CHAPTER – II

NATURE OF DISPUTE FROM 1892 AD - 1924 AD

Water has been one of the greatest factors that have influenced man’s life from the earliest times. Hence civilisations the Indus, the Nile, the Euphrates, the Tigris, etc., flourished on river beds. It is considered the natural right of every man to use and harness the water which passes through his lands. But a dispute arises when mankind contends for the use of such water. Such a dispute had been raging the Upper and Lower riparian of the Cauvery in Mysore and Madras, respectively, since 1807. In the absence of scientific or internationally accepted clear cut directions or conventions the dispute over the sharing of river water had been dragging for a long time in South India. The irrigational importance of the surplus waters of the Cauvery was realized by the Europeans in the early decades of the nineteenth century. Hence, investigations were made for the scientific use of the water. When the Government of Madras was finalising the proposals for the construction of a storage reservoir across the Cauvery on modern lines, the Mysore Government as an upper riparian realized the importance of those proposals in their state also. When identical proposals were in the offing, interests clashed.

The dispute on the question of utilisation of the waters of the river Cauvery between the Madras and Mysore Governments arose as far back as 1807.\(^1\) Correspondence took place in this connection between Madras and Mysore Governments. The rights of Mysore to the improvement of their river works, so far as they did not prove detrimental to the then existing irrigation in the Thanjavur delta, would appear to have been recognized.\(^2\) A controversy again rose in 1870 or 1871 regarding the extension of the Cauvery channels in Mysore.

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\(^1\) Mysore-Madras Cauvery Arbitration 16\(^{th}\) July 1913 to 13\(^{th}\) May 1914, Exhibits filed by the Mysore Darbar, P. 1.

\(^2\) Ibid., P. 56, Appendix A; See also letter dated Fort St. George, 14\(^{th}\) February, 1807.
The extensions made by Mysore conflicted with the claims of the Madras ryots irrigating lands lower down the banks of the river. The correspondence that then ensued cannot, however, be traced in the records, though it is believed that the dispute was settled, at least for the time being, then, in favour of the Mysore ryots.\(^3\) After that it was felt that a permanent solution was needed to settle the controversy. Steps were taken by both the Governments. So in 1890 a conference took place between the representatives of the Madras and Mysore Governments, which ended inconclusively.\(^4\) However, negotiations between Madras and Mysore Governments continued till 1892 when an agreement was reached.\(^5\) The agreement was unscientific in character as there were no accurate technical and scientific specifications with regard to the use of the river Cauvery. Yet the circumstances that led to the agreement of 1892 were almost crucial in the adjudication of disputes between Madras and Mysore in future.\(^6\)

The 1892 agreement was an important one so far as the Clauses III and IV of that agreement were concerned. They were as follows:

(III) When the Mysore Government desires to construct any new irrigation reservoir or any new anicut requiring the previous consent of the Madras Government, then full information regarding the proposed work shall be forwarded to the Madras Government and the consent of that Government shall be obtained previous to the actual commencement of the work. The Madras Government shall be bound not to refuse such consent except for the protection of prescriptive right already acquired and actually existing; the existence, extent and nature of such right and the mode of exercising it being in every case

\(^3\) *Ibid.*
\(^6\) G.O. No. 202-203, Public Works Department (PWD) (Irrigation), dated 10\(^{th}\) June 1924.
determined in accordance with the law on the subject of prescriptive right to use of water and in accordance with what is fair and reasonable under all the circumstances of each individual case.

(IV) Should there arise a difference of opinion between the Madras and Mysore Governments in any case in which the consent of the former is applied for under the first preceding rule, the same shall be referred to the final decision either of arbitrators appointed by both Governments or the Government of India.”

The first application of the provision of 1892 agreement was made by the Government of Madras in 1910, when the Mysore Government proposed the construction of a reservoir to a capacity of 41,500 m.cft. at Kannambadi (Krishnarajasagara dam) in Mysore territory. On the ground that the proposal did not provide any adequate measurement for Madras irrigation to which Madras was entitled by prescriptive right already acquired and actually existing, it was objected to by the Madras Government. The objection was only in accordance with the 1892 agreement. Then the proposal was referred to the Government of India. The Government of India accorded permission to Mysore to build a reservoir with a capacity of about 11,000 million cubic feet in September 1911. As the Mysore Government was pressed for a decision on account of the demand for power supply from the Kolar Gold Fields, they provisionally accepted the conditions laid down by Madras. But the Mysore Government stated that negotiations in connection with large reservoir would be renewed as they felt sure that sanction would not be refused when the full case was submitted to the Government of India. 

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7 The Madras-Mysore Agreement of 1892, P. 1.
9 Ibid.
10 Mysore-Madras Cauvery Arbitration 16th July 1913 to 13th May 1914, Exhibits filed by the Mysore Durbar, P. 1.
The correspondence took place in 1911. But the tangle was not set right until it was referred to arbitration. Since the terms of reference of one Government were unacceptable to the other, the Government left the matter to the Arbitration Committee.\(^{11}\)

**Work of the Arbitration Committee**

The proceedings of the arbitration began on 16\(^{th}\) July 1913. The arbitration committee settled the terms of reference on 7\(^{th}\) August 1913 and proceedings were adjourned to 20\(^{th}\) October 1913. The arbitration committee began to make findings on (1) the extent of the prescriptive rights of Madras; (2) the volume of water necessary to conserve those rights, (3) the rules for the regulation of the proposed reservoir, and whether those rules should be tentative or not, and (4) whether the Mysore project was feasible, and whether due allowance was made for safeguarding the rights of Madras.\(^{12}\)

Arbitration proceedings reopened on 20\(^{th}\) October 1913. After considering the statements, replies and rejoinders made by respective Governments, H.D. Griffin, the arbitrator, gave his award on 21\(^{st}\) April 1914. The award provided for gauge readings at the Cauvery dam (upper anicut) for the supplies to represent the established rights of Madras regarding the existing irrigation in the Cauvery delta. But the award was unacceptable to the Government of Madras.\(^{13}\) The principal defect of it was that it did not afford adequate protection to Madras in respect of the surplus waters of the river and of future extensions of irrigation.\(^{14}\) It also laid down terms and conditions under which the Madras Government should consent to the construction of the Krishnarajasagara dam and reservoir. Therefore the Madras Government appealed to the Secretary of State for India. He suspended the award. Thereupon the Mysore Government and the Madras Government with

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\(^{13}\) *Fort St. George Gazette*, Press Communiqué, dated 3\(^{rd}\) July 1924, Part I, P. 776.  
a view to arriving at an amicable settlement of the dispute entered into negotiations with each other.

**Mysore-Madras Cauvery Agreement**

The negotiations which started in 1914 brought the first stage in 1921 when a settlement was reached in that year. Meanwhile gaugings of the supply available in the river in each month of the year and of the discharges represented by gauge readings at the Cauvery dam were continuously maintained and registered. On the basis of those observations and calculations the first stage in the final settlement was taken in July 1921. The settlement contained, (1) rules limiting the impounding in the Krishnarajasagara reservoir in Mysore, (2) directions to maintain minimum gauge readings at the Cauvery dam, and (3) the limitation of extension of irrigated area in Mysore. These rules were agreed to by both sides. Colonel Morin, who was then Chief Engineer for Irrigation, and F.E. Morgan, the Assistant Chief Engineer for Irrigation, made a very careful and prolonged study of the outcome of such a settlement. But yet certain differences persisted between Madras and Mysore Governments. So the matter was further discussed at meetings held in Mysore and Ootacamund in June and July 1922. K. Srinivasa Iyengar, the Member then in charge of the Irrigation portfolio of the Madras Government and the Diwan of Mysore participated in these discussions. Subsequently several tentative draft agreements were framed\(^{15}\).

The Agreement (1) confirmed the terms of the agreement of July 1921, (2) the limit of the effective capacity of the proposed Madras reservoir was raised from 82,000 million cubic feet to 93,500 m.cubic feet; (3) the right to construct new irrigation works on the tributaries of the Cauvery in Madras was preserved, (4) the right of the Government of Madras to extend irrigation was ensured.\(^{16}\)

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\(^{15}\) *Ibid.*, P. 776.
The agreement also provided, for (1) any agreement which might be arrived at on existing interest and right in the Cauvery delta, including French territory; (2) utilisation of water power available at Mekadatu by Mysore Darbar for the development of electric power, subject to the right of Madras to purchase power from this source, if required at a concessional rate, (3) complete protection to the existing irrigation in Madras, (4) the Madras Government to proceed with their reservoir at Mettur. The agreement was hailed as a satisfactory termination of the prolonged dispute.  

The agreement contained ten main provisions. The tenth provision contained fifteen sub-clauses, which are more meaningful and important as far as the 1924 agreement is concerned. So the Mysore Government and the Madras Government agreed to the terms and conditions of the agreement. They also agreed to bind themselves, their successors and representatives to the terms in the sub-clauses of the tenth provision of the agreement. They are as follows:

(i) The Mysore Government shall be entitled to construct and the Madras Government do hereby assent under Clause III of the 1892 agreement to the Mysore Government constructing a dam and a reservoir across and on the Cauvery river at Kannambadi, now known as the Krishnarajasagara, such dam and reservoir to be of a storage capacity of not higher than 112 feet above the sill of the under-sluices now in existence corresponding to 124 feet above bed of the river before construction of the dam, and to be of the effective capacity of 44,827 million cubic feet, measured from the sill of the irrigation sluices constructed at 60 feet level above the bed of the river up to the maximum height of 124 feet above the bed river; the level of the bed of the river before the

construction of the reservoir being taken as 12 feet below the sill level of the existing under- sluices; and such dam and reservoir to be in all respects as described in Schedule forming Annexure II\textsuperscript{18} to this agreement.

(ii) The Mysore Government on their part hereby agree to regulate the discharge through and from the said reservoir strictly in accordance with the Rules of Regulation set forth in the Annexure I\textsuperscript{19} which Rules of Regulation shall be and form part of this agreement.

(iii) The Mysore Government hereby agree to furnish to the Madras Government within two years from the date of the present agreement dimensioned plans of anicuts and sluices or open heads at the off-takes of all existing irrigation channels having their source in the river Cauvery, Lakshmanathirtha and Hemavathi showing thereon on a distinctive colour all alterations that have been made subsequent to the year 1910, and further to furnish maps similarly showing the location of the areas irrigated by the said channels prior to or in the year 1910.

(iv) The Mysore Government on their part shall be at liberty to carry out future extensions of irrigation in Mysore under the Cauvery and its tributaries to an extent now fixed at 1,10,000 acres. The extent of new irrigation of 1,10,000 acres shall be in addition to and irrespective of the extent of irrigation permissible under the rules of regulation forming Annexure I to this agreement, \textit{viz.} 125,000 acres plus the extension permissible under each of the existing channels to the extent of one-third of the area actually irrigated under such channel in or prior to 1910.

\textsuperscript{18} See Appendix B, Annexure II of 1924 Agreement.

\textsuperscript{19} See Appendix B, Annexure I of 1924 Agreement.
(v) The Madras Government on their part agree to limit the new area of irrigation under their Cauvery-Mettur Project to 3,01,000 acres, and the capacity of the new reservoir at Mettur, above the lowest irrigation sluice to ninety three thousand five hundred million cubic feet provided that, should scouring sluices be constructed in the dam at a lower level than the irrigation sluice, the dates on which such scouring sluices are opened shall be communicated to the Mysore Government.

(vi) The Mysore Government and the Madras Government agree, with reference to the provisions of clause (iv) and (v) preceding, that each Government shall arrange to supply the other soon after the close of each official or a calendar year, as may be convenient, with returns of the areas newly brought under irrigation, and with the average monthly discharges at the main canal heads, soon after the close of each month as may be convenient.

(vii) The Mysore Government on their part agree that extensions of irrigation in Mysore as specified in Clause (iv) above shall be carried out only by means of reservoirs constructed on the Cauvery and its tributaries mentioned in Schedule A of the 1892 Agreement such reservoirs may be of an effective capacity of 45,000 million cubic feet, in the aggregate and the impounding therein shall be so regulated as not to make any material diminution in supplies connoted by the gauges accepted in the Rules of Regulation for the Krishnarajasagara forming Annexure I to this agreement, it being understood that the rules for working such reservoirs shall be so framed as to reduce to

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20 See Appendix A, Schedule A of 1892 Agreement.
21 See Appendix B, Annexure I of 1924 Agreement.
within 5 percent any loss during any impounding period, by the adoption of suitable proportion factors, impounding formula or such other means as may be settled at the time.

(viii) The Mysore Government further agree that full particulars and details of such reservoir schemes, and of the impounding therein, shall be furnished to the Madras Government to enable them to satisfy themselves that the conditions in Clause (vii) above will be fulfilled. Should there arise any difference of opinion between the Madras and Mysore Governments as to whether the said conditions are fulfilled in regard to any such scheme or schemes, both the Madras and Mysore Governments agree that such differences shall be settled in the manner provided in Clause (xv) below.

(ix) The Mysore Government and the Madras Government agree that the reserve storage for power generation purposes now provided in the Krishnarajasagara may be utilised by the Mysore Government according to their convenience from any other reservoir hereafter to be constructed, and the storage thus released from the Krishnarajasagara may be utilised for new irrigation within the extent of 1,10,000 acres provided for in Clause (iv) above.

(x) Should the Mysore Government so decide to release the reserve storage for power generation purposes from the Krishnarajasagara, the working tables for the new reservoir from which the power water will then be utilised shall be framed after taking into consideration the conditions specified in Clause (vii), above and the altered conditions of irrigation under the Krishnarajasagara.

(xi) The Mysore Government and the Madras Government further agree that the limitations and arrangements embodied in Clauses
(iv) to (viii) supra shall, at the expiry of fifty years from the date of execution to these presents, be open to reconsideration in the light of the experience gained and of an examination of the possibilities of the further extension of irrigation within the territories of the respective Governments and to such modifications and additions as maybe mutually agreed upon as a result of such reconsideration.

(xii) The Madras Government and the Mysore Government further agree that the limits of extension of irrigation specified in Clauses (iv) and (v) above shall not preclude extensions of irrigation effected solely by improvement of duty, without any increase of the quantity of water used.

(xiii) Nothing herein agreed to or contained shall be deemed to qualify or limit in any manner the operation of the 1892 agreement in regard to matters other than those to which this agreement relates or to affect the rights of the Mysore Government to construct new irrigation works on the tributaries of the Cauvery in Mysore not included in Schedule A of the 1892 Agreement.\(^{22}\)

(xiv) The Madras Government shall be at liberty to construct new irrigation works on the tributaries of the Cauvery in Madras and, should the Madras Government construct, on the Bhavani, Amaravathi or Noyyal rivers in Madras, any new storage reservoir, the Mysore Government shall be at liberty to construct, as an offset, a storage reservoir in addition to those referred to in Clause (vii) of this Cauvery in Mysore, of a capacity not exceeding 60 percent of the new reservoir in Madras. Provided that the impounding in such reservoirs shall not diminish or affect in any way the supplies to which the Madras Government

\(^{22}\) See Appendix A, Schedule A of 1892 Agreement.
and the Mysore Government, respectively, are entitled under this agreement, or the division of surplus water which, it is anticipated, will be available for division on which termination of this agreement as provided in Clause (xi).

(xv) The Madras Government and the Mysore Government hereby agree that, if at any time there should arise any dispute between the Madras Government and the Mysore Government touching the interpretation or operation or carrying out of this agreement, such dispute shall be referred for settlement to arbitration or if the parties so agree shall be submitted to the Government of India.

Thus the 1924 agreement dealt with the inherent difficulties in water disputes such as (1) the quantity of water to be allowed to flow (2) the allocation between conflicting states, and (3) regulation of the implementation of the decisions.\(^{23}\) The agreement did not terminate the operation of the 1892 agreement (as per Sub-Clause XIII of the 1924 agreement). It defined more clearly the rights of Mysore and Madras in extending irrigation, improving the channels and constructing dams. The rights of Mysore and Madras can be explained as follows.

**Rights of Mysore**

Sub-clause one of the tenth provision allowed Mysore to proceed with the construction of the Krishnarajasagara dam across the Cauvery at Kannambadi. The effective capacity of the dam could be 44,827 million cubic feet. Sub-Clause four gave right to the Mysore Government to irrigate 1,25,000 acres plus the extension of irrigation under each of the existing channels to the extent of one-third of the area actually irrigated under such channels in or prior to 1910. In addition to that Mysore could carry out future extensions of irrigation in Mysore.

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\(^{23}\) See Appendix B, Annexure I for Rules of Regulations of 1924 Agreement.
under the Cauvery and its tributaries to an extent of 1,10,000 acres.\textsuperscript{24} The tributaries mentioned are Hemavathy, Kabini, Swarnavathi, Harangi.

Sub-Clause seven allowed the Mysore Government to impound water in the reservoirs in Cauvery and its tributaries to an effective capacity of 45,000 million cubic feet in the aggregate and the impounding should not make any material diminution in supplies connoted by the gauges accepted in the Rules of Regulation for the Krishnarajasagara forming Annexure I. The Mysore Government was obligated to furnish\textsuperscript{25} the full particulars and details of the reservoirs and impounding to the Madras Government by, sub-clause eight. It meant that the Mysore Government no longer required to get the consent of the Madras Government to construct reservoirs on Cauvery and its tributaries to the capacity of 45,000 million cubic feet except sending the particulars and details of the reservoirs in order to satisfy the Madras Government that it was doing so according to the provision of the agreement.

**The Rights of Madras**

Sub-Clause five of the tenth main provision defined the rights of Madras according to which Madras could build a new reservoir at Mettur to the capacity of 93,500 million cubic feet, and it could limit the new area of irrigation under the Cauvery Mettur project to 3,01,000 acres. Sub-Clause twelve explained the rights of both the Mysore and Madras Governments in improving the irrigation (as per clauses four and five) without any increase of the quantity of water used. Sub-Clause fourteen gave liberty to Madras to construct new irrigation works on the tributaries of Cauvery. If Madras constructed any reservoir on Bhavani, Amaravathi or Noyyal rivers in Madras, the Mysore Government was given the liberty to equate it by constructing storage reservoirs of a capacity not exceeding 60 percent of the new reservoir in Madras. But this liberty was given with a

\textsuperscript{24}Rules of Regulation forming Annexure I, Appendix 1924 Agreement.

\textsuperscript{25}See Appendix 1924 Agreement, Annexure I.
restriction to Mysore. It was, that the construction of reservoirs to equate with 60 percent of the reservoirs of Madras should not affect in any way the surplus water to be expected to flow in the river when the 1924 Agreement was to be taken up for reconsideration in 1974. Sub-Clause eleven of the 1924 Agreement implied that the agreement would be in force for 50 years. It provided for the reconsideration of the agreement in 1974 taking into account the past experiences; and that too for the benefit of extending irrigation to new areas in both the States and to make necessary modifications and additions to the 1924 Agreement to make it more practical, scientific and meaningful. The 1924 Agreement provided facilities for the more scientific impounding and use of surplus water of the river Cauvery. But the one significant omission of the agreement was that it did not make it obligatory on the part of the Mysore Government to inform the Madras Government about the rainfall statistics at the catchment area accurately. Since the agreement had been made, the Madras ryots were getting the first freshes. But as time went on things began to change and unfortunately not for the better. The Mysore Government was prompt in reporting “no rains” even when the catchment area received good rain.26

The developments after 1924 did not create any problems in executing the agreement. In 1943 both the Madras and Mysore Governments had to put up a common resistance to the act of the State of Coorg in that year. Coorg proposed to construct a much smaller dam across the Lakshmanathirtha. Mysore being a lower riparian objected to it. It appealed to Madras to render support in its cause and the Madras Government did its best. As things stood the Government of India intervened and prevented the State of Coorg from carrying out its proposal. After independence several changes took place. The power of the Governor General to decide water dispute prior to 1950 now came to be vested with the Parliament

26 Indian Express, dated 19th July 1982.
under Article 262 of the Indian Constitution. In 1956, the Parliament enacted the River Boards Act, 1956 (No. 49 of 1956), which under Section 4 authorised the Central Government to establish on the advice of the State Government or otherwise River Boards for advising the interested Governments regarding regulation and development of inter-State rivers or river valleys within their areas of operation and in particular advising them in relation to the coordination of their activities with a view to resolving conflicts among them and to achieve maximum results in respect of measures undertaken by them in the inter-State river or river valley for the purpose of inter alia, conservation, control and optimum utilisation of water resource of the concerned inter-State river. In the same year the Parliament passed another law namely the Inter-State Water Disputes Act 1956 (33 of 1956) which provided under Section 4(1) for the constitution of a tribunal if the Central Government was of the opinion that the dispute could not be settled by negotiations.

The emergence of the State of Kerala in 1956 posed a new problem in the Cauvery river water dispute. The 1924 agreement could have better been reconsidered in that year, because the catchment area of the river Kabini lies in Kerala. So Kerala also began to stake its claim over the river Cauvery water. Meanwhile in Madras the Government wanted to achieve the target irrigated area of the Cauvery Mettur Project by opening new canals like the Mettur canal, the Pullambadi canal and the New Kattalai High Level canal taking water to Salem, Coimbatore and Tiruchirapalli districts. The total area to be brought under irrigation was 87,700 acres. Already 2,08,763 acres were brought under irrigation. The total area came now to 2,08,763 + 87,700 + 14,392 acres of double cropped area = 3,11,395 acres. The excess of 3,11,395 - 3,01,000 = 10,395 acres was objected to by the Mysore Government. However, the new scheme was approved

28 Ibid., P. 402.
by the Planning Commission on the assurance of the Madras Government, that they would utilise only the surplus waters of the Cauvery without prejudicing the distribution of such waters between the two states and in the event of deficiencies, the areas would be fed by improving the duty and effecting economies in the existing canal system. The details of extension of irrigation will be traced elsewhere.

The new canals opened in 1959. Since then the controversy between Madras and Mysore over the Cauvery river has been in existence. In 1964 the Mysore Government prepared a report to construct a reservoir across the river Hemavathy ignoring the terms and conditions of the 1924 Agreement which stipulated that the Mysore Government should get the prior concurrence from Madras. Further Government of Madras pointed out that what Mysore staked as its claim in 1943 would be the same claim of Madras over the Cauvery water.\textsuperscript{29} The argument stood reasonable. The political atmosphere in the two states confused the whole issue; there were no problems of large proportions till 1968. The report prepared in 1964 to construct a dam across the Hemavathy river was taken up vigorously in 1968. It initiated a process of arguments and counter arguments between Mysore and Madras. As this sensitive issue requires a deep study no judgement can be attempted at this stage of discussion.