IN THE CONTEXT OF THE CHALLENGE
TO THE CONSTITUTIONAL VALIDITY OF THE SAID
ACT OF 2005

99. In this group, there is a challenge to the Constitutional validity of some of the provisions of the said Act of 2005 which is

enacted with a view to give effect to clause (b) of Article 39(b). Hence, it is necessary to highlight the importance of the Directive Principles of State Policy . While dealing with the role played by the Directive Principles of State Policy, a Constitution Bench of the Apex Court in the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*

^{13A}, held thus:

“58. It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role.”

(emphasis added)

In the same decision, in paragraph 47, the Apex Court held thus:

“47. Post *Kesavananda Bharati* [(1973) 4 SCC 225] so far as the determination of the position of directive principles, vis-à-vis fundamental rights are concerned, it has been an era of positivism and creativity. Article 37 of the Constitution while declaring the directive principles to be unenforceable by any court goes on to say, “that they are nevertheless fundamental in the governance of the country”. The several clauses of Article 37 themselves need to be harmoniously construed assigning equal weightage to all of them. The end part of Article 37 — “it shall be the duty of the State to apply these principles in making laws” is not a pariah but a constitutional mandate. The series of decisions which we have referred to hereinabove and the series of decisions which formulate the three stages of development of the relationship between directive principles and fundamental rights undoubtedly hold that, while interpreting the interplay of rights and restrictions, Part III (Fundamental rights) and Part IV (Directive principles) have to be read together. **The restriction which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); the provisions contained in the chapter on directive principles of State policy can also be pressed into service and relied on for the purpose of adjudging the reasonability of restrictions placed on the fundamental rights.”**

(emphasis added)

In paragraph 71, the Apex Court further held that:

“71. The facts stated in the preamble and the Statement of Objects and Reasons appended to any legislation are evidence of the legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the fundamental rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved.”

(emphasis added)

100. In the case of *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India*^{13B}, the Apex Court observed thus:

“123. Because fundamental rights are justiciable and directive principles are not, it was assumed, in the beginning, that fundamental rights held a superior position under the Constitution than the directive principles, and that the latter were only of secondary importance as compared with the Fundamental Rights. That way of thinking is of the past and has become obsolete. It is now universally recognised that the difference between the Fundamental rights and directive principles lies in this that Fundamental rights are primarily aimed at assuring political freedom to the citizens by protecting them against excessive State action while the directive principles are aimed at securing social and economic freedoms by appropriate State action. The Fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the directive principles cannot in the very nature of things be enforced in a court of law. It is unimaginable that any court can compel a legislature to make a law. If the court can compel Parliament to make laws then parliamentary democracy would soon be reduced to an oligarchy of Judges. It is in that sense that the Constitution says that the directive principles shall not be enforceable by courts. It does not mean that directive principles are less important than Fundamental rights or that they are not binding on the various organs of the State. Article 37 of the Constitution emphatically states that directive principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It follows that it becomes the duty of the court to apply the directive principles in interpreting the Constitution and the laws. The directive principles should serve the courts as a code of interpretation. Fundamental rights should thus be interpreted in the light of the directive principles and the latter should, whenever and wherever possible, be read into the former. **Every law attacked on the ground of infringement of a Fundamental Right should, among other considerations, be examined to find out if the law does not advance one or other of the directive principles or if it is not in discharge of some of the undoubted obligations of the State, constitutional or**

13B (1981) 1 SCC 246

otherwise, towards its citizens or sections of its citizens, flowing out of the preamble, the directive principles and other provisions of the Constitution”.

(emphasis added)

101. In the case of *Sri Sri Kalimata Thakurani v. Union of India*^{13C}, in paragraph No.19 of its Judgment held thus:-

“19. Another important factor to consider the reasonableness of restrictions is if the restrictions imposed are excessive or disproportionate to the needs of a particular situation. Further, if the restrictions are in implementation of the directive principles of the Constitution the same would be upheld as being in public interest because the individual interest must yield to the interest of the community at large, for only then a welfare State can flourish.”

(emphasis added)

Thus, the challenge to the Constitutional validity of the provisions of the said Act of 2005 will have to be considered in the light of the aforesaid legal position. If any restriction is imposed in terms of Sub-clause (6) of Article 19 for giving effect to the Directive Principles of the State Policy, the same would be upheld as being in public interest.

LAW ON THE SCOPE OF INTERFERENCE IN WRIT JURISDICTION

102. As far as the scope of interference in Writ Jurisdiction in such matters is concerned, we must make a reference to another decision of the Apex Court in the case of *Kuchchh Jal Sankat Nivaran Samiti and Others v. State of Gujarat and Another*¹⁴. The Appellant

^{13C} (1981) 2 SCC 283

¹⁴ (2013)12 SCC 226

Association before the Apex Court had approached the Gujarat High Court being aggrieved by the meager allocation of water from Sardar Sarovar Project to the District of Kutch. The prayer was for issuing a writ of mandamus to allocate more water to the District of Kutch. Writ Petition was rejected by the Gujarat High Court and that is how the matter was carried to the Apex Court. In Paragraphs 12 and 13 of the said decision, the Apex Court observed thus:

“12. We have given our most anxious consideration to the rival submissions and we find substance in the submission of Mr. Diwan. We are conscious of the fact that there is wide separation of powers between the different limbs of the State and, therefore, it is expected of this Court to exercise judicial restraint and not encroach upon the executive or legislative domain. **What the Appellants in substance are asking this Court to do is to conduct a comparative study and hold that the policy of distribution of water is bad. We are afraid, we do not have the expertise or wisdom to analyse the same.** It entails intricate economic choices and though this Court tends to believe that it is expert of experts but this principle has inherent limitation. **True it is that the court is entitled to analyse the legal validity of the different means of distribution but it cannot and will not term a particular policy as fairer than the other.** We are of the opinion that the matters affecting the policy and requiring technical expertise be better left to the decision of those who are entrusted and qualified to address the same. This Court shall step in only when it finds that the policy is inconsistent with the Constitutional laws or arbitrary or irrational.

13. **Candidly speaking, we do not have the expertise to lay down policy for distribution of water within the State. It involves collection of various data which is variable and many a times policy formulated will have political overtones. It may require a political decision with which the Court has no concern so long it is within the Constitutional limits. Even if we assume that this Court has the expertise, it will not encroach upon the field earmarked for the executive. If the policy of the Government, in the opinion of the sovereign, is unreasonable, the remedy is to disapprove the same during election. In respect of policy, the Court has very limited jurisdiction. A dispute, in our opinion, shall not be appropriate for adjudication by this Court when it involves multiple variable and interlocking factors, decision on each of which has bearing on others.”**

(emphasis added)

103. We must note here that in many Petitions, various methods by which the water can be distributed from the upstream reservoirs have been suggested. Submissions are made that from a particular reservoir, a particular quantity of water should be released only to a particular region or area or that it shall not be released to a particular area. In some cases, a prayer is for releasing a particular quantity of water for the benefit of downstream reservoirs. This Court is burdened with the various figures of rainfall, capacity of various dams, location maps etc. Submissions are made as to what should be the proper period to release the water from upstream dams. The submissions made in many matters indicate that the some of the parties expect the Court to do the job of experts in the field. We do not possess any such

expertise. There are submissions made that the design of the Jayakwadi dam has many flaws. In some Petitions, in effect, the Petitioners expect to the Court to lay down something which is a matter of Policy. As held by the Apex Court, we cannot conduct a comparative study or a scientific study and hold that direction issued to distribute the water is bad. A Writ Court cannot embark upon laying down the policy of distribution of water which is necessarily a job of experts. Such policy decisions also involve an element of political decision making. Therefore, in view of the law laid down by the Apex Court, we will have examine the prayers made and the issue of legality and validity of the orders passed by the Regulatory Authority.

THE SAID ACT OF 1879

104. Brief reference to the said Act of 1879 will be necessary. In the introductory part, we have already set out the brief outline of the said Act of 1879. As stated earlier, the said Act of 1879 was enacted providing for construction and maintenance of canals, for supply of water therefrom and for providing the levy of rates of water supply. The definition of “canal” under the said Act of 1879 was very wide which included, apart from the canals, channels, pipes and reservoirs constructed, maintained and controlled by the Government for the supply of storage of water, all works, embankments, structures and

supply and escape channels connected with such canals, channels, pipes and reservoirs. It included all water courses, drainage works and flood embankments. The term “canal” included any part of a river, stream, lake or natural collection of water. For the purposes of this Petition, we are concerned with Part-IV which deals with supply of water. Section 27 provided for making an Application by a person desiring to have a supply of water from canals. Section 28 provided that a supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except in six contingencies specified therein. Clause (c) of Section 28 provided that the supply of water can be stopped whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons who are entitled to water. Part-VI deals with the supply rates.

RIGHTS CLAIMED BY BLOCK HOLDERS UNDER THE
SAID RULES OF 1934

105. It will be necessary to consider relevant provisions of the said Rules of 1934. The said Rules are relevant as it is claimed in some of the Petitions by the Petitioners that they have a vested right to receive supply of water to their respective blocks as contemplated by the said Rules of 1934 . The concept of blocks was introduced under the said Rules of 1934. Some of the definitions under the said Rules are very material which read thus:

- “(b) “Block” means the whole area of certain specified land to which the block system is applied.
- (c) “Block Conditions” means the special conditions prescribing regulating or restricting the irrigated cultivation which may be carried on within a block.
- (d) 'Block period' means the period for which a supply of water is sanctioned under the block system.
- (e) 'Block rate' means a fixed uniform annual rate per acre levied for the supply of water to a block.
- (f) 'Block system' means a system under which a supply of water is provided for carrying on irrigated cultivation under certain conditions throughout a block for a period of years.
- (l) 'Hot weather crop' means a crop grown within the period between the end of the cold weather season and the break of the monsoon season.
- (m) 'Hot weather season' means the period from the 15th February till the 14th June ensuing.

- (n) 'Kharif crop' means a crop grown within the period from the break of the monsoon season to the beginning of the cold weather season.
- (o) 'Monsoon season' means the period from the 15th June till the 15th November ensuing in the case of the districts of Ahmedabad, Kaira Broach Panchmahals Surat, Mehsana Sabarkantha Banaskantha and Baroda and till the 14th October ensuing elsewhere.
- (u) 'Rabi crop' means a crop grown within the period between the 15th September and the end of February next following.
- (y) 'Sugarcane block' means a block in which the irrigation of sugarcane is permitted.
- (aa) 'Two season block' means a block in which irrigation during the monsoon and the cold weather season is permitted.
- (bb) 'Two season crop' means a crop the period of growth of which extends over the whole or part of both the monsoon and cold weather seasons."

106. Part II of the said Rules of 1934 and in particular Rule 4 thereof dealt with the Applications for supply of water for the purposes of irrigation. Rule 4 is relevant which reads thus:

“4. Application under Section 72 how to be made--

- (1) Every application for a supply of water for the purpose of irrigation shall be made in duplicate to the Executive Engineer.
- (2) Such application may be delivered personally or sent by post to the Executive Engineer or to any officer authorised by him to receive it.
- (3) Such application shall be made in the case of -
 - (a) Two season blocks in Form I or where the State Government by Notification in the official gazette so directs in the case of any two seasonal block, in Form I A included in these Rules by Government Notification Public Works Department, No BLM 1053 dated 19th March 1954,
 - (b) Sugarcane blocks in Form II or III according as the sugarcane area permitted to be grown in the block is to be limited to 1/3rd or 1/4th of the block area
 - (c) Fruit blocks in Form IV,
 - (d) Garden blocks in Form V,
 - (e) Additional waterings, watering in Form VI, and
 - (f) Any other form of supply in Form VII
- (4) Printed blank copies of the prescribed forms of applications shall be supplied to intending applicants free of charge
- (5) An application for a supply of water for any purpose other than irrigation shall be made by a letter addressed to the Executive Engineer.”

107. We have perused the forms prescribed under the said Rules of 1934. Form I is of an Application for supply of water for irrigation in two season block. The two season block as defined in Clause (aa) of Rule 2 is the block under which irrigation during the monsoon and the cold weather season is permitted. We have perused the Form 1-B which is a form to be used by the Applicant for supply of water for irrigation in Rabi blocks. Form II is a form of Application for supply of water for irrigation in 1/3rd sugarcane blocks and Form III is for Application for supply of water for irrigation in 1/4th sugarcane blocks. Form IV is a form of Application for supply of water for irrigation in fruit blocks. Form V is a form of Application for supply of water irrigation in garden blocks. Each form provides for the period for which the water supply is sought. Same is the case with Form 5A which deals with the supply of water for a particular cultivation of crops. Moreover, in the terms and conditions incorporated in each form, it is specifically provided that there is a power vesting in the Executive Engineer to cancel any block or part of it by giving 12 months' notice if in his opinion further continuance of supply of water to it was objectionable. Neither the said Rules of 1934 nor the said Forms of Applications contemplated grant of water supply to the blocks for the indefinite or unlimited period. Even clause (f) of Rule 2 of the said Rules which defined "Block System" did not contemplate supply of water in perpetuity. It contemplated supply

to the blocks for a specified period. Therefore, the aforesaid forms specifically provide for the “Period of sanction”. Moreover, neither the said Act of 1879 nor the said Rules of 1934 contemplated execution of any binding Agreements between the State and the person/s to whom water supply is granted under the block system. Rule 10 of the said Rules of 1934 is material which read thus:

“10. Allotment of available supply - If from any cause any water supply is insufficient to meet all demands for water from such supply questions regarding the allotment of the available supply and the quantity and regulation thereof shall subject to the general or special orders of the State Government be determined by the Executive Engineer.”

Thus, notwithstanding the grant of water supply under the Block system, the State Government had retained the power to pass an appropriate order when the water supply would be insufficient to meet all demands of water from such supply.

108. Section 28 of the said Act of 1879 conferred a power stop supply of water which read thus:

“28. The supply of water to any [field-channel] to or any person who is entitled to such supply shall not be stopped except—

- (a) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by 17 competent authority;

- (b) whenever and so long as may 1[field-channel] by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water there from ;
- (c) **whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water;**
- (d) **whenever and so long as it may be necessary to do so in water to prevent the wastage or misuse of water;**
- (e) within periods fixed from time to time by a Canal-officer duly empowered in this behalf, of which due notice shall be given ;
- (f) whenever and so long as it is necessary to stop such supply pending a change in the source thereof by a Canal officer “
(emphasis added)

109. Thus, the argument that the right to receive supply of water granted to the blocks under the provisions of the said Rules of 1934 still continues to exist deserves to be rejected. Moreover, both the said Act of 1879 and the said Rules of 1934 are pre-Constitution Enactments. Article 21 which includes right to water will have to be considered in the light of clause (b) of Article 39.

110. By the said Act of 1976, the said Act of 1879 was repealed. Reliance is placed on Section 131 of the said Act of 1976 which reads thus:

"131. On the commencement of this Act, the following Acts, that is to say -

- (i) the Bombay Irrigation Act, 1879.
- (ii) the Central Provinces Irrigation Act, 1931.
- (iii) the Central Provinces and Berar Regulation of Waters Act, 1949.
- (iv) the Hyderabad Irrigation Act, 1357-F, and
- (v) the Hyderabad Irrigation (Betterment Contribution and Inclusion Fees) Act, 1952.

are hereby repealed:

Provided that the repeal shall not affect –

- (a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or
- (b) **any right, privilege, obligation, or liability acquired, accrued or incurred under any law so repealed, or**
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or
- (d) any investigation, proceeding, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

And any such investigation, proceeding, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that, subject to the preceding proviso, anything done or any action taken (including any charges created, appointments, rules, notifications, orders, summons, notices, warrants and proclamations made or issued, authorities and powers conferred or vested, record-of-rights prepared or revised, canals or

any water works or water-courses or field-channels constructed, any supply of water made, water rates charged, agreements or contracts made, any taxes or fees levied, any compensation awarded, any labour obtained or supplied for emergency works of canals, any rights acquired or liabilities incurred, any suits instituted or proceeding taken or appeal made, and any Second Class Irrigation Works declared as such, under any law so repealed) shall, in so far as such thing done or action taken is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act: and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.”

(emphasis added)

111. On plain reading of Section 131 of the said Act of 1976, at highest, it can be said that the permissions which were already granted under the said Act of 1879 and the said Rules of 1934 will not be affected. Thus, the existing permissions were continued till the same expired. Apart from the fact that neither the said Act of 1879 nor the said Rules of 1934 provided for granting permissions for unlimited period or in perpetuity, no such permissions which provide for grant of water supply in perpetuity have been produced on record. Therefore, the argument that Sections 31A or 31B of the said Act of 2005 and Section 77 of the second Act of 2005 protect and save the rights of Block holders to get water supply will have to be rejected.

112. The definition of Canal in Sub-section (3) of Section 2 of the said Act of 1976 is as wide as the definition of Canal in the said Act

of 1879. The Part-VI of the said Act of 1976 provides for supply of water. Section 46 of the said Act of 1976 reads thus:

“46. (1) Water from a canal may be supplied,--

- (a) on an application for irrigation or non-irrigation purposes as provided in Chapter II of this Part:
- (b) on volumetric basis as provided in Chapter III of this Part:
- (c) under an irrigation agreement as provided in Chapter IV of this Part; or
- (d) under a scheme in accordance with the provisions of Chapter V of this Part.

(2) Water rates for the supply of water under clause (a), (b), (c), or (d) of sub-section (1), shall be paid according to the rates provided in Chapter II, III, IV or V of this Part.

(3) Notwithstanding anything contained in sub-section (2), there shall be levied on all those holders or occupiers of lands within the irrigable command of a canal (not being lands irrigated on wells within irrigable command) who do not avail of the facility of water supply during kharip and rabi seasons (being seasons determined as such by an order of the State Government) from such canal a water rate equal to fifty per cent of the seasonal water rate applicable and in force in that season:

Provided that no such water rate shall be levied if on demand water is not made available.”

113. Therefore, even assuming that certain persons were holding valid permissions under the said Rules of 1934, after the expiry of the period of permissions, the water supply from canals could have

been made only in accordance with Section 46 of the said Act of 1976. Section 49 confers the power to supply water. Clause (g) of Section 49 provides that the supply of water to any field channel or to any person who is entitled to such supply can be stopped whenever and so long as it is necessary to stop or regulate such supply for the purposes of conservation of the canal water. Clause (c) of Section 49 permits stoppage of such supply whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water. We have perused the Chapters II, III, IV and V forming part of Part VI of the said Act of 1976. None of these provisions contemplate grant of water supply for an unlimited duration. Section 77 of the second Act of 2005 provides that only in relation to the areas under Management of Irrigation Systems by Farmers that Section 46 to 48 and other concerned provisions relating to supply of water under the said Act of 1976 stand repealed. The reason is that Section 28 of the second Act of 2005 provides for supply of water to the Users' Associations on the bulk basis measured volumetrically. If the argument of vested right of block holders is accepted, it will defeat the provisions of the second Act of 2005.

114. Various decisions are relied upon in support of the contention that the vested right of the block holders cannot be taken away by the subsequent enactments. We have perused the said

decisions. For the reasons which we have recorded earlier, we have held that no such vested right is established.

THE SECOND ACT OF 2005

115. Then we come to the second Act of 2005. Relevant part of the preamble of the second Act of 2005 reads thus:

“To provide for Management of Irrigation Systems by Farmers' and for matters connected therewith or incidental thereto WHEREAS the National Water Policy, (2002) lays down that efforts should be made to progressively involve farmers, in the various aspects of management of irrigation systems;

AND WHEREAS the Maharashtra Water and Irrigation Commission (1999) has recommended that statutory provisions may be made for management by farmers, of irrigation systems by providing water from Public Canal System to Water Users' Associations on volumetric basis;

AND WHEREAS it is decided by the State Government to bridge the gap between the irrigation potential created and its actual utilisation and to optimise the benefits by ensuring proper use of surface and groundwater by increased efficiency in distribution, delivery, application and drainage of irrigation systems and for achieving this objective to give statutory recognition to the constitution and operation of Water Users' Associations so as to enable the farmers to act collectively to improve the productivity of agriculture;”

116. Basically, the object of the second Act of 2005 is to provide water through public canal system to the Water Users' Association on volumetric basis. Some of the definitions under Section 2 are relevant which read thus:

“(e) "Area of Operation" in relation to Water Users' Association means the area notified under section 5 in respect of such Association;

(f) "Canal Officer" means the Canal Officer appointed under clause (4) of section 2 of the Maharashtra Irrigation Act, 1976, who is duly empowered by the State Government, by notification in the Official Gazette, for the purposes of exercising the powers and discharging the duties under this Act;

(g) “Canal system” means all Canals and includes all lands commanded thereby;

(h) "Command Area" in relation to flow and lift irrigation on a canal, means the land under irrigable command of a canal, bound by hydraulic or other boundaries for which a Water Users' Association is formed;

(u) "Major Irrigation Project", Medium Irrigation Project” and “Minor Irrigation Project” means project having culturable command area exceeding ten thousand hectares, exceeding two thousand hectares but not exceeding ten thousand hectares, and not exceeding two thousand hectares, respectively;

(v) “Management of Irrigation Systems by Farmers (MISF)” means involvement of irrigation users in all aspects of irrigation, including planning, designing, constructing, supervising, financing, operating, managing, maintaining, monitoring and evaluating of the Canal System;

(ag) "Sanctioned Water Use Entitlement" in relation to an Agreement with Water Users' Association on a reservoir based canal system means, the total volume of water guaranteed to be supplied to the Water Users' Association, at the agreed point of supply, in different seasons, in a Normal Year;

(ak) “Water Users" means and includes any individual or body corporate or an association, using water from a Government sources of irrigation;

(al) "Water Users' Association " in relation to Management of Irrigation systems by Farmers means all types of Water User's Association at all levels of canal system for flow as well as lift irrigation;

(am) "Water Users' Association at Minor Level" means the primary unit of Water Users' Association.

(II) Words and expressions used in this Act, but not defined herein, shall have their respective meaning as assigned to them in the Maharashtra Irrigation Act, 1976."

117. Section 3 of the said Act of 2005 lays down that a Water Users' Association at minor level shall be a body Corporate. Section 4 provides for the objects of Water Users' Associations which reads thus:

"4. (1) The objects of a Water Users' Association shall be to ,-

- (i) promote and secure equitable distribution of water amongst its members;
- (ii) maintain adequately the irrigation systems; and ensure efficient, economical and equitable distribution and utilisation of water to optimise agricultural production;
- (iii) protect the environment;
- (iv) ensure ecological balance
- (v) Actively involve the members inculcating amongst them a sense of ownership of the irrigation system; and
- (vi) safeguard and promote the common interests of its members pertaining to irrigation and agriculture in the area of operation.

(2) The Association may also engage into any activity of common interest of the members in the Command Area related to irrigation and agriculture, such as introduction of Drip and Sprinkler system for optimising the use of water; developing farm ponds and community projects for exploiting groundwater; procurement and distribution of seeds, fertilisers and pesticides; procurement and renting of agricultural implements; marketing and processing agricultural produce from the Command Area and supplementary business like dairy and fisheries.”

118. Section 5 provides for delineation of command area of an irrigation project into an area under the Management of Irrigation Systems by Farmers. It reads thus:

“5. For the purpose of this Act, Appropriate Authority may, by notification in the Official Gazette, delineate, on hydraulic basis and having regard to the administrative convenience, the command area of an irrigation project into an area under the Management of Irrigation System by Farmers, for which there shall be constituted Water Users’ Association under this Act and may by like notification from time to time, alter their limits, by ---

- (i) amalgamating or dividing the Water Users’ Associations;
- (ii) increasing an area of any Water Users’ Association;
- (iii) reducing an area of any Water Users’ Association:.....”

119. Section 6 gives power to the canal officer to delineate the command area of Water Users' Association at minor level. It gives a power to determine the lands under irrigable command and declare it

to be an area of operation of Water Users' Association at minor level. Section 8 provides that when an area of operation of a Water Users' Association at Minor Level has been delineated under section 6, the holders and occupiers of the land so delineated shall form a Water Users' Association. Such Water Users' Association shall be registered in the prescribed manner. What is important is Section 7 which reads thus:

“7. On delineation of Command area of Water Users' Association, by notification in the Official Gazette under section 6, no water shall be supplied by the appropriate Authority to the individual holder or occupier: and the system of supply of water through Water Users' Association shall be binding on all holders and occupiers of such lands.”

120. Section 10 provides for delineation of area of operation of Distributary Level Association. Section 11 is material which read thus:

“11.(1) In the area delineated as an area of operation of Distributary Level Association under Section 10, a Distributary Level Association shall be constituted by the Water Users' Associations at Minor Level. Such Association shall be registered in the prescribed manner.

(2) All the Water Users' Associations at Minor Level, represented by the members of Managing Committees of the Water Users' Associations at Minor Level, in the command area of Distributary Level Association shall constitute the General Body of the Distributary Level Association and shall have right to vote and elect the Managing Committee of the Distributary Level Association, in such manner as may be prescribed.

- (3) After the operation and maintenance of the delineated area is handed over to such Distributary Level Association, water supply to water users in such delineated area shall be through the respective Distributary Level Association.”

121. Section 13 provides for delineation of the area of operation of canal level Association. Sub-Section (1) of Section 14 provides that in the area delineated as an area of operation of Canal Level Association (CLA) under section 13, a Canal Level Association shall be constituted by the Distributary Level Associations. Such Association shall be registered in the prescribed manner. Sub-Section (3) provides that after the operation and maintenance of the delineated area is handed over to Canal Level Association, water supply to water users in such delineated area shall be through the respective Canal Level Associations.

122. Section 16 provides for delineation of area of operation of a project level Association. Section 17 provides for constitution of a Project Level Association to be constituted of the Canal Level Associations functioning within projects. Sub-Section (3) of Section 17 (3) provides that after the operation and maintenance of the delineated area is handed over to Project Level Associations, water supply to water users in such delineated area shall be through the respective Project Level Associations. Thus, the object of the said Act of 2005 is to maintain the irrigation systems at various levels through various

Associations of the farmers. It creates a comprehensive structure of Associations at four levels as under:

- A- Water User's Associations of farmers at minor level;
- B- Distributary Level Associations of the Water User's Associations at minor level;
- C- Canal Level Associations of the Distributary Level Associations; and
- D- Project Level Associations of Canal Level Associations

This structure has been created to enable the farmers through their Associations to manage the Irrigation Systems at different levels up to the project level. Chapter III also provides for Lift Irrigation Water Users' Associations. There are specific provisions which lay down that the object of the said Associations is to promote and secure equitable distribution of water amongst its members.

123. What is material is Section 77 of the second Act of 2005 which provides for repeal of certain Sections of the said Act of 1976.

Section 77 reads thus:

“77. On the commencement of this Act, in relation to the areas under the Management of Irrigation Systems by Farmers, [Subsection (1) and (2) of section 46,] sections 46 to 48, section 55, sections 57, 58, 60 and 61 to 74 of the Maharashtra Irrigation Act, 1976, shall be deemed to have been repealed:

Provided that, the repeal shall not affect -

(i) the previous operation of any sections so repealed or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any section so repealed; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offence committed against any section so repealed; or

(iv) any investigation, proceeding, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment as, aforesaid,.."

124. Thus, Section 77 of the second Act of 2005 repeals certain provisions of the said Act of 1976 only in relation to the areas under the management system of farmers. Thus, the repeal of the specified Sections will be only in relation to the delineated areas of the Associations at the four levels. The repealed provisions of the said Act of 1976 are in respect of supply of canal water and rates of supply. The reason is that the provisions of the second Act of 2005 and in particular Section 28 provide for supply of water by the Appropriate Authority (which includes Regulatory Authority under the said Act of 2005 and Irrigation Corporations established by the State Government) to the Water Users' Associations on bulk basis measured volumetrically. Sub-Section (2) of Section 28 provides that it shall be the responsibility of the Water Users' Associations to supply the water equitably in its area of

operation. Thus, the second Act of 2005 deals with water supply only to the Users' Associations. The provisions of the said Act of 1976 concerning water supply do not apply to the areas under the Management of Irrigation Systems by Farmers under the second Act of 2005. Hence, the said Act of 1976 and the second Act of 2005 operate in separate spheres.

125. However, as observed by the Regulatory Authority in its order dated 19th September 2014, even Water Users' and other three Associations of Water Users contemplated by the second Act of 2005 have not been constituted till today. There is no delineation of lands under irrigable command of any Project Level Associations. Therefore, the directions issued under the said order in that behalf by the Regulatory Authority deserve to be implemented.

THE ARGUMENT BASED ON THE PROVISIONS OF THE
MAHARASHTRA AGRICULTURAL LANDS (CEILING ON
HOLDINGS) ACT, 1961 OR SIMILAR STATUTES.

126. Before considering the provisions of the said Act of 2005, it is necessary to make a reference to the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. It is contended that under the said Act of 1961, the farmers were deprived of large portions of their land holding held in excess of prescribed ceiling limit on the ground that the lands allowed to be retained by them were perennially

irrigated. The said Act of 1961 is enacted for the purposes of imposing a maximum limit or ceiling on the holding of agricultural lands in the State of Maharashtra for the purposes of securing the equitable distribution of agricultural lands so as to sub-serve the common good. Section 3 thereof provides for prohibition on holding the lands in excess of the prescribed ceiling area. It provides that the area held in excess of the prescribed ceiling area shall be surplus area. The ceiling area is defined by Section 5. It provides that in each of the Districts and Talukas specified in Column 1 of the First Schedule, the ceiling area shall be the area mentioned under each class of land in the First Schedule. Clause (5) of Section 2 of the said Act of 1961 defines the term “class of land”. One such class of lands covered by Sub-clause (a) of Clause (5) of Section 2 of the said Act of 1961 is of lands with an assured supply of water for irrigation capable of yielding at least two crops in a year which includes the land irrigated perennially by flow irrigation from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water. The argument is that in case of the said class of land, the ceiling limit is the lowest. However, there is no provision in the said Act of 1961 which provides a guarantee that in case of retainable lands falling in the aforesaid class of land covered by Sub-clause (a) of Clause (5) of Section 2 of the said Act of 1961, there will be a perennial supply of water. There is no right created to receive perennial supply to

the lands allowed to be retained. The classification made by Clause (5) of Section 2 of the said Act of 1961 is only for the purposes of fixing the ceiling limit for different classes of lands on the cut off date.

THE PROVISIONS OF THE SAID ACT OF 2005

127. Now that takes us to the provisions of the said Act of 2005.

The preamble of the said Act is important, which reads thus:

“An Act to provide for the establishment of the Maharashtra Water Resources Regulatory Authority to regulate water resources within the State of Maharashtra, facilitate and ensure judicious, equitable and sustainable management, allocation and utilisation of water resources, fix the rates for use of water for agriculture, industrial, drinking and other purposes, and matters connected therewith or incidental thereto.

WHEREAS it is expedient to make a law to provide for the establishment of the Maharashtra Water Resources Regularity Authority to regulate water resources within the State of Maharashtra, facilitate and ensure judicious, equitable and sustainable management, allocation and utilisation of water resources, fix the rates for use of water for agriculture, industrial, drinking and other purposes, and matters connected therewith or incidental thereto, for the purposes aforesaid; it is hereby enacted in the Fifty-sixth Year of Republic of India as follows:-

(emphasis supplied)

128. Thus, broadly speaking, the objects of the said Act of 2005 can be summarized as under:

- (a) For establishing the Regulatory Authority to regulate water resources within the State;

- (b) To ensure judicious, equitable and sustainable management allocation and utilization of water resources;
- (c) To Fix the rates for use of water for agricultural, industrial, drinking and other purposes.

129. On consideration of the four enactments relating to water viz; (i) the said Act of 1976, (ii) the said Act of 1993, (iii) the said Act of 2005 and (iv) the second Act of 2005, we find that they are operating in different fields. The main object of the said Act of 2005 seems to be to ensure judicious, equitable and sustainable management, allocation and utilization of water resources as well as regulation of water resources. Apart from creating a Regulatory Authority, the said said Act seeks to establish the State Water Board and the State Water Council. The State Water Board is established in accordance with Sub-section (1) of Section 15 which is headed by the Chief Secretary of the State as the ex-officio President. Its members include the Secretaries of various Departments such as Planning, Finance, Water Resources, Water Supply, Urban Development, etc in their ex-officio capacity. The function of the Board is to prepare a draft Integrated State Water Plan (for short “the Integrated Water Plan”) on the basis of the plans prepared and submitted by the River Basin Agencies. The State Water Council is established under Sub-section (1) of Section 16 which is headed by the Hon’ble Chief Minister as the ex-officio President. The Hon’ble Deputy Chief Minister is the ex-officio Vice President and the

Hon'ble Ministers for the departments of Water Resources, Agriculture, Water Conservation, Water Supply, Finance and Planning, Urban Development, Industries and Environment are the ex officio members apart from the other members. The main function of the Water Council is to approve the Integrated Water Plan prepared by the State Water Board, if necessary, with the requisite modifications.

130. Under the said Act, certain important powers are conferred on the State Government under Section 16A and Section 23. Sectoral Allocation is defined by Cause (u-1) of Section 2 of the said Act which reads thus:

“(u-1) Sectoral allocation means the allocation made in a water resources project by the State Government to the various Categories of Use.”

As per Sub-section (1) of Section 16A, a power is conferred on the State Government to determine the sectoral allocation. It is further provided that after the sectoral allocation is determined, the Regulatory Authority shall determine the criteria for the distribution of Entitlements under Clause (a) of Section 11 of the said Act. Section 16A reads thus:

“16A. (1) Notwithstanding anything contained in section 11 or any 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) of section 11.”

131. As far as the entitlement is concerned, the same is defined by the Clause (i) of Section 2 of the said Act which reads thus:

“Entitlement” means any authorisation by any River Basin Agency to use the water for the purposes of this Act;

132. The River Basin Agency is defined in Clause (u) of Section 2, which reads thus:

“(u) River Basin Agency means any one of the following River Basin Development Corporations operating in the River Basin and includes the Government Authorities as specified by the Government, from time to time,-

(1) the Maharashtra Krishna Valley Development Corporation established under the Maharashtra Krishna Valley Development Corporation Act, 1996;

(2) the Vidarbha Irrigation Development Corporation established under the Vidarbha Irrigation Development Corporation Act, 1997;

- (3) the Konkan Irrigation Development Corporation established under the Konkan Irrigation Development Corporation Act, 1997;
- (4) the Tapi Irrigation Development Corporation, established under the Maharashtra Tapi Irrigation Development Corporation Act, 1997;
- (5) the Godavari Marathwada Irrigation Development Corporation established under the Maharashtra Godavari Marathwada Development Corporation Act, 1998;

133. Thus, the Godavari Marathwada Irrigation Development Corporation (the said Irrigation Corporation) is a River Basin Agency for Godavari Sub basin. Category of Use is defined by Clause (f) of Section 2 to mean use of water for different purposes such as domestic, agricultural irrigation, agro-based industries, industrial or commercial, environmental, etc. A very essential part of the said Act of 2005 is to prepare Integrated State Water Plan. It is to be prepared by the State Water Board. The draft of the State Water Plan is to be prepared by the State Water Board on the basis of basin and sub-basin wise water plans prepared and submitted by the River Basin Agencies. Such a Plan was to be submitted by the State Water Board to the State Water Council within six months from the date on which the said Act of 2005 came into force. While preparing the Plan, the Board is required to consider the directives of the State Water Policy. It is the duty of the State Water Council to approve the draft Integrated Water Plan submitted by the Board within six months from the date of its

submission with necessary modifications, if any. Sub-section (5) of Section 16 is an enabling provision which provides that the water plan may be reviewed after every five years from the date of its approval by the Council. There is nothing placed on record to show that such draft plan is prepared by the State Water Board and that such plan is approved by the State Water Council. As per clause (f) of Section 11, it is the function of the Regulatory Authority to review and clear water resources projects at the sub-basin and basin level in conformity with the Integrated Water Plan. Thus, the Integrated Water Plan has a very important role to play.

134. There is one more important provision of the said Act of 2005 which is Section 14 which prohibits the use any water source without obtaining Entitlement from the respective River Basin agencies. Section 14 of the said Act reads thus:

“14. (1) From the date of commencement of this Act, no person shall use any water from any water source without obtaining the Entitlement from the respective River Basin Agencies:

Provided that, no Entitlement shall be required in case of,-

- (a) any bore well, tube well or other wells which are being used for domestic purposes; and
- (b) tanks, small reservoirs or catchments of rainwater harvesting with an annual yield capacity as may be decided by the Authority.

Explanation:- For the purposes of this section, the expression “person” shall includes individual, group of individuals, all local authorities, association, societies, companies, etc.

“provided further that, the Entitlement under this section shall be required only after the distribution of Entitlement has been determined and the criteria for issuance of Entitlement has been laid under section 11.”

(2) Use of the water for the purposes of agriculture, through any existing well, bore well, tube well in the command area of a project on the date of commencement of this Act, shall be allowed to continue till such date as may be notified by the Authority.

(3) There shall not be any restriction on digging of any well, bore well or tube well in the command area of a project, till such date as may be notified by the Authority.

(4) Water shall not be made available from the canal for perennial crops in such area and from such date as may be notified by the Authority, unless the cultivator adopts drip irrigation or sprinkled irrigation or such other water saving technology approved by the Authority. The quantity of water so saved, after satisfying the further increased demand of drinking water, shall be distributed equitably in the command area and the adjoining area.”

135. The proviso added by the Amendment Act of 2011 to Sub-section (1) of Section 14 provides that the entitlement under this section shall be required only after distribution of Entitlement has been determined and the criteria for issuance of Entitlement has been laid under Section 11. Thus, the embargo of sub-Section (1) of Section 14 will not apply till the distribution of Entitlement is determined. Only

after the sectoral allocation is made by the State Government in accordance with Sub-Section (1) of Section 16A, the Regularity Authority will have to determine the criteria for distribution of Entitlements by the River Basin Agencies within each category of use. Unless determination as regards the criteria for distribution of Entitlements by the River Basin Agencies within each category of use is fixed by the Regularity Authority, the River Basin Agencies cannot issue Entitlements to any person. There is no document placed on record to show that Sectoral allocation is made by the State Government. Only after the Sectoral allocation is made by the State Government that the Regulatory Authority can discharge its functions under the clause (a) of Section 11.

136. Now it will be necessary to consider the powers, functions and duties of the Regularity Authority. Section 11 incorporates a list of powers and functions to be performed by the Regularity Authority. We have already referred to Clause (a) of Section 11 which confers power on the Regulatory Authority to determine the criteria for distribution of Entitlements by the River Basin Agencies within each category of use. Clause (b) of Section 11 confers the powers on the Regularity Authority to enforce decisions or orders issued under the said Act. Clause (c) of Section 11 of the said Act of 2005 is important which reads thus:

“(c) to determine the priority of equitable distribution of water available at the water resource project, sub-basin and river basin levels during periods of scarcity.”

(emphasis added)

137. This power is very important which can be exercised during the periods of scarcity. We must note here that under the Regulatory Authority Rules, water scarcity was defined in relation to a particular water resources project to mean a situation when actual availability of live storage is less than 33% of the designed live storage of that project as on 15th October. This definition was found in Clause (c) of Rule 2 of the said Rules. Clause (c) of Rule 2 of the Regulatory Authority Rules provided that the words “water scarcity” or “distress” are synonymous.

138. One of the arguments canvassed was that in view of repeal of the said Rules, the provisions of the clause (c) of Section 11 of the said Act of 2005 cannot be implemented as it does not contain the definition of scarcity and distress. Clause (c) of Section 11 of the said Act confers power on the Regulatory Authority to determine the priority of equitable distribution of water available at the water resource project, sub-basin and river basin levels during the periods of scarcity. One of the arguments was that in view of the repeal of the Rules, the term “scarcity” has not been defined and therefore, the Regulatory Authority cannot exercise jurisdiction under Clause (c) of Section 11.

An argument is that in the absence of statutory Rules under the said Act of 2005 , the provisions of Sections 11 and 12 are required to be struck down. In this behalf, reliance was placed by the State Government on a decision of the Apex Court in the case of *Ibrahim Bachu Bafan v. State of Gujarat*¹⁵. It was submitted that the Apex Court has relied upon the dictionary meaning of a word which is not defined under the statute.

139. In this behalf, reliance is also placed on a decision of the Apex Court in the case *Jantia Hill Truck Owners Association v. Shailang Area Coal Dealer and Truk Onwer Association and Others*¹⁶.

In Paragraph 23, the Apex Court held thus:

“The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. It is true that for the said purpose rules may have to be framed. **It is, however, a well-settled principle of law that even in a case where the statute provides for certain things to be done, subject to rules, any action taken without framing the rules would not render any (*sic* that) action invalid. If a statute is workable even without framing of the rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.** Non-compliance with the provisions relating to “laden weight” and “unladen weight” being penal in nature must be held to be imperative in character.”

(emphasis added)

140. The Apex Court dealt with the effect of the absence of definition of a particular word used in a statute in the case of *Maheshwari Fish Seed Farm v. T.N. Electricity Board*^{16A}. In paragraph 6, the Apex Court held thus:

“6. It is settled rule of interpretation that the words not defined in a statute are to be understood in their natural,

15 (1985)2 SCC 24

16 (2009)8 SCC 492

16A (2004) 4 SCC 705

ordinary or popular sense. According to Justice Frankfurter, “After all, legislation, when not expressed in technical terms, is addressed to common run of men, and is, therefore, to be understood according to sense of the thing, as the ordinary man has a right to rely on ordinary words addressed.” (*Wilma E. Addison v. Holly Hill Fruit Products*[322 US 607 : 88 L Ed 1488 (1944)] , US at p. 618.) In determining, therefore, whether a particular import is included within the ordinary meaning of a given word, one may have regard to the answer which everyone conversant with the word and the subject-matter of statute and to whom the legislation is addressed, will give if the problem were put to him. (Justice G.P. Singh: *Principles of Statutory Interpretation*, 9th Edn., 2004, p. 95.)”

141. Hence, it cannot be said that only because the word “scarcity” is not defined in Clause (c) of Section 11, that clause cannot stand the test of constitutionality. The object of the Act is to ensure judicious, equitable and sustainable management, allocation and utilization of water resources. Clause (c) of Section 11 empowers the Regulatory Authority to determine the priority of the equitable distribution of water available at the water resource project, sub-basin and river basin levels during the periods of scarcity. The Regulatory Authority has applied the test of hydrological drought. In the order dated 19th September 2014, the Regulatory Authority referred to the Manual for Drought Management issued by the Government of India which defines “Hydrological Drought”. In the said Manual, the Hydrological Drought is defined as a deficiency in surface and sub surface water supply leading to a lack of water for normal and specific needs such as minimum drinking, irrigation and minimum industrial

use. Obviously, the reference to scarcity in Clause (c) of Section 11 is to the insufficient availability of water due to inadequate rain or some other reason during the relevant period. This plain meaning is consistent with the object of the said Act of 2005. There is no difference between natural and ordinary meaning of water scarcity and hydrological drought. After noting that Jayakwadi Dam had shortage of water for 34 out of 39 years, the Regulatory Authority observed that the equitable distribution is required to overcome this situation of hydrological drought. The Regulatory Authority which is a body of experts was of the view that hydrological drought is covered by the concept of scarcity. In our view, considering the definition of hydrological drought in the manual of the Government of India, the said view is correct. Only if such natural and ordinary meaning is given to the word scarcity, the power conferred by Clause (c) of Section 11 will become meaningful. Only during such period of hydrological drought that the equitable distribution of available water assumes importance. The power under Clause (c) of Section 11 can be exercised only when there is scarcity as stated above.

142. As far as Section 12 is concerned, it lays down that the Regulatory Authority shall work according to the framework of the State Water Policy. It provides that the function of the Regulatory Authority is to promote and implement sound water conservation and

management practices. What is material is Sub-section (6) of Section 12, which reads thus:

“(6) The Authority shall fix the Quota at basin level, sub-basin level 26 or project level on the basis of the following principles :-

- (a) for equitable distribution of water in the command area of the project, every land holder in the command area shall be given Quota;
- (b) the Quota shall be fixed on the basis of the land in the command area: Provided that, during the water scarcity period each landholder shall, as far as possible, be given Quota adequate to irrigate at least one acre of land;
- (c) in order to share the distress in the river basin of sub-basin equitably, the water stored in the reservoirs in the basin or sub-basin, as the case may be, shall be controlled by the end of October every year in such way that, the percentage of utilizable water, including kharif use, shall, for all reservoirs approximately be the same:
- (d) Subject to the condition of efficient use of water, the existing private sector lift irrigation management schemes shall be allowed to continue for a period of five years from the date of commencement of this Act and thereafter on the date that may be specified by the Government the provisions of sub-section (4) of section 14 shall apply : Provided that, having regard to geographical conditions, different dates may be notified for different areas.
- (e) the command area of private lift Irrigation schemes, on the date of commencement of this Act, shall be treated at par with the command area of the irrigation projects ;”

(emphasis added)

143. The power is vested in the Regulatory Authority to fix the Quota at the project level. Clause (s) of Sub-section (1) of Section 2 of the said Act defines the term “Quota” to mean a volumetric quantity of water made available to an entitlement holder which is derived by multiplying an Entitlement by the annual or seasonal allocation percentage. The Entitlement is defined in clause (i) of Section 2 to mean any authorization by any River Basin Agency to use the water for the purposes of the Act. The definition of “Entitlement” under clause (m) of Section 2 of the second Act of 2005 is different from the Entitlement as defined under the said Act of 2005. Clause (m) provides that “Entitlement” means bulk water use entitlement or individual water use entitlement, as determined by Appropriate Authority from time to time. The second Act of 2005 provides for the management of irrigation systems by Associations of farmers created at four levels as specified in the earlier part of Judgment. The Section 16(1) of the second Act of 2005 deals with the delineation of lands under irrigable command of the Project whereas Clause (a) of Sub-Section (6) of Section 12 of the said Act of 2005 deals with the entire command area of project.

144. The power of the Regulatory Authority is to fix Quota at the project level on the basis of the principles laid down in Clauses (a) to (e) of Sub-section (6) of Section 12. Clause (c) of Sub-section (6) of

Section 12 does not confer any independent power on the Regulatory Authority to direct that the percentage of utilizable water for all the reservoirs should be the same. It is not an independent power. The principle laid down in clause (c) can be considered while doing the exercise of fixing Quota at project level or sub-basin level. The submissions made by some of the parties erroneously proceed on the footing that Clause (c) is an independent substantive provision which can be invoked de-hors the exercise of power of fixing Quota. The said submissions are completely misconceived. While fixing the Quota at Project level, the principles incorporated in clauses (a) to (e) will have to be taken into consideration. The power of fixing Quota at the project level is required to be exercised on the basis of the principles incorporated Clauses (a) to (e). Clause (a) incorporates the principle of equitable distribution in terms of Article 39(b) of the Constitution. An argument was canvassed that the power under Clause (c) of Sub-section (6) of Section 12 cannot be exercised unless Quota is fixed. The said argument is not correct. The Clauses (a) to (e) of Sub-section (6) of Section 12 are the guiding principles for exercise of power of fixing the Quota at project level and sub-basin level. The clause (c) is not an independent or a stand alone provision.

145. In view of clause (a) of Sub-section (6) of Section 12 which incorporates the principle of equitable distribution of command area of

the project, the delineation of the command area (in this case, the command area of Jayakwadi Project) is necessary to enable the Regulatory Authority to exercise the power under Sub-Section (6) of Section 12. In our view, the Regulatory Authority will have to undertake the exercise of fixing the Quota as provided in Sub-section (6) of Section 12 of the said Act after the command areas of the Projects in Godavari sub-basin are delineated.

146. Sub-section (1) of Section 12 makes it clear that the Regulatory Authority will have to work according to the State Water Policy. Sub-section (10) of Section 12 provides that the Regulatory Authority shall strive to make the water available to the drought prone areas of the State.

THE CHALLENGE TO CONSTITUTIONAL VALIDITY OF
SECTIONS 11 AND 12 OF THE SAID ACT OF 2005

147. As far as the challenge to the constitutional validity of the said statutory provisions is concerned, the law is well settled. A Writ Court can invalidate a statute only on two grounds. The first ground is a lack of legislative competence and the second ground is that it infringes the provisions of the Constitution of India. In the present case none of the Petitioners have urged that the the State of Maharashtra lacked legislative competence to enact Section 11 and 12 of the said Act of 2005. Entry 56 of List I(Union List) of Schedule VII reads thus:

“56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”

Entry 17 of List II (State List) reads thus:

“17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.”

Thus, the State Legislature was well within its powers when it enacted the said Act of 2005.

148. One argument in support of the plea of invalidity of the Sections 11 and 12 is based on the absence of Rules and the absence of the definitions of material terms such as scarcity in the said Act of 2005. We have dealt with the said submission in paragraphs 138 to 141 and rejected the same. The main argument is that the provisions of the said Act of 2005 relating to equitable distribution of water impose unreasonable restrictions on the right to carry on agricultural operations of the upstream farmers. In the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (supra), the Constitution Bench of the Apex Court held that for testing the reasonableness of any restriction imposed by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy play a significant role. It was held that the restriction which

can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); the provisions contained in the chapter on Directive Principles of State policy can also be pressed into service and relied upon for the purpose of adjudging the reasonability of restrictions placed on fundamental rights. In the case of *Sri Sri Kalimata Thakurani v. Union of India* (supra), the Apex Court held that if the restrictions imposed on fundamental rights are in implementation of the Directive Principles of the State Policy, the same would be upheld as being in public interest because the individual interest must yield to the interest of the community at large. We do not agree that the provisions of the said Act of 2005 put any restrictions on the right of cultivation of the upstream farmers. In fact the provisions therein help the citizens of both upstream and downstream area in securing equitable distribution of water. The decisions relied upon by the Petitioners in the cases of *State of M.P. and another v. Baldeo Prasad*, *B.B. Rajwanshi v. State of U.P. and Others*, and *Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi and Others* will not help them in any manner. Clause (c) of Section 11 provides for the equitable distribution of water during the period of scarcity. Sub-Section (6) of Section 12 provides for fixing Quota at project level. While fixing the quota, the principles of equitable distribution are required to be considered by the Regulatory Authority in view of clause (a) of sub-section (6). Even assuming that Sections 11 and 12 impose restrictions on the fundamental rights of the

upstream farmers under Articles 19(1)(g) and 21, the restrictions will have to be treated as being reasonable as the same have been imposed for giving effect to clause (b) of Article 39. The restrictions are for compelling public necessity. Hence, the challenge to the Constitutional validity must fail.

ARGUMENT BASED ON SECTIONS 31A AND 31B OF
THE SAID ACT OF 2005

149. There is an argument canvassed on the basis of Section 31A of the said Act, which reads thus:

“31A. Notwithstanding anything contained in the Act or any other law for the time being in force, the term “Entitlement” shall apply only to such areas where compliance of all relevant provisions including delineation under the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 is made.

Explanation- In respect of the areas where the Maharashtra Management of Irrigation Systems by Farmers Act, 2005 has not become applicable, section 78 of that Act shall apply and be effective.”

150. Therefore, all the provisions dealing with the Entitlement under the said Act of 2005 will apply only after the compliance is made with all the provisions including delineation of irrigable command area of Associations under the said Act of 2005. Clause (c) of Section 11 of the said Act has nothing to do with the Entitlement or delineation as it deals only with the situation arising due to scarcity. Explanation to Section 31A merely provides that Section 78 of the second Act of 2005 shall apply where the second Act of 2005 is not made applicable.

Hence, to such area, the provisions of the said Act of 1976 shall continue to apply.

151. It will be also necessary to deal with Section 31B of the said Act of 2005 which reads thus:

“31B. Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any order, judgment or decree of any court, tribunal or authority, any person or Water User Entity to whom a permission, allocation, sanction, authorization or Entitlement of water has been granted by the High Power Committee or the River Basin Agency or the State Government, prior to the 17th September 2010, being the date of commencement of section 1 of the Maharashtra Water Resources Regulatory Authority (Amendment and Continuance) Act, 2011, shall be deemed to have been granted, in accordance with the provisions of this Act and accordingly the same shall continue and no such person or Water User Entity shall be required to obtain fresh permission, allocation, sanction, authorization or Entitlement to draw water.”

152. Section 31B deals with the permission or sanction or authorization granted to the Water User Entity as defined under Clause (c) of Section 2 of the said Act of 2005. We have already rejected the argument that right of Block holders under the said Rules of 1934 has been saved.

153. As stated earlier, the second Act of 2005 operates in a field which distinct from the field of the said Act of 2005. The second Act of 2005 is essentially enacted for allowing the management of

irrigation system by farmers by providing water from public canal system to Water Users' Associations on volumetric basis. As far as the Act of 2005 is concerned, it essentially deals with the equitable and sustainable management, allocation and utilization of water resources which will include the water in basins and sub-basins. The second Act of 2005 essentially deals with the provision made for supply of water from public canal system. We have already referred to the provisions of the second Act of 2005 which provide for formation of Water Users' Association at various levels. It provides for delineation of irrigable command area of the Associations. It is provided by virtue of Section 31A of the said Act of 2005 that unless the provisions of the said Act of 2005 regarding delineation are complied with, the Entitlement under the said Act of 2005 should not be fixed.

ARGUMENT OF OVERRIDING EFFECT OF THE
SECOND ACT OF 2005 ON THE PROVISIONS OF THE
SAID ACT OF 2005

154. Section 65 of the second Act of 2005 is important, which reads thus:

“65. The provisions of the sections 11 to 14 and section 22 of the Maharashtra Water Resources Regulatory authority Act, 2005 shall apply in implementing this Act and the rules made thereunder.”

It provides that the provisions of Sections 11 to 14 and Section 22 of the said Act of 2005 shall apply in implementing the provisions of the Second Act of 2005 and the Rules framed thereunder. Sections 11 and 12 incorporate the principles incorporated in Clause (b) of Article 39 of the Constitution of India and, therefore, the concept adopted by the second Act of 2005 is that there has to be an equitable distribution of water. Therefore, while exercising the power under the said Act of 2005, all the authorities shall be bound by what is provided in Sections 11 to 14 and Section 22 of the said Act. Section 22 provides for disputes redress mechanism as regards the disputes over water Entitlements. Therefore, it cannot be said that the second Act of 2005 has overriding effect on the said Act of 2005.

155. There is one more important provision of the said Act of 2005 viz. Sub-section (2) of Section 2 which provides that the words and expressions used and not defined under the said Act but defined in various irrigation or water resources related Acts in the State shall have the meanings respectively assigned to them in those Acts. Therefore, wherever the said Act is silent, the definition in the second Act of 2005 can be read into the said Act of 2005. Similarly, the definitions under the said Act of 1976 can be looked into such as definition of 'canal' which is not defined in the said Act of 2005.

CHALLENGE TO THE ORDERS OF THE REGULATORY
AUTHORITY

156. In the light of the interpretation put by us to the provisions of various enactments including said Act of 2005 and the second Act of 2005, now the challenge to the orders passed by the Regulatory Authority and especially the order dated 19th September 2014 will have to be considered. We have minutely perused the order dated 19th September 2014. The first five pages of the said order up to Paragraph 2 are introductory in nature which extensively reproduce the order passed by this Court on 5th May 2014. Under the said order, this Court directed the Regulatory Authority to consider the representations of Shri Prashant Bhansilal Bumb and Shri Y.R. Jadhav. Time bound programme was laid down by the Division Bench. The Division Bench authorised the Regulatory Authority to issue interim directions to the State Government for release of water from all concerned dams in such quantity, for such period and in such manner as the Regulatory Authority considers it appropriate. In Paragraph 3 on Page 6, it is specifically recorded that on 9th July 2014, 31st July 2014, 11th August 2014, 13th August 2014 and 20th August 2014, the Regulatory Authority heard the parties on the “issue of equitable distribution of water in Godavari basin from upstream reservoirs to the Jayakwadi reservoir”. It also records that the Intervenors and Caveators objected to the release of water from upstream dam to Jayakwadi dam. This indicates that the

parties were heard on the issue arising under Clause (c) of Section 11 of the said Act of 2005. From Page 7 onwards, the Regulatory Authority has noted in detail the submissions made from time to time by different parties on different dates fixed for hearing. Apart from the argument regarding rights created in favour of the block holders, the arguments reproduced in the order show that the parties were aware that the Regulatory Authority was considering the issue of equitable distribution of water in Godavari River sub-basin in the context of releasing water to Jayakwadi dam. The arguments were also heard on the report of Godavari Study Group (Mendhegiri Committee Report). Paragraph 8.5 of the said order refers to equitable distribution of water under Clause (c) of Sub-section (6) of Section 12. The arguments are quoted up to Page 27. On Page 28, the points for determination have been framed, which read thus:

- “(1) Whether the equitable distribution of water should be made under section 11 (c) or under section 12(6)(c) of the MWRRA Act, 2005?
- (2) Would the equitable distribution of water in the Godavari Basin take away the protection accorded to the “block system”?
- (3) Whether the GSG Report can be considered as the basis for the equitable distribution of water in the Godavari Basin?

- (4) Whether the equitable distribution of water in the Godavari Basin can be decided by the MWRRA?”

157. These points were framed after hearing the parties and after considering the material. The first point was answered by the Regulatory Authority by observing that the Petitioners were not Entitlement holders and, therefore, they cannot ask for fixation of Quota under Sub-clause (c) of Sub-section (6) of Section 12. The Regulatory Authority observed that the principle in Sub-clause (c) of Sub-section (6) of Section 12 does not by itself become a stand alone provision which can be applied independent of the function of Quota fixation at basin level, sub-basin level or project level. We have already approved the said interpretation put by the Regulatory Authority for the reasons which we have recorded. Thereafter, on Page 40, the Regulatory Authority analyzed the provisions of Clause (c) of Section 11. As far as the issue regarding block system is concerned, the argument of block holders was not rejected but ultimately on Page 45, the Regulatory Authority came to the conclusion that the quota of Water Users' Association will include the quota for the blocks as approved and the quota of Water Users' Association will have to be adjusted as per the guiding principles of equitable distribution provided under Sub-section (6) of Section 12. On several dates, the parties were heard by the Regulatory Authority. From the submissions canvassed which are

recorded in the order, it appears to us that the parties were fully aware of the issues which were ultimately considered by the Regulatory Authority. From the arguments which are reproduced in the order, it is apparent that the parties were fully aware that the Regulatory Authority was hearing the issue of equitable distribution of water from Godavari Sub-basin during the period of scarcity. While dealing with the Point No.4, the Regulatory Authority observed that the representation made by the Petitioners seeks equitable distribution of water in the upper Godavari Sub-basin, being adversely affected on account of scarcity at Paithan Dam. The Regulatory Authority was not expected to write a judgment like a Civil Court. Nevertheless, the Regulatory Authority has meticulously recorded the submissions made by the parties and has even framed points for determination. From Point No.1 framed by the Regulatory Authority, we find that a specific point on the Clause (c) of Section 11 of the said Act of 2005 was framed. The parties were also heard on the Mendhegiri report. Hence, the argument based on the breach of the principles of natural justice deserves to be rejected. On Pages 52, 53 and 54, the Regulatory Authority has recorded the reasons for coming to the conclusions which are recorded in Paragraph 10. The determination in Paragraph 10 of the order passed by the Regulatory Authority has been already quoted above. Hence, even the argument of non-application of mind will have to be rejected.

QUORUM OF THE REGULATORY AUTHORITY

158. Another argument was canvassed in support of the challenge to the order dated 19th September 2014 is that the arguments were heard only by the two members Smt. Chitkala Zutshi, Member (Economy) and Shri S.V. Sodal, Member (Engineering). The constitution of the Regulatory Authority is under Section 3 of the said Act, 2005. Sub-section (4) of Section 3 provides that the Regulatory Authority shall consist of Chairperson and two other members. Sub-section (1) of Section 9 of the said Act provides that the Authority shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum) as may be determined by the Regulations. The clause (3) of Regulation 9 of the Maharashtra Water Resources Authority (Conduct of Business) Regulations, 2013 provides that the quorum for the meeting shall be of two members. Moreover, Section 10 of the said Act of 2005 is relevant which provides that no act or proceedings of the Regulatory Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Regulatory Authority. Therefore, the argument that the Regulatory Authority lacked quorum will have to be rejected.

ROLE PLAYED BY SHRI S.V. SODAL

159. Another argument was canvassed about the role of one of the two members Shri S.V. Sodal. It was pointed out that in some other Writ Petition, this Court found that Shri S.V. Sodal, acting as a Member of the Regulatory Authority entertained a bias including a pecuniary bias which ultimately led to the resignation of Shri Sodal. We may note here that allegation of bias was made in a case pertaining to Ujani reservoir which is totally unconnected with the controversy involved in the present case. It involved determination of issue of equitable distribution of water pertaining to completely a different sub-river basin for the benefit of completely different dam. In fact, in the cases in hand, there is no specific allegation made with material particulars by any of the Petitioners that Shri S.V. Sodal had a bias pecuniary or otherwise in the subject matter of the order dated 19th September 2014. The allegations in the Petition relate to the alleged conduct of Shri S.V. Sodal during the hearing of dominating the proceedings. In our view, even assuming that the said allegations are true, the same will not vitiate the order dated 19th September 2014 as it is not shown that due alleged dominating conduct of Shri Sodal, the opinion of the other member was influenced .

DIRECTIONS/DETERMINATION IN PARAGRAPH 10
OF THE ORDER:

160. By the order dated 19th September 2014, the determination is made with a view to achieve equitable distribution of water as contemplated by Section 11(c) in Godavari Sub-basin which will apply only during the periods of scarcity. In Clause (b) of paragraph 10, the Regulatory Authority has recorded that an approximate equitable distribution is to be resorted to when hydrological drought occurs. It also records that during the period of floods, the normal reservoir operation will switch over to flood regulation. There are directions issued by the Regulatory Authority to the State from Clauses (q) onwards of paragraph 10. If these directions are considered, we find that there will not be any quarrel with the said directions and especially the directions regarding implementation of the provisions of the second Act of 2005. Clause (q) of Paragraph 10 of the said order dated 19th September 2014 directs that the order of the State Government issued vide its letter dated 6th September 2004 (Exhibit “D” to PIL No.172 of 2013) be strictly observed. As pointed out earlier, by the said letter dated 6th September 2004, the State Government communicated its decision of imposing ban on undertaking any new projects in the upstream of Jayakwadi

dam. It is not the case of any party that the said decision has been revoked. So long as the said decision is not revoked, the said direction will continue to operate and has to be implemented. Therefore, there is nothing wrong with the said direction. Clause (r) of Paragraph 10 directs that in case of upstream perennial crops and horticulture, drip irrigation has to be strictly imposed as the ground water conjunctive use with drip irrigation will help in increasing water use efficiency. This is a direction issued by a Committee of Experts for increasing water use efficiency. In writ jurisdiction, we cannot interfere with the said direction. The Clause (s) of Paragraph 10 of the said order dated 19th September 2014 records that there must be an upper limit to the diversion of irrigation water to non irrigation purposes. In short, the Regulatory Authority found that the irrigated area has been reduced. Therefore, it directed the State Government to carry out the restoration of the curtailed irrigated area in a time bound manner. The direction in Clause (t) is for review of the projects completed in Godavari Sub-basin. It lays down the requirement for deciding new parameters like the command area and water availability. Then comes to Clause (u) which only directs the State Government to consider suggestion of the use of a closed pipeline for drinking and industrial water supply. This direction was issued on the basis of what is provided in the State Water Policy in the year 2003. The said direction is to the State Government to merely consider suggestions in the light of its own Water Policy. Clause (v) of

Paragraph 10 is based on the submissions made before the Regulatory Authority that there has been unauthorized lifting of water from backwaters of Jayakwadi. Therefore, the Government was directed to exercise rigorous control on the unauthorized pumping of water from Jayakwadi backwaters. There cannot be any dispute about the legality and validity of the said directions. The last direction is in Clause (w) of Paragraph 10 of the said order. Even during the course of hearing before this Court, it was pointed out that there is no delineation of Jayakwadi command and that the Water Users' Associations at four levels in terms of the second Act of 2005 have not been formed. There is a direction issued to the State Government to submit a road map for achieving the said target. Though written submissions filed by the State Government claim that such a road map was submitted, as of today, nothing concrete has been done. Therefore, while disposing of these Writ Petitions, we propose to issue directions in terms of Clause (w) of Paragraph 10 of the said order dated 19th September 2014 to the State Government.

161. From the impugned order, it appears to us that the submissions canvassed on the basis of Applications made by Shri Prashant Bumb and Shri Y.R. Jadhav were based on the lack of availability of water in Jayakwadi Dam due to scarcity. On Page 51 of the impugned order, the Regulatory Authority has noted the admitted

position that the Jayakwadi Project was to irrigate about 2.77 lacs Hectares of area from Aurangabad, Jalna, Beed and Parbhani Districts through Paithan left bank and right bank canal. It notes that from the year 1975 when the project was completed till the year 2013, the Dam has been filled to its full designed live storage capacity only 5 times. Therefore, it is noted that the Paithan Dam has experienced water deficit for 34 out of 39 years.

162. It appears from the impugned order that the Regulatory Authority was aware of the repeal of the Regulatory Authority Rules, as a result of which, the provisions made therein such as definition of “water scarcity” or “distress” cannot be applied. The Regulatory Authority referred to the Manual for Drought Management of the Government of India which defines “Hydrological Drought”. In the said Manual, the Hydrological Drought is defined as a deficiency in surface and sub surface water supply leading to a lack of water for normal and specific needs such as minimum drinking, irrigation and minimum industrial use. After noting that Jayakwadi Dam had shortage of water for 34 out of 39 years, the Regulatory Authority observed that the equitable distribution is required to overcome this situation of hydrological drought. The Regulatory Authority which is a body of experts was of the view that there is no material difference between the hydrological drought and the concept of scarcity. There is no reason to

interfere with this view especially in the light of our finding that in absence of the definition of the word scarcity under the said Act of 2005, recourse can be taken to its ordinary meaning.

RELIANCE PLACED BY THE REGULATORY AUTHORITY ON
THE GODAVARI STUDY GROUP (MENDHEGIRI REPORT)

163. Now we deal with the issue of the legality of the action of Regulatory Authority of referring to and relying upon the report of the Godavari Study Group (Mendhegiri Committee Report). Before we turn to the said report, we must take a note of the Maharashtra State Water Policy of July 2003 which is stated to be in force at least till these matters were heard. The Mendhegiri Committee has extensively considered and has relied upon the Maharashtra State Water Policy. It is true that the Integrated State Water Plan as provided under the said Act of 2005 is not yet ready, but nevertheless, the State Water Policy of July 2003 (for short “Water Policy”) is in force. The objectives of the Water Policy are set out in Clause 2.0 of the Policy, which reads thus:

“2.0 Maharashtra State Water Policy

The objectives of the Maharashtra State Water Policy are to ensure the sustainable development and optimal use and management of the State's water resources to provide the greatest economic and social benefit for the people of the State of Maharashtra in a manner that maintains important ecological values within rivers and adjoining lands.”

164. Clause 2.1.1 of the said Water Policy reads thus:

“2.1.1 Integrated, Multi-sectoral and River Basin Approach-

To adopt an integrated and multi-sectoral approach to the water resources planning, development and management on a sustainable basis taking river basin/sub-basin as a unit.

The water resources of the State shall be planned developed, managed with a river basin and sub-basin as the unit, adopting multi-sectoral approach and treating surface and sub-surface water with unitary approach.

The management of the water resources of the State shall be decentralized to the lowest practicable level on the basis of hydrologic or watershed units. The State shall be divided into 5 river basin drainages and appropriate river basin agencies shall be established within each river basin. Water resources development corporations shall be established within each river basin.

The river basin agencies shall have the responsibility and authority for the integrated planning development, and management of the water resources and watersheds of their respective river basins; for flood management, drought management and operation and maintenance water storage and delivery infrastructure. These river basin agencies shall prepare integrated river basin plans with the effective inclusion and participation of representatives of all basin water user entities, categories of water users and other stake holders. Such basin plans shall include a development plan, a long-term operations plan, a monitoring plan, a comprehensive watershed management plan, an efficiency improvement and water conservation plan and a waste minimization and water quality management plan.”

165. Clause 2.1.2 of the Water Policy provides for preparation of the State water resources plan which admittedly is not in existence.

Clause 2.8 of the Water Policy deals with the drought management which reads thus:

“2.8 Drought Management-

Drought-prone areas shall be made less vulnerable to drought associated problems through soil-moisture conservation measures (farm tanks, nalla training, percolation tanks, K.T. Weirs), water harvesting practices, minimisation of evaporation losses, development of the groundwater potential including recharging and the transfer of surface water from surplus areas where feasible and appropriate.

Pastures, forestry or other modes of development which are relatively less water-demanding shall be encouraged. In planning water resource development projects, the needs of drought-prone areas shall be given priority. Dependability of projects be lowered subject to economic viability. Modern irrigation systems such as drip and sprinkler irrigation be encouraged. In planning and regulation of irrigation projects, eight-monthly cropping pattern shall be adopted.

The distress in water availability during deficit period shall be shared equitably amongst different sectors of water use and also amongst upstream and downstream users. The norms of supply of water for domestic use shall be different from different river sub-basins of the State depending upon the water availability status of the areas concerned.

Relief works undertaken for providing employment to drought-stricken populations shall preferably be for drought proofing. Water resources development works shall be given top priority.”

166. Clause 3.0 of the Maharashtra State Water Policy of 2003 deals with the Water Resources Planning and Principles thereof. Clause 3.2 provides that Water Resources Development Projects shall be

planned according to the present and future availability with basin/sub-basin as a unit of development. Clause 4.0 lays down priority of water usage, which reads thus:

“4.0 Priority of Water Usage-

Water resources shall be allocated in accordance with the following general principles:

- (a) Domestic use for drinking, cooling, hygiene and sanitation needs including livestock;
- (b) Industrial, commercial use and agro-based industrial use;
- (c) Agriculture and hydropower;
- (d) Environment and recreation uses;
- (e) All other uses.”

167. The Godavari Study Group was formed by the State Government under the Government Resolution dated 29th January 2013 to formulate the guidelines for integrated operation of reservoirs during filling period in upper Godavari (upto Paithan dam) sub-basin so that likely water scarcity situation in Paithan dam may not be attained and to develop mechanism for effective implementation of such guiding principles which are also part of the terms of reference. The Government Resolution records that the committee was constituted as per the assurance given by the Government in Public Interest Litigation No.100 of 2012 before the Aurangabad Bench. Shri Mendhegiri who was the Director General, Water and Land Management Institute of the State Government at Aurangabad was the Chairman. The Senior Chief

Engineers at Nashik, Aurangabad and Pune were the members apart from the Executive Director, Aurangabad and the Chief Engineer (Planning and Hydrology). Thus, the Committee consisted of experts in the field. When the Committee is of experts in the field, the argument that a representative of a particular area is not included has no substance. We have carefully perused the report of the Committee. The Committee seems to have relied upon voluminous data. The Committee studied hydrological aspect of water planning of Jayakwadi Project and its present status. The Committee also studied rainfall characteristics and inflows in various reservoirs in the sub basin area. The Committee considered operating strategy for reservoir operation with a view to ensure approximate equitable distribution of water. It is material to note that in the impugned order dated 19th September 2014, the Regulatory Authority has noted that except one party, none of the parties had raised any objection to the report. The Committee in its report dealt with several operating strategies. The Committee ultimately came out with the suggestion of step by step synchronization of storages in all reservoirs during the filling period. The principles were laid down in the form of operating rules which will help in achieving the approximate equitable distribution of water amongst different categories and uses. As far as the Godavari Study Group Report (Mendhegiri Report) is concerned, there is a specific observation made on Page 46 of the order dated 19th September 2014 made by the

Regulatory Authority that none of the parties raised any objection on the facts relied upon in the said report. This observation cannot be questioned as none of the parties approached the Regulatory Authority for any clarification on this aspect. In short, the Regulatory Authority observed that conclusions drawn in the report were disputed by one party but the facts relied upon therein were not disputed by any one. The Regulatory Authority looked into the Government Resolution under which the said Study Group was constituted which is dated 29th January 2013. One of the terms of the Reference was to formulate the guidelines for integrated operation of reservoirs during filling period in upper Godavari (upto Paithan dam) sub-basin so that likely water scarcity situation in Paithan(Jayakwadi) dam may not arise. Another term of Reference was to develop mechanism for effective implementation of such guiding principles. On Page 49, the Regulatory Authority referred to the voluminous data considered by the Committee. Thereafter, the Regulatory Authority has referred to the recommendations of the Committee and observed that the findings of the Godavari Study Group can be called to the aid of the Regulatory Authority in addressing the issues of equitable distribution of water during scarcity while making determination under Section 11(c). The Regulatory Authority referred to the State Water Policy and observed that the findings of the Godavari Study Group in its report(Mendhegiri report) are consistent with the relevant principles laid down in the

State Water Policy. The Authority observed that the provisions of the said Act do not prevent the Regulatory Authority from relying upon the findings of any study carried out by any technical body or any other body. It is not the finding of the Regulatory Authority that the report was accepted by the State Government. It is an admitted position that the report is neither rejected nor accepted. All that the Regulatory Authority has observed is that the report being a report of an expert body, it can be considered as a material for deciding the issue.

168. At this stage, we must go to back to the provisions of the said Act of 2005 and examine the powers of the Regulatory Authority. Section 13 confers various powers of Civil Court on the Regulatory Authority. There is a power to order production of documents or other material as evidence. There is a power to requisition any public record. Regulation 26 of the said Regulations provides that the Regulatory Authority may take assistance of any institution, consultants, experts, engineers and such other technical professional persons as it may consider necessary. Regulation 20 empowers the Regulatory Authority to take opinion or advise of an expert. Moreover, there is a specific power vesting under Sub-section (9) of Section 8 of the said Act to appoint consultants to assist the Authority in the discharge of its functions and duties. Under Clause (d) of Sub-section (1) of Section 4 of the said Act, the Regulatory Authority is empowered to invite five

special invitees for its meeting who are experts in the engineering, agricultural, drinking water, industry, etc. Therefore, there is nothing illegal about the action of the Regulatory Authority of taking into consideration the report of the Godavari Study Group.

169. The report shows that the Mendhegiri Committee took into consideration the earlier water availability status for Jayakwadi Project including the last study of April 2013. The Committee consider rainfall characteristics. The Committee considered State Water Plan. It is true that the Committee has taken into consideration the Regulatory Authority Rules as at the relevant time, the said Rules were not repealed. The Committee considered the Government Resolution dated 7th March 2001 in which it is stated that no sanction for supply of water for kharip crop be given until live-storage reaches upto 33%. The Committee was of the view that the release of water from upper reservoir may be done in September till 15th October so that the Paithan dam reservoir reaches the actual live-storage equal to or more than 33% of design live storage as of 15th October of every year. The 33% criterion is based on the footing that such storage facility will at least satisfy the minimum annual demand. The Committee considered scenario covering six different conditions of probabilities of inflows in Jayakwadi Dam including the worst year and good year. The scenarios are as under:-

- (i) 100% dependable year;
- (ii) 90-% dependable year;
- (ii) 75-% dependable year;
- (ii) 50-% dependable year;
- (ii) Average yield
- (ii) Good year;

170. The Committee observed that in case of 100% dependable year, there will be at least 20% reduction in sanctioned demands of domestic use, industrial use and kharif seasonal crop and it will not be possible to provide water for rabi and HW crops. In case of 90% dependable year, the reduction in sanctioned demands of domestic use, industrial use and kharif seasonal crop will be the same i.e. 20%. However, it will be possible to provide 32% of rabi demands for protective irrigation but it will not be possible to provide water for HW crops. The Committee observed that the scenario will be the same in case of 75% dependable year subject to modification that 52% of rabi demands can be made. In case of 50% dependable year, the scenario will be the same with the modification that it will be possible to provide 72% rabi demands. In case of average yield, there will be 20% reduction in sanctioned demands of domestic use, industrial use, kharif use and rabi use. Only during the good year, the water adequate will be 100% design demands. The guiding principles are provided by the Committee in Paragraph 15.6.

171. Now coming back to the impugned order dated 19th September 2014, the Regulatory Authority relied upon the Tables-5 and 6 which are reproduced in this Judgment.

172. The Regulatory Authority decided to accept guiding principles laid down by the Godavari Study Group. After referring to the guiding principles, the Regulatory Authority observed that it will be logical to regulate upper reservoir as per the guiding principles after taking review of storage position in upstream complexes, storage in the Jayakwadi Dam and after taking into consideration the likely effect of return rainfall normally in the first fortnight of October so that the equitable distribution of available water among upstream and downstream users is achieved by the end of October. Therefore, the Regulatory Authority directed that the storage position of Jayakwadi dam should be observed in first fortnight of October. The storage position in upstream complexes should be also considered after duly accounting for the actual kharif use. Thereafter, the Regulatory Authority laid down that the equitable distribution should be effected if the hydrological drought has occurred.

173. Before we deal with the actual strategies directed to be adopted, we must deal with some controversy regarding the concept of

hydrological drought. This concept is taken from the Manual for Drought Management published in by the Ministry of Agriculture, Government of India, New Delhi, in November 2009. A copy of the manual is placed on record which explains the concept of drought. The manual records that it is very difficult to provide a precise and universally accepted definition of drought due to its varying characteristics and impacts across different regions of the world, such as rainfall patterns, human response and diverse academic perspectives. The classification of droughts into three categories such as (i) Meteorological drought, (ii) Hydrological drought and (iii) Agricultural drought is made on the basis of its impact. The Hydrological drought is defined as deficiencies in surface and subsurface water supplies leading to a lack of water for normal and specific needs. It provides that even in times of average precipitation, such condition may arise due to increase usage of water which diminishes the reserves. The Meteorological drought arises due to deficiency of precipitation from the expected or normal levels over an extended period of time. The manual provides that the Meteorological drought usually precedes other kinds of drought. The moderate drought occurs when the rainfall deficit is 26% to 50% and severe drought occurs when the deficit exceeds 50%. As far as the Agricultural drought is concerned, the manual provides that it is triggered by meteorological and hydrological droughts when soil moisture and rainfall are inadequate during the crop

growing season causing extreme crop stress. The Hydrological drought arises when there is a deficiency in surface water supply leading to lack of water from normal and specific needs. The condition of Hydrological drought may arise when there is a deficiency in precipitation (Meteorological drought) or sudden increase in usage of water thereby diminishing the water reserves.

174. In the impugned order dated 19th September 2014, the Regulatory Authority has referred to the said concepts under the manual published by the Government of India and has noted that Jayakwadi dam had suffered from a shortage of water for irrigation for 34 out of 39 years of its existence. Clause (c) of Section 11 of the said Act applies during the periods of scarcity. Thus, the period of scarcity will also include the period of Hydrological drought giving jurisdiction to the Regulatory Authority to determine the priority of equitable distribution of water available at the water resources project and river basin during the periods of scarcity. Therefore, we do not find any error with the Regulatory Authority which relied upon the concept of Hydrological drought as provided in Manual for Drought Management published by the Agricultural and co-operation Ministry of Agriculture, Government of India.

175. In the impugned order, the Regulatory Authority has observed that there must be sufficient water available in upstream projects before water can be released downstream. The Regulatory Authority also considered the issue of transmission losses in the river carrier system during the equitable distribution process. It is observed that the equitable distribution has to be resorted to at the end of monsoon season so that the river carrier system is also in a saturated condition which is less prone to losses. The Regulatory Authority observed that evaporation losses cannot be avoided in the system by virtue of topographical nature of the sub-basin.

176. Thereafter, the Regulatory Authority has observed that the operating strategy should be chosen for regulating reservoirs by observing the storage capacity in the upstream complexes after duly accounting for the actual kharif use. Even storage position in Jayakwadi dam will have to be observed at the same time. It is further provided that the equitable distribution should be effected if hydrological drought has occurred. It is further provided that such distribution is to be achieved through a step by step synchronization of the storages in the upper reservoirs upto Strategy-III as given in Table 6. We have already referred to the Table 6 which refers to percentage of storage. The Regulatory Authority further directed that if any complex of reservoir on the upstream side is short of water to meet its own

minimum needs governed by the respective strategy, no release of water from that complex will be allowed.

177. In Clause (b) of Paragraph 10 of the operative part of the impugned order, it is reiterated that the equitable distribution has to be resorted to when hydrological drought occurs. This equitable distribution is achieved through a step-by-step synchronization of the storages in the upper reservoirs upto Strategy-III in Table 6 which provides that the equitable distribution should be resorted to so that the requirement of Strategy-I is first met fully for all upstream dams. The Strategy-I provides for storage of 37%, 49%, 56,%, 61%, 64% and 73% respectively in Jayakwadi, Mula, Pravara, Gangapur, Darna and Palkhed Complexes. Clause (b) further provides that if sufficient storage is available in the upstream reservoirs, then the Strategy-II will come into play. The Strategy-II provides for storage of 54%, 65%, 74%, 74%, 84% and 73% respectively in aforesaid complexes. It provides that if sufficient storage is thereafter available in the upstream reservoirs, then the Strategy-III will come into picture. The Strategy-III provides for storage of 65% in Jayakwadi, 79%, 88%, 82%, 102% and 82% respectively in Mula, Pravara, Gangapur, Darna and Palkhed Projects. The synchronization is to be effected during the filling period. It is stated that while achieving the equitable distribution, an uniform cut of 5% /10%/15% as the case may be in the utilizable water of all

upstream storages shall be applied to meet the requirement of storage of the lower reservoir for the chosen strategy. More importantly, it is directed that if the live storage at Paithan dam in the first fortnight of October is 65% and above, the question of releasing water from the upstream storages does not arise. Clause (i) of Paragraph 10 of the operative part of the order dated 19th September 2014 provides that guiding principles laid down will be reviewed each year. After having carefully analysed the impugned order dated 19th September 2014, it is impossible to interfere with the determination made in Paragraph 10 of the said order by the body of experts. As stated earlier, there are all safeguards which protect the citizens of upstream area as the equitable distribution is to be made only when the hydrological drought occurs. It also provides that if the storage in Jayakwadi dam in the first fortnight of October is found to be 65% of its design capacity, there shall be no release of water from the upstream reservoirs. Except for the finding recorded by the Regulatory Authority as regards the right of Block holders, there is no reason to interfere with the order of the expert body. The expert body has taken into consideration all the relevant aspects. There is no perversity in the said order. The order is not contrary to law. We cannot substitute our own opinion in place of the well considered view of the body of Experts. Moreover, the order of equitable distribution is to operate only when there is a hydrological drought and only when in the first fortnight of October, the storage of

Jayakwadi is less than 65%. In addition, the principles laid down are subject to review each year.

178. As far as the subsequent orders of the Regulatory Authority are concerned, the order dated 18th November 2014 was passed on an Application made by the said Irrigation Corporation for clarification of the order dated 19th September 2014. While disposing of the said Application, the Regulatory Authority observed that the order dated 19th September 2014 ought to have been implemented by the said Irrigation Corporation in the month of October itself and that the said Irrigation Corporation should not have vacated till the end of month. There are certain clarifications issued regarding definition “Hydrological Drought”. Further order dated 10th March 2015 was on the basis of the order of this Court dated 2nd February 2015 directing the Authority to consider whether there could be any further release of water during the said year. The Regulatory Authority had issued various directions in Paragraph 5 and came to the conclusion that it is not possible to release any further water from upstream reservoirs. The directions given to the said Corporation are in Clauses (A) to (D), which read thus:

“However, we would like to give the following directions to the ED, GMDC for implementation of our order dated 19 September 2014 in future:

- (A) The Ed, GIMDC should undertake a review of the storage position of Jayakwadi reservoir and all upstream storages on the 15 October every year.

- (B) Considering the storage position of Jayakwadi reservoir as on the 15 October, he should decide the appropriate strategy of equitable distribution from Table 6 vide Para 10(b) of MWRRA Order.
- (C) In case of any difficulty in implementation, he should approach the Authority directly and not later than 4 days after the 15 October and seek our clarification.
- (D) he should complete the exercise of equitable distribution by the end of October every year of hydrological drought.

Any act of omission on the part of the ED, GMIDC will attract the action under Section 26 of the MWRRA Act.

6.0 MWRRA Direction:-

In view of the above background we are of the view that the following direction is in order: no further release of water from any of the upstream reservoirs is to be made to Jayakwadi reservoir during the current water year (till 31 May 2015).

With the above, the matter stands disposed of.”

There cannot be any quarrel with the directions in paragraph 5.0 as the same are for the implementation of the order dated 19th September 2014.

179. Another relevant order is dated 9th November 2015 which makes an adjudication in terms of the directions of this Court dated 30th October 2015. All the three members of the Regulatory Authority came to the conclusion that the order dated 17th October 2015 of

releasing 12.84 TMC water from upstream dams to Jayakwadi reservoir is perfectly in order and is inclusive of evaporation of losses. As observed in the earlier, the order dated 17th October 2015 has no significance now as there is no question of any further implementation thereof.

180. The challenge to the order dated 19th September 2014 and all subsequent orders of the Regulatory Authority must fail subject to the findings recorded by this Court on the right of Block holders.

OTHER PRAYERS:

181. Before we deal with the prayers in the Petitions, we need to deal with the prayer made by Shri Rajendra H. Jadhav for directing the Government to provide direct gravity pipelines from upstream to downstream reservoirs. Though it is not possible for us to issue a writ as prayed, the said issue needs to be considered by the State Government as it is contended that that is the only method for avoiding evaporation losses. Nonetheless, we do not feel that it may not be an impossible task. The distance is not too much. We are in an era that has seen pipelines of hundreds of kilometers in our own country carrying natural gases, which are more prone to evaporation. Here we are concerned with water which is the basic requirement for human

survival and development. The requirement of petroleum may be secondary to that of water. In this situation, we do not see as to why provision for such water transportation from areas which receive sufficient rainfall, and when water is seen to be rendered lasting utility being drained into, the sea cannot be “caught” and transported by pipelines to areas like Marathwada and other such areas where there is a situation of absolute scarcity year after year. We are sure that the State Government would not feel lacking in any means to achieve this object in the large welfare of the people of the State. This is more so when sometime back, it was very much a proposed plan of action, however, subsequently derailed for no reason, much less justifiable. It is thus imperative for the State to suitably consider these issues reaping advantage of the high technological advancement.

182. Another issue raised in the Public Interest Litigation No.170 of 2013 is based on a report submitted by the Committee appointed by the State Government in the year 2001 which is at Page 124 of the said PIL. The said report provides for a scheme to divert quantity of 80 TMC of water which goes waste on the western side of Sahyadri range of Nashik and Thane districts. The said water from various rivers flows to the Arabian sea. The scheme in the report is for diverting the said water to Godavari / Tapi river sub-basins. It is submitted that though the State Government is prepared to spend huge amount on preparation

of Monuments in sea by spending a sum of Rs.400/- crores and though the huge amount of more than Rs.3,700/- crores is spent on drought relief work in the year 2014-2015, the State Government is not willing to consider the suggestions in the said report. In our view, even this suggestion needs to be considered by the State Government by taking appropriate decision thereon. The State Government can always take benefit of High Technological advancement. Though it is submitted that the said scheme is submitted to the Central Government, there is no material on record to substantiate the said case. In the written submissions of the State Government, there is a reference to the said report. It is stated therein that only 23 gravity flow schemes have been sanctioned out of which 6 have been implemented. It is stated that after all 23 schemes are completed, it will divert only 2.24 TMC water to Godavari basin.

183. Now we are dealing with the prayers made in different Petitions. In Public Interest Litigation No.78 of 2014, there is a prayer made for enjoining the State Government to exercise the powers under Section 23 of the said Act and to issue directions to the Authorities for regularly supplying the water to the left and right bank canals of Pravara, Mula and Godavari river basin. There is also a direction against the Regulatory Authority to pass necessary orders under Section 11 of the said Act for protecting the interests of the upstream

agriculturists. As far as the exercise of powers under Section 23 of the said Act is concerned, we propose to direct the State Government to look into the representations made by the Petitioners and take appropriate decision thereon. There is a similar prayer in Public Interest Litigation No.211 of 2013 for enjoining the State Government to exercise the power under Section 23 of the said Act. In Public Interest Litigation No.228 of 2014, there is a prayer for issuing a writ of prohibition preventing the State Government from implementing the report of the Study Group appointed which submitted a report known as “Mendhegiri Committee Report”. It is an admitted position that the State Government has neither accepted nor rejected the said report. In Public Interest Litigation No.258 of 2014, there is a challenge to the said report. As stated earlier, the said report is by a Committee of experts in the field. A writ Court cannot go into the merits of the opinion expressed by a Committee of experts.

184. In Writ Petition No.8129 of 2013, the prayer is for diverting the water flowing from various rivers such as Narpar, Damanganga, Ulhas, etc which is being released in Arabian Sea to the river basins of Tapi and Godavari. In Writ Petition No.11240 of 2014, the prayer is that a revised hydrology of Jayakwadi sub-basin be made. In Writ Petition No.11241 of 2014, there is a direction sought to carry out a review of storage capacity and hydrology of all the dams in Godavari

sub-basin. Hydrology is the scientific study of the movement, distribution, and quality of water on Earth, including the hydrologic cycle, water resources and environmental watershed sustainability. In one of the Petitions, it is contended that the storage capacity of Jayakwadi dam has been reduced due to silt. It will be ideal if State Government undertakes hydrology of Godavari sub-basin and takes a review of storage capacity of the reservoirs in the sub-basin. We propose to direct the State Government to take a policy decision in this behalf.

185. In Public Interest Litigation No.174 of 2013, the grievance is about the failure of the State Government to complete the work of dams known as “Bham” and “Waki”. The work of the said dams has commenced prior to the directions contained in the letter dated 6th September 2004. Therefore, we find no difficulty in coming to the conclusion that the State Government needs to complete the work of the said dams in a time frame which may be fixed by the State Government. If the work of Nandur Madhameshwar canal project is incomplete, the State will have to complete the same. In some Petitions, the challenge is to the permission granted to India Bulls to draw water. As this issue is subject-matter of pending proceedings at Aurangabad, we have not dealt with the same.

STATE WATER PLAN:

186. We have already adverted to the Maharashtra State Water Policy of July 2003. Clause 2.1.2 provides for State Water Plan which reads thus:

“2.1.2 State Water Plan

Based on the water resources development and management plan developed by the respective river basin agencies, the state shall prepare a State water resources plan to promote a balanced development and by proper coordination among diverse water uses which shall include structural measures, operational measures, watershed management measures, demand management measures such as conservation, scarcity scheduling and efficient technologies, water pollution control measures and monitoring measures that will assure comprehensive sustainable management of the water resources and equality of water distribution for the benefit of the State and its peoples.”

(emphasis added)

187. There is nothing on record to show that the State Water Plan has been prepared. As the State Government is bound by its own Water Policy, the State Government will have to take appropriate steps for preparing the State Water Resources Plan.

RELEASE OF WATER FOR KUMBHMELA AND OTHER FUNCTIONS:

188. One of the issues canvassed by one of the Intervenors is as regards the release of water for religious ceremony of Kumbhmela in Nashik and for other religious purposes. The objection is to release

water in large quantity for religious purposes especially during the scarcity. The contention is that during the period of scarcity, the determination of the priority of equitable distribution of water can be made only by the Regulatory Authority. The submission is that a large quantity of water cannot be wasted without taking into consideration the other priorities.

189. On this aspect, it will be necessary to consider the priorities laid down in the Maharashtra State Water Policy of July 2003. Clause 4.0 reads thus:

“4.0 Priority of Water Usage:

Water resources shall be allocated in accordance with the following general principles:

- (a) Domestic use for drinking, cooling, hygiene and sanitation needs including livestock;
- (b) Industrial, commercial use and agro-based industrial use;
- (c) Agriculture and hydropower;
- (d) Environment and recreation uses;
- (e) All other uses.”

190. At highest, the use of water for Kumbhmela and for other religious purposes will be covered by the last category “e”. Therefore, according to the Water Policy of the State Government, if sufficient water cannot be allocated for usages in categories (a) to (d) in that

order of preference, there cannot be any allocation of water for Kumbhmela and other religious purposes. In the National Water Policy of 2012, in Paragraph 1.2, it is noted that large parts of India have already become water stressed as the issues related to water governance have not been addressed adequately. It is noted in the said policy that the mismanagement of water resources has led to a critical situation in many parts of the country.

191. Needless to add that in case of scarcity or hydrological drought, in view of Clause (c) of Section 11 of the said Act of 2005, the water cannot be released from the reservoirs by the State for religious ceremonies or religious objects without the Regulatory Authority deciding the issue of priority of equitable distribution of water. Therefore, in case of scarcity or hydrological drought, the State is not entitled to release water from the reservoirs for such purposes without adjudication being made by the Regulatory Authority under Clause (c) of Section 11 of the said Act of 2005.

SUBSEQUENT DEVELOPMENT:

192. After the judgment and order in these Petitions was reserved, on 17th June 2016, the State Government promulgated an Ordinance bearing Maharashtra Ordinance No.XIII of 2016 called as the Maharashtra Water Resources Regulatory Authority (Amendment)

Ordinance, 2016 for amending the said Act of 2005 mainly for the purposes of changing the constitution of the Regulatory Authority.

Section 3A was added by the Ordinance which reads thus:

“3A. Notwithstanding anything contained in this Act, when the Authority cannot be reconstituted under subsection (5) of section 3, for whatsoever reason, the powers, functions and duties of the Authority may be exercised, performed and discharged by a Committee, to be appointed by the Government, by notification in the Official Gazettee, consisting of persons holding the post of the Additional Chief Secretary or equivalent thereto, who shall act as a Chairperson and the Secretary (Water Resources Management and Command Area Development), Water Resources Department and Principal Secretary/Secretary, Finance Department, who shall act as Members thereof; and the said Committee shall cease to exercise the powers, perform the functions and discharge the duties of the Authority after expiry of a period of six months or when the Authority is duly reconstituted, whichever is earlier.”

193. Section 4 was substituted and the substituted Section 4 reads thus:

“4. (1) The Chairperson, the Members and Special Invitees of the Authority shall be appointed as follows:-

(a) the Chairperson shall be a person who is or who was the Officer of the State Government of the Rank of Chief Secretary to the State Government or equivalent thereto or Retired High Court Judge;

(b) one Member shall be expert from the field of water resources engineering;

(c) one Member shall be expert from the field of economics;

(d) one Member shall be expert from the field of ground water management;

(e) one Member shall be expert from the field of law; and

(f) five Special Invitees as may be prescribed shall be, one from each River Basin Agency area, having adequate knowledge, experience or proven capacity in dealing with the problems relating to water resources engineering, agriculture, ecology and environment, drinking water, industry, law, economics, commerce, finance or management for assisting the Authority:

Provided that, at least one Special Invitee shall be a woman:

Providing further that, no two Special Invitees shall be from the same field or group of fields.

(2)(a) The Chairperson of the Authority shall be the person of ability integrity and standing.

(b) The Members of the Authority shall be persons of ability, integrity and standing who have adequate knowledge of, experience in, and proven capacity in, dealing with problems relating to their respective fields:

Provided that, the Members and experts mentioned in clauses (b) to (f) of sub-section (1) of section 4 shall have minimum educational qualification of bachelor's degree of any recognized university or institute and experience of not less than twenty years with proven track record in their respective fields.

(3) The Chairperson or any other Member of the Authority shall not hold any other office of profit.

(4) No person shall be appointed as the Chairperson or other Member, if he has attained the age of sixty-seven years.”

194. Sub-section (1) of Section 5 was amended for constituting a Selection Committee for appointments of the Chairperson and

Members of the Regulatory Authority. The Committee is headed by the Chief Secretary. The said Ordinance was brought into force immediately. Therefore, the State Government will have to take steps for constituting a Selection Committee and thereafter, to constitute the Regulatory Authority in terms of the amended provisions.

SOME OF THE IMPORTANT CONCLUSIONS:

195. We have recorded findings on the various issues in this Judgment. In this paragraph, we are not reproducing all the conclusions and findings recorded by us. Some of the important conclusions can be summarized thus:

- (i) The water flowing through the rivers and water stored in the reservoir/dams is the property of the State. The doctrine of Public Trust will apply and therefore, the State is the trustee thereof. Hence, the public at large is beneficiary of the water. Therefore, no citizen or entity is entitled to claim any preferential right to get supply of water in a particular manner or of a particular quantity except in accordance with the provisions of law. In view of Clause (b) of Article 39 of the Constitution of India, it is an obligation of the State to equitably distribute

the river water and the water stored in the reservoirs/dams so as to sub-serve the common good;

- (ii) The right of water supply under the block system under the Bombay Canal Rules, 1934 is no longer available. Only to that extent, the finding recorded by the Regulatory Authority on the issue of the availability of rights under the block system in the order dated 19th September 2014 is erroneous;
- (iii) Subject to what is stated in clause (ii), the orders dated 19th September 2014, 18th November 2014 and 10th March 2015 passed by the Regulatory Authority do not call for any interference and the same are confirmed;
- (iv) The order dated 17th October 2015 passed by the Irrigation Corporation has worked itself out as the same cannot be now implemented. The challenge to the Government Resolution dated 21st November 2012 in Public Interest Litigation No.170 of 2013 does not survive with the passage of time;

- (v) The provisions of Clause (c) of Section 11 and Sub-section (6) of Section 12 of the said Act are constitutionally valid;
- (vi) We hold that clause (c) of Sub-Section (6) of Section 12 the said Act of 2005 is not an independent or a stand alone provision. Therefore, a direction to independently exercise the power under under clause (c) of Sub-Section (6) of Section 12 of the said Act of 2005 cannot be issued. However, the principles set out therein shall be taken into consideration by the Regulatory Authority while fixing the Quota at project level. However, as doctrine of Public Trust is applicable, the State is under an obligation to make equitable distribution of water available in Godavari Sub-basin;
- (vii) So long as the Government decision reflected from the letter dated 6th September 2004 (Exhibit-D to the PIL No.172 of 2013) is in force, new irrigation projects in the upstream area of Jayakwadi dam cannot be approved. However, we clarify that we

have not made any adjudication upon the legality and validity of the said Government decision;

(viii) All projects which were approved and the work of which was commenced prior to the 6th September 2004 shall be completed by the State Government as expeditiously as possible. This will include the Bham and Waki Project;

(ix) In addition to the implementation of 23 schemes undertaken by the State Government for diverting water flowing from Sahyadri hills towards Arabian sea, the State Government is under an obligation to consider the proposal of diverting the water from the west flowing rivers to Godavari and Tapi sub-basin as recommended in the project report of August 2001 (page 191 of PIL No.170 of 2013) in the light of what is observed in Paragraphs 181 and 182 of this judgment;

(x) The State Government shall be under an obligation to implement all the provisions of the said Act of 2005 and the second Act of 2005 including the

delineation, formation of Water Users' Associations within a time bound schedule;

- (xi) We make it clear that the strategy of release of water from upstream dams laid down by the order dated 19th September 2014 can be applied only in case of scarcity (hydrological drought) and that the principles laid down in the said order are subject to the periodical revision or review by the Regulatory Authority;
- (xii) The State Government will have to consider the prayer made for providing direct gravity pipelines from upstream to downstream reservoirs in the light of the observations made in Paragraph 181 above;
- (xiii) While considering the issue of release of water for religious purposes including Kumbhmela, the State Government shall be bound by the Clause 4.0 dealing with the Priorities of Water Usage in the Maharashtra State Water Policy of July 2003. Therefore, if sufficient water cannot be allocated to usages in higher categories (a) to (d) in Clause 4.0

of the Maharashtra State Water Policy of July 2003, there cannot be any allocation of water for Kumbhmela and for other religious purposes/objects. In case of scarcity or hydrological drought, in view of Clause (c) of Section 11 of the said Act of 2005, the water cannot be released from the reservoirs by the State for religious ceremonies like Kumbhmela or for other religious objects without the Regulatory Authority deciding the issue of priority of equitable distribution of the water.

196. We must record our appreciation for the co-operation rendered by the learned counsel representing the parties and the parties in person.

197. Hence, we pass the following order:

ORDER :

- (a) We hold that the Clause (c) of Section 11 as well as Sub-section (6) of Section 12 of the Maharashtra Water Resource Regulatory Authority Act, 2005 (the said Act of 2005) are constitutionally valid;

- (b) The orders dated 19th September 2014, 18th November 2014 and 10th March 2015 passed by the Regulatory Authority are confirmed subject to the observations made in this judgment and order;
- (c) Except the direction regarding the block system, the other directions issued by the Regulatory Authority in the impugned orders and especially in the Order dated 19th September 2014 shall be implemented by the State in its true letter and spirit;
- (d) We direct the State Government to effectively implement the provisions of the the Maharashtra Management of Irrigation System by Farmers Act, 2005 (the second Act of 2005) especially the Chapters II and III thereof by carrying out the delineation of the areas and by establishing the Water Users' Associations as provided therein. The State Government shall file an affidavit within a period of three months from today providing a time schedule for implementing the provisions thereof. The time schedule shall provide the outer limit of two years from today for completing the

implementation. The time schedule shall be fixed in such a manner that even the provisions of the said Act of 2005 and in particular regarding the Entitlement are implemented within the outer limit of two years:

- (e) The State government and the Regulatory Authority shall effectively implement the provisions of the said Act of 2005. The State government shall determine the Sectoral allocation in terms of Sub-Section (1) of Section 16A within a period of six months from today to enable the Regulatory Authority to decide the criteria for the distribution of the Entitlements as provided in clause (a) of Section 11. In the affidavit to be filed by the State Government, the schedule of implementation of the provisions of the said Act of 2005 shall be set out with special reference to Sections 16A, clauses (a) and (d) of Section 11 and Sub-Section (6) of Section 12 thereof. The implementation shall be made within a period of two years from today;

- (f) We direct the State Water Board constituted under Sub-section (1) of Section 15 of the said Act of 2005 to prepare a Draft Integrated State Water Plan within a period of four months from today;
- (g) We direct the State Water Council constituted under Sub-section (1) of Section 16 of the said Act to approve the said Integrated State Water Plan with such modifications as may be necessary, within a period of four months from the date on which the draft is submitted by the State Water Board to the State Water Council;
- (h) We direct the State Government to constitute a Selection Committee as provided in Sub-section (1) of Section 5 of the said Act of 2005 as amended by the Maharashtra Ordinance No.XIII of 2016 within a period of two months from today;
- (i) We direct the State Government to ensure that the Regulatory Authority is constituted as per Section 4 of the said Act as amended by the Maharashtra

Ordinance No.XIII of 2016 within a period of six months from today;

- (j) We direct the State Government to take appropriate decision within a period of six months from today on the proposal of diverting the water from the west flowing rivers to Godavari and Tapi sub-basin as recommended in the project report of August 2001 (page 191 of PIL No.170 of 2013). The State Government shall also consider the suggestion to provide direct gravity pipelines from upstream reservoirs as indicated in Paragraph 181 and Clause (xii) of Paragraph 188 of this Judgment. Appropriate decision on both the aspects shall be taken in six months from today. The State Government shall implement all the 23 gravity flow diversion Schemes set out in paragraph 13 of its written submissions within a period of one year from today;
- (k) We direct the State Government to ensure that so long as the Government decision reflected from the communication dated 6th September 2004 (Exhibit-D to the PIL No.172 of 2013) is in force, permissions

are not granted to set up any new irrigation project upstream of Jayakwadi dam. However, Bham and other irrigation projects, the work of which was commenced prior to 6th September 2004 shall be completed by the State Government as expeditiously as possible. The State Government shall file an affidavit within a period of three months from today setting out the outer limit within which all the on-going irrigation projects in Godavari sub-basin shall be completed;

(l) The State Government shall take a policy decision on the issue of carrying out the exercise of the review of storage capacity of all the reservoirs and undertaking hydrology of Godavari sub-basin. The decision shall be taken by the State Government which shall be placed on record within a period of six months from today;

(m) The State Government shall be bound by the priorities listed in Clause 4.0 of the Maharashtra State Water Policy of July 2003 as held in Clause (xiii) of Paragraph No.188 of this judgment. The

release of water for religious purposes from the reservoirs shall be governed by what is held in said Clause (xiii);

- (n) We direct the State Government to formulate State Water Resources Plan as contemplated by Clause No.2.2 in the Maharashtra State Water Policy of July 2003 as expeditiously as possible and in any event, within a period of six weeks from today;
- (o) It will be open for all the parties to make a representation to the State Government for the exercise of power under Section 23 of the said Act of 2005. If such representations are made, the State Government shall decide the same within a period of two months from today. All pending representations seeking exercise of the power under Section 23 of the said Act of 2005 shall be also decided within the same period;
- (p) Subject to the findings in the Judgment, the prayers which are not specifically granted stand rejected;

- (q) The Rule issued in these Petitions stands disposed of on above terms;
- (r) There shall be no order as to costs;
- (s) All pending Civil Applications stand disposed of;
- (t) For reporting compliance, the Petitions shall be listed on 10th January 2017 under the caption of “Directions”.

(G.S. KULKARNI, J)

(A.S. OKA, J)