

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CONTEMPT PETITION (L) NO.46 OF 2016
 IN
 WRIT PETITION (L) NO.1256 OF 2016
 ...

Sanjay Lakhe Patil	...Petitioner
v/s.	
The State of Maharashtra & ors.	...Respondents

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Mr.Sanjay Patil, Petitioner in person.
 Mr.A.B.Vagyani, GP with Mr.Vikas Mali,AGP and Ms.Tintina for the State.
 Mr.G.S.Godbole with Ms.Swati Sawant and Ms.Sakshi Chougale i/b
 S.K.Legal Associates for MWRRA.

...
 ...

CORAM : A.S.OKA &

A.A. SAYED, JJ.

DATED : 4 OCTOBER 2016

P.C.:

Heard the Petitioner appearing in person. After arguing the Petition for some, he seeks time to address the Court on the Contempt Petition. A contempt petition is a matter between the Court and the contemnor. After having perused the petition, we are of the view that no case is made out to initiate action. Therefore, we decline to grant time to him. The breach alleged in the Contempt Petition is of the orders dated 5 May 2016 and 24 May 2016. The main grievance of the Petitioner is that in terms of the directions of the Court, water was not released for the benefit of Jayakwadi

Dam. Paragraph 11 of the order dated 5 May 2016 issues a direction for release of water to Jayakwadi Dam. Paragraph 11 reads thus:

“11. We, however, direct the Maharashtra Water Resources Regulatory Authority (“MWRRA”) to ensure that wherever possible water may be supplied from Ujjani Dam to Jayakwadi Dam, after solving the technical problem.”

2. Thus, there was a direction issued to the Maharashtra Water Resources Regulatory Authority (“MWRRA”) to ensure that wherever possible, water may be supplied from Ujjani Dam to Jayakwadi Dam. There is also a direction issued in paragraph 12 to MWRRA to consider the issue and immediately release water from Ujjani Dam as also other Dams at Ahmednagar to Jayakwadi Dam. The breach alleged is of further order dated 24 May 2016 and in particular directions contained in paragraphs 11 and 14. Paragraphs 11 and 14 of the order dated 24 May 2016 read thus:

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

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

(underline supplied)

3. Thus, paragraph 11 makes it clear that this Court cannot issue further directions in terms of paragraph 11 of the order dated 5 May 2016. In view of the said finding recorded in paragraph 11 of the order dated 24 May 2016, action for contempt cannot be initiated on account of the breach of direction contained in paragraph 11 of the order dated 5 May 2016. The other direction in paragraph 14 of the said order is to MWRRA.

4. There is an Affidavit filed by Shri Suresh A. Kulkarni of MWRRA. We are not going into the technical question raised that the said Authority was not a party to the Writ Petition filed by the present Petitioner. Within few days after the order dated 24 May 2016 was passed, on 17 June 2016 an Ordinance was promulgated making major amendments to the Maharashtra

Water Resources Regulatory Authority Act, 2005 in relation to constitution of Regulatory Authority. Paragraph 9 of the said Affidavit reads thus:

“9. With regard to the direction to supply water to Jayakwadi dam from Ujani dam I humbly say as follows:

- a. I respectfully submit that it is not technically feasible to supply water to Jayakwadi Dam through Ujani Dam as both Ujani and Jayakwadi Dams are in different river basins i.e. Krishna basin and Godavari basin respectively.
- b. I say that as per Clause X(3) of the Krishna Water Dispute Tribunal (KWDT) Award-I of 1976, the State of Maharashtra is not allowed to divert any water out of Krishna river basin to Godavari basin. Ujani dam is located in the Bhima sub-basis of Krishna basin and Jayakwadi dam is located in the Godavari basin. Hence as per the KWDT Award, the diversion of water from Ujani dam to Jayakwadi dam is not allowed. I crave leave to refer to and rely upon the copy of the aforesaid KWDT Award as and when required.
- c. Moreover, there is no existing infrastructure to divert water from Bhima sub-basin to Godavari basin on the basis of gravity. The Ujani and Jayakwadi dams are located about 250 km distance apart and are separated by Balaghat Hill ranges. In view of the unfavourable intervening topography, it is not economically and technically viable to supply water from Ujani dam to the Jayakwadi reservoir.”

5. Paragraph 10 deals with implementation of the order dated 24 May 2016. It records that on 28 July 2016 a meeting of the Regulatory Authority was held. On 4th August 2016, hearing was held by the Regulatory Authority. The details of what transpired during hearing are also set out.

Exhibit “7” to the said affidavit is a chart showing the storage status as on 17 August 2016 of Jayakwadi and other upstream Dams. It records that the Jayakwadi Dam already had a live storage of 65.1% and live storage was increasing day by day. It is stated that the 65.1% storage was sufficient to take care of drinking water need of the dependent population during current water year.

6. Both orders of which breach is alleged are in the nature of ad-interim orders dealing with exigencies arising at the relevant time. It is impossible for us to come to a conclusion that even assuming that the said orders have not been complied with, the breach is deliberate or willful. We are of the view that this is not a fit case to invoke the jurisdiction of this Court under the Contempt of Courts Act, 1971. Accordingly, we dispose of the Contempt Petition.

7. At this stage the Petitioner appearing in person submits that his grievance is about non-compliance of the provisions of the Disaster Management Act, 2005. The Petitioner has invoked the jurisdiction of this Court under the Contempt of Courts Act by alleging that there is a civil contempt. Civil contempt can arise only if there is a willful breach or disobedience of the order of the Court or undertaking given to the Court.

Needless to add here that the issue regarding non-compliance of the provisions of the Disaster Management Act, 2005 can always be agitated by the Petitioner by filing appropriate proceedings.

8. Though, we have held that no case is made out to initiate action under the Contempt of Courts Act, we make it clear that we have made no adjudication on merits.

9. Subject to what is observed above, the Contempt Petition is disposed of.

(A.A. SAYED, J.)

(A.S.OKA, J.)