

State of T.N.

Vs

State of Karnataka and Others

Original Suit No. 1 of 1992 with I.A. No. 6 of 1996

(CJI A. M. Ahmadi, S. B. Majmudar, B. N. Kirpal JJ)

21.03.1997

ORDER

1. By judgment dated 4-5-1990 in Writ Petition No. 13347 of 1983 [T. N. Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India, (1990) 3 SCC 440], this Court directed the Central Government to notify in the Official Gazette the constitution of an appropriate tribunal for the adjudication of water dispute between the plaintiff and the defendants.

2. By notification dated 2-6-1990, a Tribunal namely, Cauvery Water Disputes Tribunal (hereinafter referred to as "the Tribunal") was constituted for adjudicating the water disputes regarding the inter-State River Cauvery and the river valley thereof. After the said notification, interim application was filed by the plaintiff before the Tribunal praying for the following reliefs :

(a) direct the State of Karnataka not to impound or utilise water of Cauvery River beyond the extent impounded or utilised by them as on 31-5-1972, as agreed to by the Chief Ministers of the basin States and the Union Minister for Irrigation and Power, that day; and

(b) pass an order of injunction restraining the State of Karnataka from undertaking any new projects, dams, reservoirs, canals, etc., and/or from proceeding further with the construction of projects, dams, reservoirs, canals, etc., in the course of River Cauvery or its tributaries except with the consent of Tamil Nadu or with the specific directions of this Hon'ble Tribunal; and

(c) pass such further or other orders as this Hon'ble Tribunal may be pleased to in the interest of justice.

3. By order dated 5-1-1991, the Tribunal dismissed the aforesaid application as in its opinion, it could not decide the disputes not referred to it including the dispute regarding grant of interim relief. The plaintiff, thereafter filed Civil Appeals Nos. 303-304 of 1991 [State of T.N. v. State of Karnataka, 1991 Supp (1) SCC 240] against the said order. This Court by judgment dated 26-4-1991 set aside the aforesaid decision of the Tribunal and directed it to decide afresh the interim application on merits.

4. The Tribunal then on 25-6-1991 passed interim orders, inter alia, directing the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC of water was available in Tamil Nadu's Mettur Reservoir in a year from June to May. In that year, the order was to be effective from 1-7-1991. It also directed the defendants herein to regulate release of water in

the following manner :

#June 10.16 TMC December 10.37 TMC July 42.76 TMC January 2.51 TMC August
54.72 TMC February 2.17 TMC September 29.36 TMC March 2.40 TMC October
30.17 TMC April 2.32 TMC November 16.05 TMC May 2.01 TMC##

5. The present suit was instituted by the plaintiff on 14-5-1992 principally seeking the enforcement of the Tribunal's interim order dated 25-6-1991. By order dated 7-9-1995, this Court framed the following issues :

"(1) Whether in view of the provisions contained in Article 262 of the Constitution of India and Section 11 of the Inter-State Water Disputes Act, 1956, the suit is not maintainable ?

(2) Whether a suit for enforcement of an interim order of the Inter-State Water Disputes Tribunal (constituted under the Inter-State Water Disputes Act, 1956) is a suit relating to a water dispute ? If yes, what is its effect ?

(3) Whether the jurisdiction of this Court under Article 13 of the Constitution of India cannot be invoked unless the Cauvery Water Disputes Tribunal has recorded a finding that there has been a violation of its order dated 25-6-1991 and/or 3-4-1992 ?

(4) Whether by the order dated 3-4-1992 the Cauvery Water Disputes Tribunal can be said to have modified its order dated 25-6-1991 under Section 5(3) of the Inter-State Water Disputes Act, 1956 ? If yes, what is its effect ?

(5) Whether it is open to the State of Karnataka to unilaterally reduce the monthly release of water required to be made as per the order dated 25-6-1991 read with order dated 3-4-1992 under the 'distress clause' stated to have been provided by the Tribunal ?

(6) Whether the plaintiff is entitled to all or any of the reliefs claimed in paragraphs (a), (b) and (c) of the plaint ?

(7) What order ?"

6. The parties did not desire to lead any oral evidence and the suit was set down for hearing.

7. During the pendency of this suit, the Court was informed that efforts are being made to bring about an amicable settlement between the parties. However, no information is available with regard to the final outcome of the efforts in this behalf. Inasmuch as the suit is being referred to a Constitution Bench, it is possible that, in the meantime, an amicable settlement may be arrived at.

8. Having considered the submissions urged on behalf of both the parties, it appears to us that this suit involves substantial question of law as to the interpretation of the Constitution and, therefore, it will be appropriate if this suit is heard and decided by a Constitution Bench of this Court. Ordered accordingly.

