

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

PUBLIC INTEREST LITIGATION NO.176 OF 2012

with

CIVIL APPLICATION NO.69 OF 2015

in

PUBLIC INTEREST LITIGATION NO.176 OF 2012

1. Mr. Rajesh Madhukar Pandit,)
2. Mr. Nagsen (Nishikant) Murlidhar)
Pagare,)
3. Mr. Jagbir Nirmal Singh.).. Petitioners

Versus

1. The Nashik Municipal Corporation,)
2. Commissioner,)
The Nashik Municipal Corporation.)
3. Maharashtra Pollution Control Board,)
4. Government of India,)
Through Director, Control of Pollution,))
5. State of Maharashtra,)
6. Maharashtra Industrial Development)
Corporation,)
7. M/s. Indiabulls Realtech Limited,)
8. Maharashtra State Power Generation)
Company Limited.).. Respondents

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Shri Pravartak S. Pathak for the the Petitioners and Applicants in CA No.69 of 2015

Shri R.N. Dhorde, Senior Advocate along with Shri R.L. Kate i/by Shri Kamlesh Prakash Mali for the Applicants in CA No.97 of 2015.

Shri M.L. Patil for Respondent Nos.1 and 2.

Shri Ratnesh Dubey i/by Ms. Rutuja Ambekar for the Respondent No.3.

Shri N.R. Prajapati i/by Shri D.A. Nalawade for the Respondent Nos.4 and 5- Union of India.

Shri Ankit Kulkarni i/by M/s. Little & Co for the Respondent No.6.

Shri Vineet B. Naik, Senior Advocate along with Shri Kartikeya Desai, Shri Deepan Dixit and Shri Prashant Kamble i/by M/s. Kartikeya & Associates for the Respondent No.7.

Ms. Krishna Raja i/by L.J. Law for the Respondent No.8.

Shri A.B. Vagyani, Government Pleader for the State of Maharashtra.

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CORAM : A.S. OKA & REVATI MOHITE DERE, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 16TH JULY 2015

DATE ON WHICH ORDER IS PRONOUNCED : 11th SEPTEMBER 2015

ORDER: (PER A.S. OKA, J)

. This Civil Application No.69 of 2015 is filed by the Petitioners in the Public Interest Litigation. The parties were heard on the issue of grant of further interim relief as well as on the said Civil Application. The Public Interest Litigation is filed seeking various directions for cleaning the polluted Godavari River and for preventing further pollution of the river. Various interim orders have been passed

from time to time in the present Public Interest Litigation. There are two relevant interim orders. The first order is dated 7th March 2014 and the second order is dated 19th December 2014. Various directions were issued under both orders. Under the earlier orders passed by this Court, the National Environmental Engineering Research Institute (for short "NEERI") was directed to prepare an action plan for the purposes of cleaning of the River Godavari and for proper maintenance of the said river. The reports have been submitted by NEERI from time to time. Under the order dated 7th March 2014, a Committee headed by the Divisional Commissioner of Nashik was appointed to monitor the implementation of the order passed by this Court. This Court directed that all the recommendations made by NEERI shall be implemented. There are large number of action taken reports placed on record by the Committee headed by the Divisional Commissioner of Nashik in which various steps taken for implementation of the orders of this Court and the recommendation of NEERI have been set out. It will be necessary to consider further interim directions issued under the order dated 19th December 2014. Barring few issues, it was directed that the recommendations made by NEERI in all the reports including the final report as well as the Action Plan to tackle Kumbhmela shall be implemented by all the concerned authorities.

2. Under the orders of this Court, M/s. Indiabulls Realtech Limited and Maharashtra State Power Generation Company Limited were respectively impleaded as party Respondent Nos.7 and 8.

3. The Civil Application No.69 Of 2015 has been filed by the Petitioners in the Public Interest Litigation for grant of further interim reliefs. The prayers made in this Civil Application read thus:

“(a) During the pendency of present Petition be pleased to direct the respondents Government including local authorities to restrict forthwith the use of Godavari River water and river bed for any kind of human consumption in Nashik region till the Godavari river water in Nashik region achieves prescribed standards Alternatively,

(b) Be pleased to direct the respondents Government including local authorities to restrict the use of river bed and river water after the downstream of existing Sewerage Treatment Plants (STPs) for any kind of human consumption till the compliance of NEERI's recommendations and complete control over the pollution due to the existing STPs.”

4. Apart from the prayers as aforesaid, the Petitioners are seeking an interim direction of preventing release of water from the STPs into river Godavari on the ground that the said so called treated water is creating further pollution. This relief is sought on the basis of the recommendations of NEERI. It is pointed out that the present

Sewerage Treatment Plants (STPs) in the City of Nashik are not functioning properly. The two STPs are yet to be established. It is pointed out that even according to the reports of the NEERI, the river water is unfit to human consumption. It is pointed out that the existing STPs are discharging treated water in the river which is adding to the pollution of the river. It is pointed out that the water discharged from the existing STPs is contributing to the pollution of the river. Therefore, a prayer is made against the Government to restrict the use of river water downstream the existing STPs for any kind of human consumption till the compliance of the recommendations of NEERI. Reliance is placed on the Action Plan submitted by NEERI on the proposed Kumbhmela. What is pointed out by the Petitioners is that in view of the NEERI's recommendations, the Seventh Respondent Company should be directed to lift the water directly from the STPs instead of lifting the water from the barrage constructed on the Godavari River down stream so that the pollution of the river water can be avoided.

5. Civil Application No.97 of 2015 has been filed by the Applicants who are seeking intervention. It is contended in the said Application that the very allotment of water from the STPs of Nashik Municipal Corporation to the Seventh Respondent Company is under challenge in the Public Interest Litigation No.77 of 2013 filed by the

Applicants before the Bench at Aurangabad. It is contended that the water from Darna Complex and Gangapur Complex was reserved by the State Government for Nashik Municipal Corporation. The contention is that if any order is passed by this Court in the present Public Interest Litigation allowing lifting of water by the Seventh Respondent Company, it will affect the Applicants.

6. The learned counsel appearing for the Petitioners sought further interim directions based on the recommendations of the NEERI directing that the water allotted to the Seventh Respondent M/s. Indiabulls Realtech Limited (for short "M/s.M/s. Indiabulls") should be lifted by it directly from the STPs. He urged that the water which is released from the STPs is not free from pollution. It is pointed out by the learned counsel appearing for the Petitioners that the water released from the STPs of the Nashik Municipal Corporation to the river Godavari is taken downstream at a distance of more than 30 kms and the same is lifted by the Seventh Respondent from the barrage constructed in the Godavari River by the Eighth Respondent Company. His contention is that the discharge of water from the STPs in the river should be forthwith discontinued.

7. Another submission of the learned counsel appearing for the Petitioners is that considering the fact that the large number of

devotees will visit the event of Kumbhmela held in the year 2015-2016, various orders passed by this Court for rejuvenation of the river Godavari will be defeated. He pointed out that the orders passed by this Court, the recommendations of NEERI which were ordered to be implemented and the directions issued by the Committee headed by the Divisional Commissioner of Nashik from time to time, do not appear to have been brought to the notice of the three Committees constituted by the State Government for dealing with the arrangements to be made for Kumbhmela. He would, therefore, urge that the Committees constituted by the State Government cannot act contrary to the directions issued by this Court which bind the State Government.

8. The learned counsel appearing for the Petitioners invited our attention to the Agreements dated 16th January 2012 and 8th February 2012 by and between the Seventh Respondent M/s.M/s. Indiabulls and the Government of Maharashtra. He pointed out that the seventh Respondent has been permitted to take recycled water from the STPs of Nashik Municipal Corporation. He pointed out that the agreements relate to lifting of the said water. He invited our attention to the material terms and conditions of the agreements and in particular the Clause No.27. He pointed out that there were three options provided in the agreements to enable the Seventh Respondent to lift the treated recycled water released from the STPs of the Nashik Municipal

Corporation. The three options for lifting the water were, (i) by constructing a storage Bandhara (barrage) on Godavari River; or (ii) from the storage sump near STPs of Nashik Municipal Corporation; or (iii) from the existing storage Bandhara on the Godavari River. He pointed out that the Eighth Respondent had constructed a barrage/Bandhara at Eklahare. He pointed out that though the Government did not exercise one of the three options, the recycled/ the treated water from the STPs of Nashik Municipal Corporation is released into the river Godavari which goes downstream and is being lifted by the Seventh Respondent M/s. Indiabulls near the barrage of the Eighth Respondent at Eklahare. His submission is that as the STPs of Nashik Municipal Corporation have not been upgraded, the release of the treated water in Godavari River is adding to the pollution. He pointed out that if a direction is issued to the Seventh Respondent to lift the treated water directly from the STPs of Nashik Municipal Corporation, the pollution can be avoided.

9. As far as the Nashik Municipal Corporation is concerned, the contention is that the Seventh Respondent can lift the water directly from the STPs and take the same through the pipeline laid on the bank of River to the lifting point at Eklahare. The learned Counsel of the municipal Corporation has contended that the Seventh Respondent can directly intercept outfall from the STPs and carry by the gravity

pipeline. He pointed out that the pipeline can be laid with permission of the Water Resources Department of the State Government.

10. The contention of the learned senior counsel appearing for the Seventh Respondent M/s. Indiabulls is that the Government has consciously decided to permit the said Respondent to draw the treated water from the Eklahare barrage which was conveyed by the letter dated 1st June 2012. The learned Government Pleader has placed copies of the relevant file on record inviting our attention to the documents in the said files. Referring to the documents in the file, the learned Counsel for M/s. Indiabulls submitted that there was a meeting held under the Chairmanship of the Hon'ble Deputy Chief Minister on 30th March 2012. He submitted that in the said meeting, the Principal Secretary of the Water Resources Department suggested that the treated and untreated water will cater to the need of the water of the Seventh and Eighth Respondents. In the said meeting, it was decided that the arrangement will be made by the Eighth Respondent to enable the Seventh Respondent to draw the water from the Eklahare barrage. He pointed out the further steps taken on the basis of the decision taken in the meeting held on 30th March 2012. He heavily relied upon a letter dated 1st June 2012 of the Industries, Energy and Labour Department of the State of Maharashtra by which the Eighth Respondent was directed that there shall be a joint use of water from Eklahare barrage by the

Seventh Respondent M/s.M/s. Indiabulls and the Eighth Respondent Maharashtra State Power Generation Company Limited. He pointed out that on the basis of the said letter, the drawings for construction of Pump House of the Seventh Respondent were submitted. On 12th February 2013, the Executive Engineer of the Water Resources Department, Nashik Division, Nashik, granted permission to the Seventh Respondent to construct a Pump House as per the Plan approved by the Eighth Respondent. On 20th February 2015, the Seventh Respondent commissioned its Pump House and commenced the water supply. He pointed out that on 1st April 2015, an Agreement was entered into by and between the Seventh Respondent and the Eighth Respondent for the joint use of Eklahare barrage. Relying upon a decision of this Court in the case of *Chandrakant Sakharam Karkhanis and Others v. State of Maharashtra and Others*¹, he urged that the provisions of Article 166 and in particular Sub-clauses (1) and (2) thereof are directory. He relied upon the principles of promissory estoppel and legitimate expectation. He submitted that on the basis of the agreements, after detailed examination of all the relevant issues by the Energy as well as Water Resources Departments, the Department of Energy issued orders to the Eighth Respondent to permit the Seventh Respondent to draw the water from the Eklahare barrage. He pointed out that if the Seventh Respondent is directed to lift the water from the STPs of Nashik Municipal Corporation, the

1 AIR 1977 Bom. 193

Seventh Respondent will be forced to lay down pipeline by spending crores of rupees. He urged that even the minutes of the meeting held on 9th November 2011 under the Chairmanship of the Hon'ble Deputy Chief Minister show that a decision was taken to allow the Seventh Respondent to lift the water from Eklahare barrage as it was not possible to construct another barrage/Bandhara. Lastly, he submitted that the decision of not allowing M/s M/s. Indiabulls to lift the treated water from the source and allowing it to lift the water from Eklahare barrage was of the State Government. He invited our attention to the letter dated 8th December 2014 addressed by the Seventh Respondent to the Executive Engineer of the Nashik Irrigation Department. He pointed out that though the Seventh Respondent had approached the Nashik Municipal Corporation for lifting of treated water directly from the STPs of the Nashik Municipal Corporation, in the meeting held on 9th November 2011, it was decided to allow the Seventh Respondent to lift the treated recycled water released by the Municipal Corporation in Godavari River from the Eklahare barrage which is down the stream. He, therefore, urged that now it will be unjust to direct the Seventh Respondent to lift the water from the source. He urged that the decision arrived at in the meetings presided over by the Hon'ble Deputy Chief Minister is the decision of the State Government which permits the Seventh Respondent to lift the water from Eklahare barrage.

11. The learned senior counsel appearing for the Applicants in Civil Application No.97 of 2015 invited our attention to the prayers made in Public Interest Litigation No.77 of 2012 and the affidavits filed in the said Petition. The Applicants are the Petitioners in the said PIL. He pointed out that the permission granted to the Seventh Respondent to use the water which ought to have been used for the purpose of irrigation is completely illegal. He urged that if the present arrangement under which the water is supplied to the Seventh Respondent is continued, the Applicants will be directly affected.

12. The learned Government Pleader relied upon the affidavit of Shri Deependra Singh Kushwah, the Collector & District Magistrate, Nashik which sets out various arrangements made for dealing with the arrangement to be made to the Kumbha Mela. He invited our attention to the file containing the documents in relation to the grant of permission to use the water to the Seventh Respondent. He urged that a decision was taken in the meeting held by the Hon'ble Deputy Chief Minister on 9th November 2011. He submitted that the minutes of the meeting show that all the three options provided in the subsequent Agreements were already considered in the meeting. He relied upon an affidavit of Shri Manohar Kisan Pokale, Superintending Engineer and Administrator, Command Area Development Authority, Nashik.

13. We have given careful consideration to the submissions. We are not examining the wider issue of the legality of the decision to allow M/s M/s. Indiabulls to use the water from the STPs of the Nashik Municipal Corporation. The said issue will have to be gone into in the pending PIL No.77 of 2012 in the Bench at Aurangabad. We are considering the issue in the context of preventing the pollution of the river Godavari. It is not in dispute that the treated water is released by the STPs of Nashik Municipal Corporation into the Godavari River. The water is drawn by M/s M/s. Indiabulls from the Eklahare Barrage which downstream. The contention of the Petitioners in the PIL is that considering the fact that this treated water itself is polluted, it increases the pollution level of the River Godavari. We must note here that this contention of the Applicants is clearly supported by the various reports of NEERI on record. The recommendation is that the existing STPs need to be upgraded. The work of two other STPs is likely to be commenced and the same will be completed in near future. The relevant recommendations of NEERI have been considered in the second report submitted by the Committee headed by the Divisional Commissioner which monitoring the work of the implementation of the directions issued by this Court. The relevant part of the Report reads thus:

“(A) Name of authority : Nashik Municipal Corporation
Nashik Municipal Corporation submitted its second compliance report on 1st July 2014 which is as follows:

Actions taken by Nashik Municipal Corporation
on NEERI's Report No.1 (Preliminary Assessment
Report)

Sr. No.	NEERI's Recommendations	Act Taken/Submission
1)	Allotment of water from Gangapur dam should be rescheduled so that the minimum ecological or environmental flow is maintained downstream of dam.	Allotment or releases of water from Gangapur Dam is under the control of Hon.Collector, Nashik and Executive Engineer, Water Resources Department. To observe this recommendation, specific direction is required to be issued to them. NMC has requested WRD vide letter dt. 12/08/2013 and 18/02/2014 in this regard. However, WRD vide letter dtd. 25/4/2014 has informed that water from reservoir is already reserved for drinking, agriculture and industrial purpose and hence, no extra water is available for ecological flow. Hon. Divisional Commissioner, Nashik has appointed a five member sub-committee vide letter no.4632/14, dt. 2/4/2014 to study the issue of ecological flow of water in Godavari. Till now, two meetings of the committee have been conducted and further detailing is under progress.

<p>2)</p>	<p>In the light of minimum availability of flow in the river, the expected dilution, dispersion and decomposition of the treated wastewater is not occurring. This has resulted in non compliance of the water quality standards for designated use as A-II. More stringent standards for discharge of treated effluent should be imposed by MPCB.</p>	<p>Stringent standards for discharge of treated effluent are required to be included in the manual prepared by Central Public Health and Environmental Engg. Organization (CPHEEO). At present, discharges will have to be monitored as per prevailing quality standards for which, all STP's are designed and have been approved by CPHEEO GOI. Accordingly earlier consent by MPCB is also issued.</p> <p>NMC has submitted factual report to MPCB & Hon.High Court, stating that STPs shall be allowed to discharge treated effluent as per approved designed norms, as it cannot be changed in present setup. However, NEERI has been requested norms, as it cannot be changed in present set up. However, NEERI has been requested to provide add on technology of Phytoid, so that effluent characteristics will be within designed limits.</p> <p>As discussed and instructions given in the committee meeting held on 16/04/2014 with Hon. Divisional Commissioner, NMC will plan to add tertiary treatment facility at proposed Gangapur STP where primary and secondary treatment is already sanctioned under JNNURM, and will be executed as soon as possession of land is made available. As per NEERI's recommendation and consent given by MPCB, this new 18 MLD STP will be designed to achieve new parameters in which BOD will be less than 10 mg/lit.</p>
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5)	Functioning of the Sewage Treatment Plants should be improved.	STP's in three zones namely, Tapovan (78+52), Panchak (7.5+21), and Chehedi (22+20) are commissioned and are working round the clock 24x7 and 365 days. These plants are working efficiently and the treated effluent is well below the discharge standards as per CPHEEO Manual Norms for which it is designed. Same has been verified by NEERI and accordingly mentioned in the report submitted to Hon. High Court. However, there is a problem of foam formation in the effluent from the STPs, when it joins the water bodies. A solution in this regard is under experimental stage & NEERI is working on the solution and the same will be implemented by NMC. Recently 70 MLD at Agartakali is commissioned & is put to performance run.
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<p>6)</p>	<p>The treated effluent from the STPs should be reused either by industries or for irrigation. By improving the quality of effluent, the water can also be used for gardening and other related activities. This will also restrict the inputs of pollutants in the river stream.</p>	<p>As per Water Resources Dept. (WRD), GOM decision dated 21st August 2007, NMC is required to discharge the treated effluent in the river stream, so that it can be further used for irrigation purposes. Subsequently, WRD has booked the treated effluent quantity to the tune of 229 MLD to India Bulls for their thermal power plant and SEZ at Sinner along with 21.3 MLD for augmentation of Eklahare Power Station. Now India Bulls is permitted to lift this treated effluent from the Odha barrage near Eklahare thermal power plant, located at downstream of Nashik city from where water is already lifted for Eklahare Thermal Power Station. At present, treated effluent normally flows from STP outlet unto this barrage only.</p> <p>In order to restrict the input of pollution in river stream upto Odha barrage it is necessary to pass directives to WRD to reinstate the condition on India Bulls and Eklahare Thermal Power Station, to lift treated effluent directly from the outlet of respective STPs located in Nashik city.</p> <p>Secondly, NMC with the help of WRD will try to reuse treated effluent from STP's either by industries or irrigation as per demand & feasibility requirements. In such a case, WRD should be directed to divert the demand requirement received by them for industrial or irrigation purpose to NMC.</p>
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7)	Recycle and reuse of treated effluents from STPs for irrigation and transfer the equivalent flow into the river is recommended.	In this regard, as mentioned above necessary directives are required to be given to WRD who is controlling the water releases & requirements for irrigation purposes.
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(Emphasis added)

In the affidavit of Shri Manohar Pokale, it is accepted that augmentation of existing STPs of Nashik Municipal Corporation is necessary. He has agreed that affluent discharge is required to be below 10 ppm as per the report of NEERI. According to the Nashik Municipal Corporation, the only way of implementing the recommendation NO.6 of NEERI is to reinstate the condition on India Bulls and Eklahare Thermal Power Station, to lift treated effluent directly from the outlet of respective STPs located in Nashik city. Hence, only way to stop pollutants from entering river is to lift the water directly from the STPs. There is a prima facie material on record to show that the water released by the STPs of Nashik Municipal Corporation into Godavari River is not a properly treated water and is contributing the pollution of the river. Therefore, it can be allowed to be used by directly lifting the water from the source.

14. The Seventh Respondent is setting up a Coal Based Thermal Power Project at Sinnar Sez, Nashik as is clear from the letter dated 2nd March 2010 addressed by the Seventh Respondent to the Commissioner of the Nashik Municipal Corporation. The Seventh

Respondent will require 100 MLD for the first phase and 200 MLD for the second phase. By a communication dated 3rd April 2008, the Water Resources Department of the State Government has allocated 100 MLD (Million Litres Per Day) recycled water from the STPs of Nashik Municipal Corporation. In this context, it will be necessary to make a reference to the Agreements executed by and between the Seventh Respondent and the Hon'ble Governor of Maharashtra. The first Agreement is dated 16th January 2012 executed at Nashik. There is a similar Agreement executed by and between the Seventh Respondent and the Hon'ble Governor of Maharashtra which is dated 8th February 2012. Both the Agreements are in respect of the different quantities of water. In the first Agreement, there is a recital that the Seventh Respondent is desirous of constructing a Pump Station for treating the recycled water received from the Nashik Municipal Corporation, Nashik at Godavari River near Tapovan, Nashik City for the use in its plant and laying underground and surface pipes and drains for discharge of the factory effluent. Clause 27 of both the Agreements is similar. For the sake of convenience, we are quoting the Clause 27 of the Agreement dated 16th January 2012 which reads thus:-

“27. IRL shall lift the treated water released by NMC, by either constructing a storage Bandhara on Godavari river from the storage sump near Sewage Treatment Plant (STP) of NMC or from the existing storage Bandhara on the Godavari River as may be finally approved by the Government. The

construction & maintenance of storage Bandhara shall be done by IRL under supervision of W.R.D. at its own cost or IRL shall deposit the amount to W.R.D. then the work will be carried by W.R.D. as a deposit work. If the work of storage Bandhara shall be carried by IRL at its own cost, then in that case supervision charges shall be paid by the IRL to W.R.D. This storage Bandhara shall be handed over at free of cost to W.R.D. after expiry of the usefulness of this Bandhara.”
(emphasis added)

15. Clause 27 of the said Agreement thus lays down the manner in which the Seventh Respondent should lift the treated water released by the STPs of Nashik Municipal Corporation. There were three options given under the said Agreement for lifting the water from three STPs. The first one was by constructing a storage Bandhara/Barrage on Godavari River. The second option was by taking the water from the storage sump near STPs of Nashik Municipal Corporation. The third option was of taking water from existing storage Bandhara on the Godavari River. One of the three options was to be finally approved by the Government. So a conscience decision was required to be taken by the Government of accepting one of three methods to be adopted by the Seventh Respondent M/s. Indiabulls for lifting the treated water from the STPs of the Municipal Corporation. There is an option of lifting the water directly from the STPs which will ensure that the polluted water is not released in the river. Another option was of constructing a new Bandhara. The third option requires water to be released in the river from the STPs which will be taken

downstream upto existing barrage. The clause 27 further provides that the construction and maintenance of storage Bandhara shall be done by the Seventh Respondent under the supervision of the Water Resources Department at its own cost. There is no dispute between the Seventh Respondent and the State Government before this Court that after the execution of the aforesaid two Agreements, there is no specific decision taken by the State Government on the basis of the Clause 27. We do not find from the file that final approval of the State Government has not been granted. The contention of the State and M/s. Indiabulls is that the decision taken in the meeting held on 9th November 2011 under the Chairmanship of the Hon'ble Deputy Chief Minister was implemented after the execution of the Agreements. We have minutely perused the file produced by the learned Government Pleader. There is not a single document on record to show that after the execution of the aforesaid Agreements any Authority of the State applied its mind to any of the three options provided in clause 27 and took a conscience decision to grant final approval to M/s. Indiabulls to lift the water from the STPs by adopting one of the three methods provided in clause 27 of the Agreements. The decision of the State Government in terms of Clause 27 of both the Agreements requires application of mind and consideration of all the relevant factors including consideration of the quality of water released from the existing STPs and the issue of causing further pollution by release of such water into river. Obviously, a

decision in terms of the Clause 27 could have been taken only after the Agreements dated 16th January 2012 and 8th February 2012 were executed and not prior to the said Agreements. Therefore, any decision taken in any meeting held prior to the respective dates of the Agreements cannot be a decision in terms of clause 27 thereof. If a decision was already taken, there was no reason to incorporate Clause 27 in the Agreements. It must be noted here that on 30th March 2012, there was a meeting chaired by the Hon'ble Deputy Chief Minister of the State of Maharashtra. The specific subject of the meeting was the Power Project of M/s. Indiabulls. We have carefully perused the minutes of the meeting. We find that there was no discussion in the said meeting in terms of taking a decision on one of the three options provided in Clause 27 of the said Agreements. The discussion mainly appears to be about the contingency when the water released from the STPs of the Nashik Municipal Corporation may not be adequate for the Power Plant of M/s. Indiabulls. The discussion appears to be on the question what should be done in the event there is a short-fall in the water supply to the Seventh Respondent. There was no discussion on the options provided in Clause 27.

16. We must note here that as far as the Eighth Respondent Maharashtra State Power Generation Company Limited is concerned, the water allocation has been made by the State Government from

Gangapur Dam. It will be necessary to make a reference to the letter dated 5th November 2011 addressed by the Managing Director of the Eighth Respondent to the Principal Secretary of the Energy Department of the Government of Maharashtra. Paragraph 4 of the said letter is material, which reads thus:

“4. Although, the water allocation for MSPGCL is from the Gangapur Dam, it is noticed that due to water scarcity in the area, the Irrigation Department doesn't let out the water frequently from the Gangapur dam unless there is a demand of water for priority sectors i.e. Irrigation or Drinking purposes from the downstream side. Therefore, most of the time, Nashik power station is utilizing the available recharge water through the river, which is nothing but the raw sewage, let out from Nashik City. Therefore, extensive treatment of the water is required before use in the power station and Nashik TPS has to incur huge costs for such water treatment.”

(emphasis added)

The said paragraph clearly reflects upon quality of the treated water released by the Nashik Municipal Corporation.

17. Careful perusal of the file tendered on record shows that the first note in the file is prepared on 21st January 2012 by the Industries, Energy and Labour Department. The note prepared on the basis of the proposal submitted by the Eighth Respondent which includes a proposal for allowing the Seventh Respondent to lift the water from Eklahare barrage and to allow the Seventh Respondent to

construct a Pump House. There is a noting made that an opinion of the Water Resources Ministry should be obtained. We have perused the report dated 2nd March 2012 prepared by the Water Resources Ministry. The report contains a recommendation marked as "A" that the Eighth Respondent should reconsider the issue at its own level. This portion "A" has been approved on 5th March 2012. Thereafter, a meeting was held on 30th March 2012 under the Chairmanship of the Hon'ble Deputy Chief Minister. The file shows that only decision taken is that it is not necessary to release the extra water from Gangapur Dam in the event there is a shortage of water. Even in the said meeting, the three options provided in Clause 27 of the said Agreements have not been considered.

18. The stand of the Seventh Respondent as well as the State Government is that the decision was taken in the meeting held on 9th November 2011. We fail to understand as to how the decision can be taken on one of the options provided in Clause 27 of the Agreements in the said meeting inasmuch as on the date on which the meeting was held, the agreements were not even executed. We have perused the minutes of the meeting. In the meeting, two options have been considered. One was of construction of additional barrage in Godavari River and the second one was of allowing the Seventh Respondent to lift the water from Eklahare barrage. However, the third option of the

Seventh Respondent of taking the water from the source i.e. STPs of the Nashik Municipal Corporation was not at all considered. Therefore, this decision cannot be said to be a decision taken in terms of the Clause 27 of the subsequent Agreements. Reliance has been placed by the learned senior counsel appearing for the Seventh Respondent on the subsequent events.

19. The learned senior counsel appearing for the Seventh Respondent M/s.M/s. Indiabulls invited our attention to the action taken by the Energy Department as well as the Water Resources Department. The contention is that the subsequent correspondence and the reports show that the State Government had chosen one of the three options. In fact, the learned senior counsel appearing for the Seventh Respondent relied upon a decision of this Court in the case of **Chandrakant Sakharam Karkhanis** in support of the contention that the provisions of Clauses (1) and (2) of Article 166 of the Constitution of India are directory. In the present case, even going by the contents of the file which are placed on record, there is nothing on record to show that the three options provided in Clause 27 of the Agreements were considered by the State Government and a conscious decision was taken to choose one of the three options. Even in the subsequent correspondence and the actions of the two Ministries, there is no reference to any of such decisions taken by the State Government.

The meeting dated 30th March 2012 was for a consideration of a different subject and in any case, there is no consideration of Clause 27 of the Agreements in the said meeting. The Eighth Respondent may have taken an action of approving the drawing submitted by the Seventh Respondent and permitting them to erect Sub-station. However, the fact remains that in terms of Clause 27 of both the Agreements, there is no decision taken by the State Government.

20. In the order dated 13th October 2014, this Court has referred to the letter dated 13th October 2014 addressed by the Superintending Engineer to the Chief Engineer in which it was suggested that if a direction is issued to the Nashik Municipal Corporation not to release the treated affluent into the Godavari River by directing the Seventh Respondent to lift the water directly from the STP outlet, the pollution of the River can be avoided. Therefore, the State Government will have to take a decision in terms of clause 27 of the Agreements. Today, M/s. Indiabulls are lifting water from the Eklahare barrage downstream. Therefore, the water from STPs is being released into river Godavari which goes downstream.

21. As far as the Civil Application No.97 of 2015 (for intervention) is concerned, the Applicants have raised larger issue before the Bench at Aurangabad where the challenge is to the very

action of allowing Seventh Respondent to take water from the STPs. In this Petition, we are not concerned with the wider controversy. But, they will have to be heard in the PIL.

22. In the affidavit filed by the Seventh Respondent, several difficulties are put forward in the way of collecting the water from the outlet of STPs. As we have found that there is no decision taken by the State Government in terms of the Clause 27 of the Agreements, at this stage, it is not necessary to go into the said difficulties. It stated in the affidavits on record that now the Seventh Respondent has started drawing water from Eklahare barrage from February 2015. Till the State Government takes appropriate decision, we are not disturbing the present arrangement.

23. As far as the arrangements for Kumbhmela are concerned, this Court has repeatedly clarified that the orders passed in this Public Interest Litigation still continue to operate with all force and vigour even during the Kumbhamela. There are three Committees constituted at different levels by the State Government. The said Committees are bound to consider the orders of this Court, the recommendations of NEERI which have been accepted and the reports submitted by the Committee headed by the Divisional Commissioner of Nashik.

24. As far as the use of river bed is concerned, prima facie, we are of the view that the river bed will have to be protected by preventing the use thereof in such a manner that it will cause pollution. However, there is no specific affidavit filed on record of the Municipal Corporation and the Maharashtra Pollution Control Board setting out whether the river bed is being used for any purpose other than contemplated. We direct them to file affidavits on this aspect within three weeks. Therefore, appropriate directions can be issued after hearing the parties.

25. Hence, we issue further interim directions.

(i)

We direct that the State Government to take appropriate decision in terms of the Clause 27 of the Agreements dated 16th January 2012 and 8th February 2012 within a period of six weeks from today and to place the said decision on record of this Court. In view of the clear terms of the said Agreements, it follows that the Seventh Respondent M/s. Indiabulls will have to act in accordance with the said decision;

- (ii) For reporting compliance, the PIL shall be kept under the caption of directions on 30th October 2015.
- (iii) All Committees constituted by the State Government for the purposes of making arrangements for on going Kumbhmela shall be bound by all the interim orders passed by this Court. It is obvious that the Committees constituted cannot act contrary not only to the interim directions issued by this Court in this PIL but also to the recommendations of the NEERI as accepted and the directions issued by the Committee headed by the Divisional Commissioner, Nashik from time to time.
- (iv) for considering the issue of the use of river bed and for considering the reports of the Committee, the PIL shall be listed on 15th October 2015 for directions.

In view of the above further interim directions, this Civil Application No. 69 of 2015 is disposed of.

26. Civil Application No.97 of 2015 is allowed in terms of prayer Clause (A) thereof. Amendment to be carried out by the Petitioners in the PIL within a period of four weeks from today.

(REVATI MOHITE DERE, J)

(A.S.OKA, J)