CHAPTER II

GENESIS OF CAUVERY RIVER WATERS DISPUTE
The river Cauvery takes its birth at Talakaveri in the Brahmagiri range of hills in the Western ghats in Coorg district of Karnataka at an elevation of 1341 mt. above mean sea level. This river is an inter-state river transversing through four states Karnataka, Kerala, Tamil Nadu and Pondichery. The total length of the river is about 802 km. It flows to a length of 381 km in Karnataka before reaching Karnataka & Tamil Nadu borders. The river forms a boundary between the two states to about 64 kms. It traverses a further distance of about 357 km in Tamil Nadu before joining the Bay of Bengal at Kaveripatanam\(^1\). The river Cauvery is a life line not only for southern Karnataka, but also for South India. It is known as Dakshina Ganga or the Ganges of the south and is one of the seven sacred rivers to Hindu.

The Cauvery has a number of tributaries both in Karnataka and Tamil Nadu. The Karnataka tributaries are, Hemavati, Lakshmanatirtha, Kabini Honhole (or Survarnavati) and Yagachi. The Tamil Nadu tributaries originate in Meriala are Bhavani, Amaravati and Noyil. Of the total waters of the Cauvery basin 75 per cent is stated to be contributed by Karnataka. An agreement was reached at between the two Governments of Tamil Nadu and Karnataka in 1924 over the construction of dams across the river.\(^2\) The then princely state of Travancore (now Kerala) was not a party to this agreement although a portion of the catchment area of the three tributaries of the river lies in that state. A part of the catchment area of the Cauvery also lies in the former territory of Coorg which was merged into Karnataka subsequently. As a result of the

---


states' re-organization Act 1956, the present dispute about the utilisation of the Cauvery waters and its tributaries centres around the interpretation of the 1924 agreement. Before considering this agreement, it may be worth while to point out that this agreement was preceded by an agreement in 1892 which related to the construction of "New irrigation Reservoirs". The 1892 agreement imposed restrictions on both Mysore and Madras which mounted to waiver of some of its rights by Mysore as an upper riparian state, and which goes against the classical theory of absolute right of the riparian States. Thus clause II of the Madras-Mysore agreement, 1892, reads as follows:-

The Mysore Government shall not without the previous consent of the Madras Government or before a decision under rule 4... build (a) any "New Irrigation Reservoirs" across any part of the fifteen main rivers. The Madras Government should be 'bound not to refuse such consent except for the protection of prescriptive right already acquired and actually existing, the exisstance, extent and nature of such right... being in every case determined in accordance with what is fair and reasonable under all circumstances of each individual case'.

When the Mysore Government desires to construct any "New Irrigation Reservoir" or any "New Anicut" requiring the previous consent of the Madras Government under the last preceding rule then, full information regarding the proposed work shall be forwarded to the Madras Government and consent of

---

3 Ibid.
4 Government of Madras; Madras-Mysore agreement on Cauvery river waters, 18th February, 1892; p.14.
6 Ibid., p.16.
the Government shall be obtained previous to the actual commencement of work.

THE GRIFFIN ARBITRATION, 1913-14

In June 1913, the Government of India had suggested to appoint an arbitrator for Cauvery river waters dispute. It appointed H.D.Griffin Judge of the Allahabad High Court, as the arbitrator assisted by M.Netherhold, inspector general of Irrigation, Government of India. The award of the arbitrator, which came to be known as the Griffin Award, was presented in 1914. It interpreted the 1892 agreement to entitle Madras to such rights as it had acquired by prescription and as were fair and reasonable, and held that a 20 year period was requisite to earn a little by prescription. Specifically, the Griffin Award fixed the requirements of Madras for its existing irrigation at 22,750 cusecs equivalent to a guage reading of 6.5 ft., at the upper anicut. The award also dealt with related issues such as irrigation above the upper anicut, hot weather supply, seasonal regulation of in flows, impounding, and exchange of information between the two parties. Finally, the arbitrator held that the scheme of regulation could be reviewed, re-adjusted, and revised by mutual agreement.

But the Madras Government had not accepted the Griffin Award, and it went on representation against it to the Government of India in 1915. The main grounds of the representation were that Madras should be assured of a higher inflow at the upper Anicut (26, 750 cusecs and 7 ft., on the guage instead of the 22,750 cusecs and 6.5 ft., allowed in the award); that the system of

regulation, which under the award was different from that proposed by either party, should be modified to one acceptable to both; and that the award "afforded in-adequate protection to Madras in respect of the surplus waters of the river and of future extensions of irrigation". The Government of India did not accept the contentions of Madras and in April, 1916 conveyed its decision to ratify the award without modification. The Madras Government went on appeal to the secretary of State against this decision. In November 1919, after consulting independent expert opinion, the secretary of state decided, on procedural and substantive grounds, that there was a prima facie cause for not ratifying the award, there by upholding the appeal of Madras. The secretary of state then gave the Mysore Durbar one of three options:

i. To appeal against the secretary of state's decision;
ii. to enter fresh arbitration; or
iii. to arrive at a negotiated settlement with Madras.

Mysore opted for the last of these alternatives. The Government of India, despite continued pressure from Madras, was not willing to delink its approval for the Mettur project from a settlement of the Mysore-Madras differences on Kannambadi (Krishna Raja Sagar).

The 1924 agreement was necessitated by a proposal of the Mysore Government to construct a dam in 1909 across the Cauvery known as Krishnarajasagar which was opposed by the Madras Government as it was feared that its construction would affect the Tanjore delta. After a prolonged conflict, which involved in the submission of the dispute to an arbitrator appointed by the Government, an award in favour of the Mysore Government and its

7 Ibid., p.12.
subsequent upsetting by the secretary of state, the agreement between Madras and Mysore was signed in 1924. According to the 1924 agreement, the Mysore state was entitled to extend irrigation to an extent then fixed at 1,10,000 acres in Mysore, to be carried out by means of reservoirs constructed on Cauvery and its tributaries, namely, Hemavati, Lakshmanatirtha, Kabinl, Suvarnavati and Yogachi (Upto the Balur bridge) with effective capacity of 45,000 M.C.R. The Madras Government also gave assent to the construction of the Krishnaraja Sagar dam by Mysore. The Madras Government was to limit the area of irrigation under their Cauvery-Mettur project to 3,01,000 acres with the capacity of the Mettur reservoir at 93.5 T.M.C. ft., should Madras construct any new storage reservoir on the Bhavani, The Amaravati or Noyil rivers in Madras, Mysore was at liberty to construct storage reservoir on a tributary as on off-set with a capacity not exceeding 60 per cent of the new reservoir in Madras. The irrigation limits mentioned in the agreement were not to preclude extensions of irrigation effected solely by improvement of duty, without any increase of the quantity of water used. The agreement contemplates reconsideration of some of the arrangements in 1974 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..." The agreement also provides settlement of disputes touching on the interpretation of the agreement through arbitration or if the parties agree through the Government of India".

A dispute arose again in 1926 in regard to the interpretation and operation of rules specified in the agreement. This was referred to arbitration.

---

8 A.R.Banerji, P. Hawkins; Final agreement between the Mysore and the Madras Governments on Cauvery river waters; 18th February, 1924. (Vol.10.I) p.1.
of Mr. Justice Page with Mr. Hooley and Forbes as assessors. In 1950 difficulties arose out of the implementation of the following three new irrigation projects by the Madras Government on the main river: 1. Mettur High Level Canal. 2. Kattalai Bed Regulator, 3. Pullambay Scheme. The first is the first Five year Plan project. The Mettur High level canal is taken off directly from the Mettur dam and the other two schemes are on the main Cauvery River below the Mettur dam. The Government of Mysore objected to its counter part of Madras taking up these projects.

According to 1924 agreement, the Madras Government on their part agreed 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 ft. Since the Kattalai Bed Regulator and Pullambady scheme were on the main river, these could not be taken up by Madras. With regard to the Mettur High Level canal taking off from the Mettur dam itself, it was pointed out that the project was never conceived as a storage reservoir for the direct supply for irrigation but on the other hand was only taken up as a protection for regulation of supply of water to the existing extent or irrigation in the Tanjor delta. According to Mysore, the agreement permitted Madras to construct new irrigation projects only on its three tributaries namely, Bhavani, Amaravati and Noyil rivers and if the Madras Government did so Mysore was at liberty to construct new reservoirs on the tributaries of the Cauvery with in its territory to the extent of 60 per cent of the capacity of the new reservoir in Madras.

Ibid., (Col. 10. V) p.2.
Mysore apprehended that since the 1924 agreement was to be revised in 1974, the new uses of the river by Madras might seriously prejudice its case at the time of revision as the existing uses then might create prescriptive rights in favour of Madras.

The two projects, namely, Kattalai Bed Regulator and Pullambody scheme were given clearance by the planning commission on the assurance of the Madras Government that these would utilise only surplus waters between Mysore and Madras states and that in the event of deficiencies they would be fed by improving duty and affecting economics on the existing canal systems in the Cauvery basin in Madras. The Madras Government agreed that the utilisation of water for these schemes might not be considered to have bestowed any prescriptive rights on Madras. The question of division of surplus waters was award in 1974, it would have been decided as though these schemes were implemented.

About the Mettur level canal, no specific approval of the planning commission was obtained. The contention of the Madras Government was that the Mettur High Level canal would take off from the Mettur dam which would form part of the Cauvery high level Mettur project of which the work entitled to extend irrigation to the limit of 3,01,000 acres. Under the project, as per 1924 agreement, Mysore should not have any objection to the location of the areas where irrigation is done in this project so long as it is restricted to 3,01,000 acres.\textsuperscript{10} The Mysore Government referred to the arbitration proceedings in support of its view that Madras could not undertake the Mettur

\textsuperscript{10} S.Guhan, "The Cauvery River Dispute", 1993, p.16.
canal scheme. But the Madras Government raised an interesting jurisprudential question in support of its case. It contended that negotiations leading to the agreement between the states were in admissible in arguments subsequent to the conclusion of the agreement where agreement is clear and unambiguous (as 1924 agreement is). The two governments have also been at logger heads on owing to lack of communication in respect of information regarding projects of common interest. It is expected of each state that it would send the relevant information of its side to the other state. Under Col. 10 (VIII) of the 1924 agreement and Cl. 4 of the annexure there to. The Mysore Government is obliged to furnish "full particulars and details" of the reservoir schemes to the Madras Government "to enable them to satisfy themselves that the conditions will be fulfilled". This is only a provision of unilateral nature but Cl. 10(VI) of the agreement is bilateral. The Mysore Government and the Madras Government agree, with reference to the provisions of clauses (iv) and (v) preceding, that each government shall arrange to supply the other as soon after the close of each official or 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 as after soon the close of each month as may be convenient. In the present dispute, both the states refused to exchange information. Thus, Mysore complained that "Under Cl. 10(VI) of the 1924 agreement, the Madras Government should have given the details with reports of the areas newly brought under irrigation" but, that the "Madras Government is going ahead or has gone ahead, without any reference to this Government". Frequently legal

11 Opcit. Col. 4.
battles and acrobatics have taken place between the two states on this issue. Madras, for example, highlighted the controversy in the following manner.

The Madras Government wishes to bring it to the notice of the Government of India, that whenever details of Mysore irrigation schemes affecting flows in the Cauvery were required by this Government, the Mysore Government has avoided furnishing such details and insisted on this state quoting the relevant provision of the agreements under which the details should be furnished.

The Madras Government further mentioned various schemes details of which were not furnished by Mysore e.g., pumping schemes taken up by Mysore Government on the river Cauvery and its tributaries, Nagu reservoir scheme, Kabini reservoir scheme, new feeder channels to Navalur and schemes on Arkavatty, Lokapavani, sagaradal and Kerrahalla and the like river basins. Mysore, however, contended that some of them are non-schedule rivers and therefore not covered by the agreements. Ultimately, although it was realised that the best course is the exchange of information directly by one state to another as a practical solution to the deadlock, it was proposed that the information may in the first instance be sent to the centre and communicated there from to the concerned states.

Mysore felt that the 1924 agreement has been operating harshly on it an account of the fact that where as 75 per cent of the catchment area of the Cauvery basin lies within its territory its utilisation is much less, and therefore, it has been pressing for the revision of the agreement. It appears that the irrigated area in Mysore is hardly 3,45,000 acres. As stated earlier, the 1924
agreement itself provides for reconsideration in 1974. Apart from this clause, agreement was provided by the states Re-organisation Act. Coorg state and a portion of the Cauvery basin (Kollegal taluk in Coimbatore District) previously lying in Madras have been merged into Mysore state. After reorganisation of the states in 1956, Kerala also claimed some water from the Cauvery (although princely state of Travancore i.e., part of the present Kerala state was not a party to the agreement) section 108 of states re-organisation Act 1956, stipulated that agreements affected by the re-organisation of states should be revised by the re-organised states by 1 November 1957, in accordance with the new territorial adjustments.

It was felt by the deputy chairman of the Planning Commission that in all such cases the solution lay in the states concerned setting up a river board under section 4 of the river boards Act 1956. Such a board could discuss questions of utilisation in a practical manner and arrive at agreed solutions. Kerala wanted such a river board to be set up, but Mysore and Madras staunchly opposed it.

Certain recent developments have precipitated further the crisis between the two states. The then Mysore Government appointed a Technical Committee which has suggested further utilisation of the Cauvery basin on the Mysore side. The committee’s finding is that Cauvery waters may be utilised at the optimum levels by Mysore without prejudice to the existing supply in Tamil Nadu (formerly called Madras state) is disputed by the Government of Tamil Nadu. The committee has urged the Mysore Government to execute six major

---

projects for damming and diversion of the Cauvery before 1974. Since the Madras Government undertook the three projects namely Mettur High level canal, Kattabail Bad Regulator and Pullambady scheme without, concurrence of the Mysore Government, the Committee has urged the Mysore Government to go ahead with its schemes without waiting for the approval of the then Madras Government.

In a meeting of the Southern Zonal Council, Tamil Nadu, Mysore and Kerala have agreed to settle among themselves disputes relating to the Hemavathi irrigation project on the river Hemavathi, a Tributary of the river Cauvery in Mysore. It was also decided that the Mysore-Kerala dispute in respect of the Kambini project on the Kabini river, another Tributary of the Cauvery, should be settled in between the two states.

The issue was again taken to the supreme Court when Karnataka began working on construction of dams on the Cauvery tributaries like the Hemavathi, the Harangi and the Kabini - Tamil Nadu pleaded for a tribunal and suspension of work on the three projects. Their application for an injunction to stop work on these projects was re-pacted by the Court and subsequently the prayer for setting up of a tribunal was withdrawn. With a view to finding an amicable solution, the Government of Indian held a series of discussions with the Chief Ministers of the basic states. Though 25 meetings were held, the final issue came nearer to the solution only in 1974.

At a meeting of the Chief Ministers of the states under reference held on 29th and 30th of November 1974 under the Chairmanship of Mr. Jagjivan Ram, the then Union Irrigation Minister, the pattern of utilisation in the four basin
states of Karnataka, Tamil Nadu, Kerala and Pondicherry agreed upon.\(^\text{13}\) A draft agreement was also prepared. One of the principle features of the draft agreement was setting up of cauvery valley authority. The agreement fell through for want of ratification as Tamil Nadu rejected it on the ground that it was evolved during the President’s rule.

In pursuance of 1976 understanding, technical committee of officers was set up for assessment of water and to suggest formula for sharing of water in lean year. A committee of secretaries was also constituted to draft functions and rules for the proposed cauvery valley authority. The above two committees were not able to complete the work owing to divergent views expressed by the states concerned.

In order to implement the understanding without any delay and to iron out differences, 6 meetings were held by Central Government with the chief ministers of the basin states during 1978-1982, but no agreed decision could be reached at and the understanding was not satisfied.\(^\text{14}\)

The dispute carries with it the shadow of the Raj. The Imperial Government spoken through the then state of Madras. And in 1892, Mysore spoke through general H.N.D. Prendergast RE, KCB, VC, officiating president in the princely state of Mysore. The Government of India was to be the final arbitrator. But, the agreement itself prevented the construction of reservoirs and anicuts by Mysore without the consent of Madras. Several other agreements

---

\(^{13}\) Government of India; Draft proposal on Cauvery river waters Dispute; 1974. col.1.

\(^{14}\) Directorate of central water commission, Cauvery waters Dispute : A Brief fo PM’s Meeting on 3rd April, 1987, p.5.
followed such as the repair agreements of December 28, 1933 the agreement of July 1994 on the sharing of the water of the Tungabhadra, the agreement of December 1945 on the Secrebyle anicut on the Tunga, and the supplemental agreement of 1946 between Madras, Mysore and Hyderabad. Of particular importance was the agreement of February 18, 1924 in regard to the constitution of a dam and a reservoir at Krishnasagar. The important clauses (IV) and (V) allowed Mysore further irrigation to an "extent now fixed at 1,10,000 acres" in addition to the already permitted 1,25,000 acres plus a one third increase on the existing channels over the actual irrigation in 1910. Madras under Mettur project limited its irrigation to 3,01,000 acres. This agreement was continued till 1974 after which it was to be reviewed in the light of experience.¹⁵ Four years before the fifty years were to end, an agreement under the advice of the powerful and knowledgeable Dr.K.L.Rao (then Minister of Irrigation) dated May 31st 1972, declare that the Cauvery dispute had to be resolved in a knowledgeable way with full technical expertise with the helpful advice of the Union.

On August 26, 1976 an agreement confirmed the existing utilisation of the Cauvery at 671 tmc. ft., comprising 489 tmc. ft., by Tamil Nadu, 177 tmc. ft., by Karnataka and 5 tmc. ft., by Kerala. At the end of 16 years, savings would go on the basis of 4 tmc. ft., to Tamil Nadu and 87 and 34 tmc. ft., to Karnataka and Kerala respectively, with 2 tmc. ft., for industrial and domestic supply monitoring and consultation were to take place through a Cauvery valley authority perhaps¹⁶, it was easier to negotiate this agreement because it was

---


³ Government of India; Draft proposals on Cauvery river water dispute; 1976 Col.1 & p.1.
pulled together by Jagjivan Ram during the Emergency, at a time when the Karunanidhi government had been dismissed for corruption in January 1976. What is clear is that at no point has there been a discourse between equals on the basis of clearly articulated principles if the turn of the century agreements were dictated by fort St. George, the later agreements were dominated by the "Emergency" intervention of Delhi. The agreements as well as the procedure adopted to implement or reconsider them have been adhoc based on exigency convencience and the balance of power and instrumented towards a makeshift peace rather than rational discussion.

Delhi has reacted to the problem with the same kind of imperial air as previous Central Government (whether of the Raj and otherwise) but painfully aware that its political existence could well depend upon the solution. Lacking the expert skill of a Dr.K.L.Rao or the political acumen of Jagjivan Ram, they have sent emissaries to the respective capitals who have made no head way but tried to defuse the situation by passing on relatively meaningless questions to the Supreme Court in the hope that the temporary cold storage provided by legal proceedings would cool down the tempers without resolving issues of Principles.

The manner in which India tries to tackle its inter State disputes needs to be worked through with much greater clarity. Institutionally, some headway was made in this regard by Dr.B.R.Ambedkar’s valuable intervention at the Constituent Assembly on September 9, 1949 that the institutional mechanism
should not be "too hidebound or too stereotyped to allow any elastic action that may be taken to meet with these problems". 17

Along side there has been no enunciation of principles. The best course suggested by Justice Black in Arizona (California, 1963) on allocation of the water of the Colerando water dispute in the USA is for the states to enter into contracts with one another with the consent of Congress on these matters, imposed solution (even if they come in the garb of decisions of sitting judges) commonly yield conflict. It was also thought that these are matters for cooperative federalism which is why the National water development agency was created to develop technical expertise and the water resources development council sought to bring together, the Prime Minister and the Chief Minister to develop procedural mechanisms accumulate expertise and explore principles of appointment. Unfortunately centralised and party politics have glossed over the working of co-operative federalism.

Irrigation continues to be a state subject under the constitution of India which has come into force since 1950. For the settlement of inter-state water disputes, the Draft Constitution of India initially contained identical provisions as the 1935 Act. But subsequently, Dr. Ambedkar moved an amendment proposing the necessity for a permanent body to deal with the disputes because it was expected that there would be an increase in the number of inter-state water disputes consequent on full exploitation of inter-state rivers for increasing the irrigation and power potential in independent India. Accordingly, article 262 was adopted. It empowers the Parliament to provide for the adjudication of any

dispute or complaint with respect to the use, distribution or control of the waters or in any inter-state or river valley and to bar the jurisdiction of the supreme court or any other court in respect of each disputes.\textsuperscript{18}

Admittedly the Cauvery water dispute is involved more basic human rights concerning freedom and slavery. So, though sabotage and terrorism have been threatened, there is little fear that the Cauvery water dispute will lead to any great violence. Still, a doubt remains whether a legal judgement can settle a political dispute. After the expiry of the agreement in 1974, the centre enacted, the Rivers Board Act and the inter-state waters disputes. In 1971, the Tamil Nadu state Government sought the Court's indigenous in restraining Karnataka from executing new projects on the river.

**SUPREME COURT DIRECTS CENTRE TO APPOINT TRIBUNAL**

On May 4th 1990, the Supreme Court directed the Central Government to fulfil its "Statutory Obligation" and refer the Cauvery inter-state river waters dispute for resolution to a tribunal.\textsuperscript{18} Passing judgement on an eight year old writ petition by Tamil Nadu Farmers Association pleading for reference of the dispute to a tribunal, a division bench comprising Mr. Justice Ranganath Mishra, Mr. Justice B.P. Sawant and Mr. Justice K. Ramaswamy, directed the Centre was to set up the tribunal with in a month. Allowing the writ petition by the Tamil Nadu Farmers Association, the bench said it had no option but to conclude that a clear picture has emerged that settlement by negotiation cannot


\textsuperscript{19} The Economic Times, 5th May, 1990.
be arrived at and it also held that taking the recent developments in the matter, the central Government was also of the opinion that the matter could not be settled by negotiation.

The Bench observed that there was no reason for the dispute to project for such a long time as parliament had by statute empowered the centre to resolve such disputes effectively by referring them to and impartial tribunal. The court said disputes of this nature had the potentiality of creating avoidable feelings of the states concerned. "The longer the dispute lingers the more bitterness" the bench observed. The court said any further delay in taking the "statutorily mandated action is bound to exasperate the feelings of the concerned further and lead to more bitterness" it was therefore, necessary, that the legal machinery provided by the statute is set in motion before the dispute escalates the bench said, referring to the adage "a stitch in time saves nine". "Perhaps if the Centre had intervened in an effective way during that period there would have been considerable chance of settlement by negotiation", the court observed and said "no serious attempt seems to have been made at that time to have the dispute resolved and it has been shelved and allowed to catch up momentum and give rise to issue, of sensivity". The court stated that 26 attempts within a period of four to five years and several more adjournments by the court to accommodate those attempts for negotiation were sufficient opportunity and time for the states of Tamil Nadu, Karnataka, Kerala and Pondicherry and Centre to negotiate the settlement since these attempts have failed. It would be reasonable undoubtedly to hold that the dispute cannot be settled by negotiations.
The Court further said it was cognisant of the fact that the matter was a very sensitive one and judicial notice can be taken of the fact that the Government at the centre is one political party which the respective states are run by different political parties. The Bench pointed out under section four of the inter-state river dispute cannot be settled by the negotiation. It was mandatory for the centre to constitute the Tribunal for adjudication of the dispute. The bench said once it had come to the conclusion that a state has been reached when the centre must be held to be of the opinion that the water dispute can no longer be settled by negotiations, it becomes the centre's bounden duty to constitute a Tribunal and refer the dispute under section IV of the Act. The court said it was, therefore, directing the centre to fulfil its statutory obligation and notify in the official gazette the constitution of an appropriate tribunal to adjudicate the dispute. At the outset the court rejected the Karnataka Farmers society petition for the relief sought. The Tamil Nadu Government, the court noted, had supported the petitioners entirely and without any reservation and the court had kept the minutes before it for about seven years.

"Now to throw out the petition at this stage by accepting the objection raised on behalf of the state of Karnataka that the petition of a Society like the petitioner for the relief indicated is not maintainable would be ignoring the actual state of affairs would be too technical an approach and in our review would be wholly unfair and unjust" the judges said. The court, however, did not issue any order on the plea of the petitioners to restrain the Karnataka
Government from constructing dams and reservoirs across the river and to restore water supply to Tamil Nadu under the 1924 agreement.\textsuperscript{20}

The judgement came in the wake of failure of the concerned States and the Centre to resolve the dispute through negotiations before the April 28, 1990 deadline set by the court. Following the failure of several rounds of talks recently, Tamil Nadu had taken the stand that it would not participate any more in bilateral talks, Tamil Nadu demanded the reference of the dispute to a tribunal. Karnataka on its part, had strongly opposed the reference of the issue to a tribunal and had favoured a negotiated settlement on the issue. It had, in fact, proposed the setting upon a Fact Finding Commission to assess afresh the water potential before discussion to the sharing of waters. Following the respective positions taken by the states and centre the court reserved its orders for to-day for passing final judgement, as steps to resolve the dispute at the root of the conflict is a 1924 agreement between the erstwhile Madras presidency and princely state of Mysore. While specifying the share of the two states, the agreement stipulated that Karnataka has to get prior clearance for Tamil Nadu for any new irrigation projects. There had been a series of meetings between the two states since 1974 when the agreement expired but no subsequent agreement could be reached.

Karnataka has taken the position that no purpose would be served by appointing a tribunal and the issue should be settled only through negotiations. It is in favour of the appointment of a fact finding commission to collect fresh data on availability of water in the Cauvery, its utilisation by different states and

\textsuperscript{3} Ibid.
their future requirement on a scientific basis, Karnataka rejected as "Out dated the data collected by a previous committee in 1972. According to Supreme Court's direction in 1990 the centre was to set up a Tribunal to settle the inter-state dispute on the equi-distribution of Cauvery water." The Supreme Court pointed out that once it come to the conclusion that a stage has reached when the central Government must be held to be of the opinion that the water dispute can no longer be settled by negotiations, it thus becomes its obligation to constitute a Tribunal and refer the dispute to it as stipulated in section 4 of the Act (ie. the ISWD Act, 1956). Accordingly, the Court directed the Central Government to fulfil its statutory obligation and notify in the official gazette within one month the constitution of an appropriate Tribunal for the adjudication of the Cauvery Water dispute. The Cauvery Water dispute Tribunal was constituted on June 2, 1990, under section 4 of the ISWD Act, 1956 with Justice Chittatessh Mookerjee, the then Chief Justice of the Bombay High Court, as chairman and justice S.D. Agarwaia of the Allahabad High Court and Justice N.S. Rao of the Patna High Court as Members. 

The Government of India referred to adjudication to the Tribunal the dispute as set out in the official letter from the Tamil Nadu Government of July 6, 1986. Pondicherry and Kerala are also parties to the Cauvery Water dispute. Pondicherry claims the water as the river flows through the Union Territory before merging into the sea. Kerala also has staked its claim on the waters as

---

21 Ministry of Water Resources, Government of India gazette, No.21/1/90. WD. New Delhi, 2nd June 1990.

22 Irrigation Department, The Cauvery water dispute, Bangalore, July 1993. p.15.

23 The Hindu 3rd June, 1990.
the river Kabini, one of the tributaries of the Cauvery has its source in Kerala. After completion of the Tribunal interim work, it has decided to give Interim order on Cauvery water disputes. The interim award content is as follows:

**INTERIM ORDER ON CAUVERY RIVER WATERS DISPUTE**

On 5th January, 1991 the court had dismissed the CMP Nos. 4 and 9 of 1990 filed by the State of Tamil Nadu and CMP No. 5 of 1990, filed by the Union Territory of Pondicherry, INTER ALIA upon the review that the Central Government had as yet made no reference to the Tribunal for adjudication of the interim reliefs prayed in the said CMPs filed by the state of Tamil Nadu and the Union Territory of Pondicherry respectively and hence the said petitions for interim reliefs were non-maintainable. The state of Tamil Nadu and Union Territory of Pondicherry had respectively filed Civil Appeal Nos. 303-304 of 1991 and Civil Appeal No.2036 of 1991, before the Supreme Court of India. On 26th April 1991, the Bench consisting of Kasliwal, Punchhi and Sahai, J.J. allowed the said appeals, set aside cauvery water dispute. Tribunal dated 5th January, 1991, directed that the said CMP Nos. 4, 5 and 9/90, be decided on merits.24 Kasliwal, J. with whom Punchhi J. Agreed, INTER ALIA held that the requests for expeditious action contained in a passage of the letter dated 6.7.1986 of the Government of Tamil Nadu and which was quoted by the learned judge showed that the state of Tamil Nadu was claiming for immediate relief as year after year realisation at Mettur was failing and the like. Therefore, the tribunal was clearly wrong in holding that the Central Government had not made any reference to any interim relief. The reliefs prayed by the appellants in

CMP. Nos. 4, 5 and 9/90, clearly came within the purview of the disputes referred to by the Central Government under Section 5 of the Act (Inter-State Water Disputes Act, 1956). Kasliwal, J. had further observed that in view of the above circumstances, he did not consider it necessary to decide the larger question whether a Tribunal constituted under the Act had any power to grant any interim relief. The appellants became entitled to succeed on the basis of the finding recorded by the Supreme Court that the reliefs prayed by them in their CMP Nos. 4, 5 and 9/90 were covered in the reference made by the Central Government. In his judgement, Kasliwal, J., also noted that at the fag end of the arguments it was submitted on behalf of the state of Karnataka that they were agreeable to proceed with the CMPs on merits before the Tribunal on the terms that all party States agreed that all questions arising out of or connected with or relevant to the water dispute be determined by the Tribunal on merits.

Kasliwal, J. observed that the above terms were not agreed to by the state of Tamil Nadu as such he was deciding the appeals on merits. As already mentioned Punchhi, J. agreed with Kasliwal, J. who concurred that the appeals on merits. He observed, INTER ALIA that he had reservations about certain issues including the construction of the letter dated 6th July, 1986. He did not prefer expressing any opinion on them since according to Sahai, J., the States of Karnataka and Kerala were agreeable to the determination of the applications for interim relief on merits.25

After the Supreme Court rendered the above decision, these CMPs were again placed before Tribunal. Both the State Tamil Nadu and Union Territory of Pondicherry, filed applications for amendment of their respective CMPs, Nos.4 and 9/90 and 5/90 INTER ALIA to incorporate additional prayers therein. In its amendment application the State of Tamil Nadu also placed on record certain additional facts. After hearing the parties, the judges allowed the said prayers for amendments of CMP No.4,9 and 5/90. Thereupon, the State of Karnataka filed supplementary objections supported by affidavit. The State of Tamil Nadu also filed rejoinder to the said supplementary objections dated 27th May 1991.\(^28\)

The judges were not prepared to give any countenance to the objections as to the maintainability of these CMPs raised by Mr. F.S.Nariman, Senior Counsel appearing on behalf of the State of Karnataka. The Supreme Court has directed the Tribunal to decide these CMPs on merits. Accordingly, it is no longer open to the State and Karnataka to urge this point of maintainability. The said direction of the Supreme Court is binding upon the parties and the Tribunal. It is accordingly, unnecessary for us to notice the various authorities cited by both sides on the question as to whether this tribunal possesses inherent powers and as to whether it can grant interim reliefs. Tribunal judges already mentioned that Kasliwal, J. with whom Punchhi, J., agreed, categorically that held that Tamil Nadu’s prayer for grant of interim relief was covered by the reference dated 2nd June, 1990 made to this Tribunal. Justice proceeded to

consider the merits of the petitions for emergent reliefs respectively made by the State of Tamil Nadu and the Union Territory of Pondicherry.

In its CMP No.4 of 1990, the State of Tamil Nadu had initially prayed for directing the State of Karnataka not to impound or utilise waters of the Cauvery River beyond what it was on 31st May, 1972, as agreed by the Chief Ministers of basin States and the Union Minister for irrigation and power. The State of Tamil Nadu also had prayed for restraining the State of Karnataka from undertaking or proceeding with any new projects, dams, reservoirs, canals, and others without the consent of the State of Tamil Nadu. The State of Tamil Nadu has now made an additional prayer for directing the State of Karnataka to make timely and adequate releases of waters from its storages and reservoirs in such a manner as to ensure availability of sufficient inflow into the Mettur reservoir of Tamil Nadu on week to week basis as reflected in the Statement.

Pleadings are not complete, parties have not yet placed on record all their documents and papers and the like. Therefore, Tribunal proposes not to make any pronouncement about the agreement of 1892 between the then princely state of Mysore and the then State of Madras regarding irrigation reservoirs over thirteen major rivers flowing through the then States of Mysore, including the Cauvery and its five tributaries viz., Hamavathi, Laxman Thirtha, Kabini, Suvernavathi and Yagachi. For the identical reasons, refrain from examining the submissions of the two sets of contending parties about the agreement between the then Madras and Mysore Governments dated 18th February, 1924

27 Government of Tamil Nadu, "Cauvery water dispute"; Tamil Nadu Civil Miscellaneous petition No. 4 of 1990.
under which Mysore Government became entitled to construct a dam and a reservoir across and over the river Cauvery at Kannambadi, now known as Krishnaraja Sagar, according to the stipulated specifications. The discharge through and from the said reservoir was to be strictly in accordance with their Rules and Regulations in the 1924 Agreement as mentioned. The Madras Government under Clause (xiv) of the agreement was at liberty to construct on the Bhavani, the Amaravathi or the Noyil rivers in Madras any new storage reservoir and Mysore Government would be at liberty to construct a storage reservoir in addition to the reservoirs mentioned in clause (vii) of the said Clause (xi) of the agreement of 1924 provided that the limitations and arrangements in Clauses (iv) to (viii) shall be open to reconsideration at the expiry of fifty years from the date of the signing of the agreement. The parties before Tribunal were at variance about the scope of this clause (xi). Shortly before the expiry of fifty years from the date of signing of the agreement of 1924, discussions were held on 29th May, 1972, at New Delhi between the Chief Ministers of Karnataka, Tamil Nadu and Kerala. The Union Minister of irrigation and Power was also present. 28

The discussions amongst Chief Ministers revealed general consensus on the three points as in para 2. Under the paragraph 2.2, the centre was to appoint a fact finding committee to collect all the connected data pertaining to the Cauvery waters. Paragraph 2.3 provided that by making use of the data, discussions will be held between the Chief Ministers of the three States to arrive at an agreed allocation of waters for the respective states.

28 Opel., Interim award on Cauvery water Dispute June 25, 1991.
The paragraph 3 of Cauvery waters dispute Tribunal, recorded, the Union Government will assist in arriving at such a settlement in six months, and meanwhile no State will take any steps to make the solution of the problem difficult either by impounding or by utilising water of Cauvery beyond what it is at present. The fact finding Committee was constituted, and it had submitted its reports. But no final agreement was arrived at between the States regarding the allocation of Waters for the respective States.

When judges were deliberating whether any emergent order ought to be passed, their prime consideration ought to preserve, as far as possible, pending final adjudication the rights of the parties and also to ensure that by unilateral action of one party the other party is not prejudiced from getting appropriate relief at the time of the passing of the final orders, Tribunal ought to also endeavour to prevent the commission of any act by the parties which might impede the tribunal from making final orders in conformity with the principles of fair and equitable distribution of the waters of this inter-State river.28

Undisputedly, the Cauvery river is an inter-State river. Therefore, the three states and the Union Territory of Pondicherry being riparian to the said river are entitled to the release of waters of the said river in a reasonable and beneficial manner. Equality of right does not give a co-riparian the right to an equal division of the waters. Rather, equality of right is the equal right of each co-riparian state to a division of the waters on the basis of its economic and social needs, consistent with the corresponding rights of its co-riparian states,

and excluding from consideration factors unrelated to such needs. At this stage it would be neither feasible nor reasonable to determine how to satisfy the needs of each State to the greatest extent possible with a minimum of detriment to others.

Tribunal did not also propose at this stage to enter into the question whether the present use of water of the river Cauvery either by the State of Tamil Nadu or the State of Karnataka is the most beneficial use which the water could be put to. At an appropriate stage and in the appropriate manner, it may be necessary to consider legitimate economic and social needs of each State for the purpose of making equitable utilisation of the waters. The learned editors of the Law of International Drainage Basins at page 64 have pointed out that multitude of factors should be examined. "While many factors are relevant, all are not of equal weight. Existing uses are particularly significant and are generally entitled to grant weight". Tribunals are not unmindful of the further observations made by the learned editors to the fact that the matter of existing use is most controversial. These points may arise for our consideration at the time we finally dispose of the ‘Reference’. At this interlocutory stage it would be more in consonance with the ends of Justice to examine the prayers made by the State of Tamil Nadu and Union Territory of Pondicherry in the light of the considerations which are germane for granting or refusing interim reliefs in a list of this kind. Tribunal has already mentioned herein before that pending final adjudication by materially altering the present position, no party should be

allowed to cause prejudice to the other party or to obstruct and impede this Tribunal from making its final order in accordance with the law.

The substance of the allegations made on behalf of the state of Tamil Nadu in CMP. No.4/90 is that by reason of impounding greater and greater volume of water in the reservoirs constructed in the different tributaries of Cauvery flowing through Karnataka, the Inflow of water into Mettur Dam of Tamil Nadu from year to year is being reduced. At this stage, Tribunal however makes it clear that it will not be appropriate to fix the inflow of water into Mettur Dam on the basis of the figures at the time of recording of consensus arrived at the meeting of Chief Ministers of the States of the then Mysore, Tamil Nadu and Kerala in the presence of Union Minister of Irrigation and Power, held on 29th May 1972. More than eighteen years have elapsed since the recording of said consensus of 29th May 1972 and various subsequent events also including construction of additional dams and reservoirs and other irrigation facilities have taken place. We do not propose to examine at this stage the legality or justifiability of erection of these reservoirs, dams, and canals. The said matters may be gone into if found necessary at the appropriate stage. In this case it would be in accordance with justice to fix the annual releases into Mettur Dam by making average of the same for a number of normal years in the immediate past.

It is pertinent to point out that after meeting of the Chief Ministers of the States of Mysore Tamil Nadu and Kerala, the minutes were recorded on 29th May, 1972. More than one attempt was made to estimate the total flow of the water in the river Cauvery and also to specify the share of utilisation,
particularly by the States of Karnataka and the State of Tamil Nadu. Since the
correctness of the reports made by the Fact finding committee and thereafter
by the study team under the Chairmanship of Sri C.C. Patel will hereinafter
come up for Tribunal consideration, they propose not to deal with these reports
at this stage.

Tribunal’s attention has also been drawn to the draft agreement which
were prepared in 1974 and 1976, but were not formally signed by the
contending states. Justice may only indicate that the attempts made in the past
to determine the shares of waters to be allocated to the States and Union
Territory of Pondicherry had been abortive, and the same still remain for
adjudication by the Tribunal. Tribunal have already mentioned that at the
present stage they would be guided by consideration of balance of convenience
and maintenance of the existing utilisation so that rights of the parties may be
preserved till the final adjudication. For this purpose, the average of the annual
flow of the waters of the river Cauvery into the reservoir of the Mettur Dam in
Tamil Nadu could serve as a reasonable basis. Justice is also not unmindful of
the fact that besides releases made from Krishnaraja Sagar and Kabini Dams of
Karnataka, some water from the intermediate catchment area also flows down
into the Mettur Dam. The said fact cannot be the ground for totally rejecting the
prayer of the Tamil Nadu because the contribution of the said catchment area
into the Mettur Dam is not large enough. Tribunal’s view, was that there ought
to be the release of waters by Karnataka which is to be fixed by having regard
to the realisation made over a span of years in the proximate past after
excluding abnormally good and abnormally bad years.
Tamil Nadu has furnished before the Tribunal the following figures for the period of ten years, i.e., 1980-81 to 1989-90 of inflow of water into Mettur Dam.  

<table>
<thead>
<tr>
<th>Years</th>
<th>TMC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980-81</td>
<td>394.01</td>
</tr>
<tr>
<td>1981-82</td>
<td>403.20</td>
</tr>
<tr>
<td>1982-83</td>
<td>173.09</td>
</tr>
<tr>
<td>1983-84</td>
<td>230.37</td>
</tr>
<tr>
<td>1984-85</td>
<td>284.36</td>
</tr>
<tr>
<td>1985-86</td>
<td>158.28</td>
</tr>
<tr>
<td>1986-87</td>
<td>187.36</td>
</tr>
<tr>
<td>1987-88</td>
<td>103.90</td>
</tr>
<tr>
<td>1988-89</td>
<td>181.37</td>
</tr>
<tr>
<td>1989-90</td>
<td>175.64</td>
</tr>
</tbody>
</table>

In considering these figures Tribunal has decided to exclude the figures for the years, 1980-81 and 1981-82, which were described by parties as abnormally good years. Justices have also excluded from consideration the figures for the years 1985-86, 1987-88 which were classified to be bad years. The average annual flow of the remaining six years work out at 205.3 tmc., which may be rounded off to 205 tmc.

Karnika Region of Union Territory of Pondicherry is at the tail end of Cauvery delta. Before Tribunal submissions were made about the plight suffered by this area other shortage of water, the Union Territory of Pondicherry has claimed before Tribunal 9.355 tmc. of water towards irrigation and water supply. In their view, while making order upon these emergent petitions Tribunal ought to take into consideration the prayer of the Union Territory of

---

Pondicherry for release of some additional volume of water. They propose to
direct for the end of Justice, release of 6 tmc., of water by Tamil Nadu for
Union Territory Pondicherry.

The grievance of Tamil Nadu broadly was that not only the total volume
of water from Karnataka for flowing down to Mettur Dam was becoming less
and less, but also the said releases were not being made timely to meet the
needs of cultivation of crops, particularly in the Cauvery delta of Tamil Nadu.
It would be fair to direct that annual releases be made in a regulated manner
from week to week basis from June to May. The State of Kerala has not applied
for any interim order, therefore, this order is without prejudice to the claims and
contentions of the State of Kerala about the equitable distribution and release
of the waters of the river Cauvery and its Tributaries. We again make it clear
that the interim orders passed do not amount to final adjudication of the rights
and contentions of the parties in regard to the dispute referred to this Tribunal.

In view of the above, thus direct the State of Karnataka to release
water from its reservoirs in Karnataka so as to ensure that 205 TMC of
water is available in Tamil Nadu’s Mettur Reservoir in a year from June to May.
From 1st July, 1991 the order will be effective. They further direct that, the state of Karnataka shall regulate the release of water in the following manner.\textsuperscript{32}

<table>
<thead>
<tr>
<th>MONTHS</th>
<th>TMC</th>
</tr>
</thead>
<tbody>
<tr>
<td>June</td>
<td>10.16</td>
</tr>
<tr>
<td>July</td>
<td>42.76</td>
</tr>
<tr>
<td>August</td>
<td>54.72</td>
</tr>
<tr>
<td>September</td>
<td>29.36</td>
</tr>
<tr>
<td>October</td>
<td>30.17</td>
</tr>
<tr>
<td>November</td>
<td>16.05</td>
</tr>
<tr>
<td>December</td>
<td>10.37</td>
</tr>
<tr>
<td>January</td>
<td>2.51</td>
</tr>
<tr>
<td>February</td>
<td>2.17</td>
</tr>
<tr>
<td>March</td>
<td>2.40</td>
</tr>
<tr>
<td>April</td>
<td>2.32</td>
</tr>
<tr>
<td>May</td>
<td>2.01</td>
</tr>
</tbody>
</table>

In respect of particular month the releases are to be made in four weeks in four equal instalments. If in a particular week, it is not possible to release the required quantum of water, the tribunal ordered that the said deficit shall be made good in the subsequent week. The tribunal also ordered that 6 tmc. water for Karaikal region of the Union Territory of Pondicherry will be delivered by the state of Tamil Nadu in a regulated manner. Tribunal further directed that the state of Karnataka shall not increase its area under irrigation by the waters of one river Cauvery beyond existing 11.2 lakh acres as mentioned in their Annexure K-V. Column 13, at page 103 to the Supplementary Statement of objections dated 22nd May, 1991 to the amended CAP No.4/90. The above

\textsuperscript{32} Cauvery waters dispute Tribunal; Interim Order on Cauvery water disputes (extract) 1991, p.15.
order will remain operative till the final adjudication of the dispute, referred to the Tribunal.

A state-wide bandh was observed in Karnataka on July 26th 1991 to protest against the interim order of Tribunal. The decision to observe the bandh was taken unanimously at an all party meeting held under the chairmanship of the Chief Minister Mr. S. Bangarappa. The bandh was scheduled on the same day when Tamil Nadu could also be observing a bandh for condemning Karnataka Government’s failure to implement the interim order. The then Karnataka Chief Minister Mr. S. Bangarappa said the Karnataka Government would move the Supreme Court against the Cauvery Tribunal’s recent directive to the State Government to release 205 tmc. of water to Tamil Nadu every year.\(^{33}\)

In a significant development regarding the Cauvery waters issue, the Karnataka Governor Khursheed Alam Khan promulgated an ordinance for the protection and preservation of irrigation in the areas of the Cauvery basin in the State dependent on the waters of the Cauvery and its Tributaries. The ordinance called "the Karnataka Cauvery Basin irrigation protection ordinance 1991"\(^ {34}\) was promulgated after the state cabinet at Bangalore and discussed the issue coming as it did on the eve of the bandh to protest against the interim order of Cauvery water dispute tribunal, the ordinance and rules and orders made there under should have an overriding effect not withstanding any thing contained in any order, report or decision of any court or tribunal (whether


\(^{34}\) Karnataka Government; The Karnataka Cauvery Basin, Irrigation protection ordinance; Bangalore, 25 July, 1991.
made before or after commencement of the ordinance) save and expect a final decision under the provision of Sub-Section (2) of section 5 read with section 6 of the Inter-State water disputes Act, 1956. The ordinance is thus aimed at overcoming the interim order of the Tribunal. The ordinance said it should be the duty of the State Government to protect, preserve and maintain irrigation from the waters of the Cauvery river and its tributaries in the irrigable area under various projects. It has listed 28 projects with irrigable area of 8.497 lakhs hectares (or roughly 21 lakh acres). The State Government the ordinance directed might abstract or cause to be abstracted during every water year (commencing on June 1 of a calendar year and ending on May 31st of the next Calendar year). Such quantity of water as it might deem requisite, from the flows of the Cauvery river and its tributaries in such manner and during such intervals as the Government or any officer not below the rank of an Engineer in Chief designated by it might deem fit and proper.

Both states Karnataka and Tamil Nadu being entangled up in Cauvery water dispute observed a state wide bandh on 26.7.1991 to protest against interim award and to implement the Tribunal interim award. To placate the both states, the Union Government decided to seek the advice of the Supreme Court on the constitutional issues arising out of the promulgation of the Karnataka Cauvery Basin irrigation protection ordinance 1991 and the status of interim order given by the Cauvery waters dispute Tribunal previous month directing Karnataka to release 205 tmc. of water from its reservoirs into the Mettur Dam in Tamil Nadu. Then decision followed a meeting of the Cabinet Committee of Political Affairs (CCPA) presided over by the Prime Minister, Mr. P.V. Narasimha Rao to consider the various options before the centre in the light of political
crisis. Earlier, the Prime Minister had called on the then President, Mr. R. Venkatraman and is understood to have discussed the Cauvery issue with him.

The Supreme Court declared on November 22, 1991 as "Un-Constitutional" an ordinance promulgated by the Karnataka Government to deny Cauvery waters to Tamil Nadu and observed that the Government's legislation was an "invitation to lawlessness and anarchy.\(^{35}\) A five judge constitution Bench presided over by the Chief Justice, Mr. Ranganath Misra, in a 109 page verdict on the Presidential reference seeking opinion of three issues relating to the Cauvery waters dispute, noted that the ordinance promulgated on July 25, 1991 was "against the basic tenets of the rule of law by which the State Government could take law into its own hands and be above the law". The judgement pronounced by Mr. Justice P.B. Sawant, answered the President's queries on the three issues. The Court held that the Interim order passed by the Cauvery waters Dispute Tribunal on June 25 awarding 205,000 metric cubic feet (TMC) water to Tamil Nadu in a phased manner was a report within the meanings of section 5(2) of the Inter-State water disputes Act. 1956.

Second, a Tribunal constituted under an Act was competent to grant an interim relief to the parties to the dispute when a reference for such a relief was made by the central Government. The Court, however, declined to opine on the query whether the Tribunal was empowered to grant interim relief when no reference was made by the Government for such a relief. The judges said the issue did not arise in the facts and circumstances under which the presidential

reference was made on July 30. In a significant ruling, the judges noted that there should be no doubt on the legal position of the Tribunal's interim order. "To question its efficiency under the Act would be tantamount to flouting it" the court warned.

After hearing the arguments by counsel for the under disputes states, the Court noted, "no state can claim exclusive ownership of such water so as to deprive the other states of their equitable share". Therefore, no state could effectively legislate for the use of such waters since "its legislative power does not extend beyond its territories", declaring the ordinance which later became an Act 'Un-constitutional' the judges noted it effected the jurisdiction of the Tribunal and its obvious purpose was to nullify the effect of Karnataka Government the Court said, the Government has arrogated to itself the power to decide unilaterally whether the tribunal has the jurisdiction to pass the interim order and whether the order is based on it.\(^{36}\)

On 13th December, 1991 Karnataka observed State bandh. For over 15,000 Tamilian refugees fled from Bangalore and it proved to be a black Friday to them as "Kannadiga Wrath" over the Cauvery set back fell on them, Mostly migrant workers, were targeted by mobs and told them to quit the state forth with. Their exodus to Tamil Nadu went on till December 18, 1991. Many arrived by road in Hosur in Dharmapuri District. Thousands of others landed in Vellore, via, Katpadi, by train. Says S, Ramasundaram, North Arcot Collector. "They told ghastly tales of attacks on them by bombs". Most refugees were

headed for their villages in Vellore, Chayyar and Arni Taluks in Thiruvannamalai District. Some needed assistance of all sorts and asked financial. Many do not want to return but will have to go back as they have no other means of livelihood. They had to wait for the Karnataka Government to take proper steps ensuring the safety of the substantial Tamilian population in Bangalore.\(^{37}\)

As the upper riparian State Karnataka has natural advantage and is, therefore in a stronger bargaining position. It can reject any formula it finds disadvantageous and unilaterally enforce its own, as indeed it has been doing over the past few years. The legal track Tamil Nadu has been pursuing may end in a judgement favourable to it, but it simply cannot be enforced unless accepted by Karnataka as this has been made clear in the case of the interim order. With the need to arrive at some kind of solution assuming increasing urgency, Tamil Nadu must agree to the principle of dialogue as way of strengthening the adjudicatory process. Though Karnataka has not been happy with the idea of a Tribunal, neither the Government nor the opposition parties of the State have questioned its authority. What is specifically resented about the interim order is the fact that while fixing a weekly quantum of water to be released to Tamil Nadu, there is no mention of this being made subject to water availability. These are not major problems and an out-of-tribunal agreement can be arrived at which the tribunal can in-corporate in a modified interim order.

But the politics of the dispute rules out such mutually advantageous options. Any show of flexibility is condemned as a sell-out of state interests.

In fact, what is evident is the amazing lack of information (and indeed the deliberate spreading of disinformation) on agricultural needs and practices in either state. In Karnataka, for example, it is widely believed that Tamil Nadu farmers take three irrigated crops, which is untrue. There is only one, and in some areas in Thanjavur too. A third unirrigated non-paddy crop is grown between the seasons.

Twelve prominent citizens appeal to both Governments of Karnataka and Tamil Nadu said "ours is modest though serious non-Governmental effort in which they have shifted the discussion from the emotional to the technical level". It has generated a lot of good will. It is a recognition of the fact that the two Governments will eventually have to work together to ensure a durable, sustainable arrangement regardless of whether an understanding is reached through the tribunal or otherwise. As they understand it, the problem must be disentangled from the equations of political power, that is, of individual leaders. When important leaders, especially of farmers representatives in the basin as a whole, express themselves strongly in favour of an equitable distribution of water, it will be difficult for individual political leaders to come up with excuses to stall a resolution of the problem.

So, they hope to convince more people, especially the representatives of people in the farmers organisations erstwhile Zilla Parishad and Mandal Panchayat representatives, and other people's representatives in the four basin districts in Karnataka, and their counter parts in Tamil Nadu to speak up for a

---

38 N.Ram "For New approach", Frontline, 13 January 1992. p.29
final settlement. They should give them necessary information and tell them how responsive people from the other state were.

The statement does recognise the role of the Tribunal, although believes talks can help the tribunal to play a more positive role. Suppose the two Governments hammer out a solution, an agreed formula can be presented before the Tribunal which it can then incorporate as part of its own statement. They would urge the Tribunal to set up immediately expert committees via their assessors. They would like the Tribunal to activate itself so that it could incorporate any agreement the two Governments, may enter into as part of a modified interim order or final award. They have approached the problem from the short, medium and long term points of view, with regard to considerations of "economy, efficiency and equity". This has already recognised the demands of the two states. In return for an assured annual availability of water, which assurance is vital for Tamil Nadu for planning, they suggest a phased implementation of water conservancy measures which Tamil Nadu must implement.

None of them are experts on such matters and they felt that launching into details at this phase would detract from the main principles of the solution they have suggested. These are best left to experts in the field. If Tamil Nadu accepts the principle of water conservancy (as Karnataka must accept the principle of assured and timely water release), then with some creative thinking on the part of the two States, all kinds of possibilities can be opened up.

A joint appeal issued by a group of 12 prominent citizens from Karnataka and Tamil Nadu is an excellent example of the sentiment and approach that
should ideally form the basis of any solution to the issue. The signatories include M.D. Nanjunda Swamy, President, Karnataka Rajya Raith Sanga; H.N. Nanja Gowda, former Karnataka irrigation minister; B.K. Chandra Sekar, Prof. of Law, Indian Institute of Management; R.K. Narayan, writer; S. Guhan, senior fellow; Indian Institute of Development Studies; S. Janavalam, retired Chief Engineer (Irrigation), Tamil Nadu, and N. Ram Editor, Frontline.

The appeal, or a document modelled along its lines, could in fact become the basis for negotiations. It shows the demands of each state are not mutually irreconcilable, and given time and a spirit of give and take a solution, can be worked out amicably. While not going into detailed facts and figures, it lays out the basic principles of a just solution which essentially revolves along the central demand of each state. Tamil Nadu must be assured of an annual average release into the Mettur Dam. This, the signatories recognise, is vital for any kind of agricultural planning for that state. In turn Tamil Nadu must take steps to improve water conservation measures in the delta through better regulatory structures including new storage facilities, efficient on farm water use management and appropriate exploitation of ground water. The appeal envisages short, medium and long-term measures that will augment the availability of water in the Cauvery basin and its optimum use, based on the principles of economy, efficiency and equity. It has recommended that a water sharing formula be worked out for normal, surplus and lean years so that surpluses and deficits can be equally shared. Mediation and conciliatory

processes must now be set in motion (an excellent example of which is the joint appeal) The issue has to be discussed at the technical level, with no concession to chauvinism. As a follow-up to their appeal, the signatories are arranging a series of seminars in Karnataka and in Thanjavur to promote a better understanding of the problems that each state faces and to see how best these can be solved. They also plan to set up expert committees which will go into different aspects of the problem.

This statement had been concerned with exploring ways and means to restore good relations between Tamil Nadu and Karnataka and to progress the settlement of the Cauvery dispute. The news has came that the Chief Ministers of the two States had agreed to meet on 17 February, 1992 at the initiative of the Prime Minister under his aegis. This was a welcoming development, especially since it had come in the wake of the tragic and violent incidents result in damage to persons, property, and employment in both states. While it was not realistic to expect that this complex and long standing dispute can be resolved in a single meeting, the coming together of the Chief Ministers at this juncture can clear the all complexities and initiate processes to promote a settlement.  

The immediate humanitarian priority was for both Governments to restore the affected families to their erstwhile homes and livelihood and to provide them with speedy and adequate relief and compensation in furtherance of the steps that had already been undertaken in this regard.


The sharing of river waters and disputes connected with them had long history in the world. Such disputes have arisen in different continents-North America, South-America, Africa, Europe and Asia - between and within countries. They have often involved prolonged negotiations and other procedure for conflict settlement such as mediation, conciliation, and arbitration. However, despite initial difficulties and divergences of views, solutions have been arrived at and have been sustained. There is, therefore, no reason why a sustainable solution cannot be found to the Cauvery river waters dispute also given effort, good will and political maturity among all the parties involved viz. the Basin States of Karnataka, Kerala, Tamil Nadu, Pondicherry and the Union Government.

They suggest that the approach to a solution should have to take into account the following basic principles.42

1) All measures should be undertaken, in the short, medium and long term, to augment the availability of water in the Cauvery basin and to promote its optimum utilization having regard to considerations of economy. Efficiency and equity. Inter-alia, this will involve time bound projects and programmes in a planned manner for avoidance of waste, in river and canal flows, better regulatory structure including new storage facilities where necessary, efficient on farm development and on farm water use management, appropriate exploitation of ground water and its conjunctive use with surface water, and prevention of rain water going waste, might also involve, to the extent necessary, changes in cropping patterns, crop cycles, and methods of crop husbandary.

42 Ibid., P.2.
ii) The solution must provide assured annual average availabilities of flows to each of the Basin States, consistent with the phased implementation of measures indicated in (i) above so as to provide the basis for planning.

iii) Given the fact that the rivers in the Cauvery basin are all dependent on rainfall, or rainfed surpluses in good years and deficits in lean years with reference to the average in normal years will have to be equitably shared.

iv) Arrangements for timely water releases and availability consistent with the sharing pattern for normal, surplus, and lean years and with cropping requirements of agriculturists in the Basin States will have to be worked out.

v) To implement the requirements stated in (ii), (iii) and (iv) above, it will be necessary to initiate technical studies covering engineering, agricultural, economic and financial aspects which would result in proposals, including alternative proposals, for augmenting availability, maximising utilisation, and for regulation of water releases consistent with the sharing criteria and acceptable to all parties.

vi) It will be necessary to establish a suitable institutional mechanism in order to implement any solution and to promote the long term development of the Basin States.

vii) The Basin States must also co-operate to control pollution in the Cauvery and establish suitable modalities for the purpose.

Citizens of both states appeal to the Prime Minister of India, and the Chief Ministers of Karnataka and Tamil Nadu to initiate steps to explore all possible and practicable alternatives with an open mind, in an atmosphere free
of prejudice, suspicion, and rancour. So as to narrow the gap in the positions taken by each of the concerned parties. They believe that a conciliatory and/or mediatory process, which takes into account the principles they have outlined, can facilitate the Cauvery water Tribunals task by supplementing and strengthening its adjudicatory effort and ensure the sustainability of any solution that may be arrived at; they earnestly appeal to all parties concerned to initiate such a process. The appeal to all political parties to co-operate for resolving this problem in a spirit of good will, eschewing all chauvinistic attitudes and actions, and to educate the people so that the historic culture of good neighbourliness among the Basin States can be preserved and promoted.

The Centre’s efforts to reconcile the Chief Ministers of Tamil Nadu and Karnataka on February 17, 1992 on the Cauvery water dispute ended thoroughly in a ‘failure’ with Ms.Jayalalitha ruling out any more talks because she could not get an assurance on the implementation of the interim order by the Karnataka Government. She had expected to get a definite assurance on the implementation of the interim order and the rehabilitation and compensation to the people of Tamil origin affected by the recent riots in Karnataka. She also demanded judicial enquiry into the violence by a sitting Judge of the Supreme Court but since "she did not receive the assurance, there was no point in any further talks". She, however, insisted that the Centre should fulfil its constitutional duty to see that Karnataka implemented the interim order. While re-iterating the Centre’s duty under article 256 to enforce the order, she said that the Government might be constrained to move the Supreme Court with the

writ of Mandamus for the implementation of the Tribunal’s directive for release of 205 tmc., feet of water. The meeting, which was presided over by the Prime Minister, Mr. P.V. Narasimha Rao and attended by the Chief Ministers of Karnataka, Kerala and Pondicherry, ended with a joint statement referring to general agreement by the Chief Ministers of the four southern states on seeking a solution to the protracted dispute. However, Ms. Jayalalitha’s stand reflected a different mood.

The then Karnataka Chief Minister, Mr. S. Bangarappa expressed the opposite view, describing the meeting as a "very good beginning". His statement to the press soon after the meeting also ran counter to the sentiments expressed by Ms. Jayalalitha at a news conference after the meeting. The statement said that the Chief Ministers agreed that in the interest of seeking solutions that provide optimum benefits to the people residing in the Cauvery Basin, all issues be considered in an objective manner treating water as a national resource. For this purpose, everyone would help in creating a peaceful and congenial atmosphere so that heightened passions and extraneous considerations did not cloud issues and adversely affect the final outcome. The states agreed to ensure systematic and scientific management of Cauvery waters and the Chief Ministers agreed to take effective steps in the overall interest of the farmers and the people residing in the Basin. The statement also said that the States agreed to facilitate expeditious completion of all proceedings before the Tribunals. The meeting was convinced at the
initiative of the Prime Minister. Earlier on that day, Mr. Rao held a separate session with the Chief Ministers before the full meeting.\textsuperscript{44}

The Cauvery water dispute Tribunal on April 3rd 1992 directed the states in the Cauvery basin to "share in the distress caused by diminution in the supply of water on a pro-rata basis" even as it rejected Karnataka’s plea for review or modification of the June 1991 interim order.\textsuperscript{45} In a 28-page order, Justice S.D. Agarwala and Justice Chittatosh Mookherjee, Justice S.D. Agarwala and Justice N.S. Rao held that no interference was called for "at this stage" with the June 25 order and directed Karnataka to release 205 tmc. of water to Tamil Nadu as stipulated. They said, however, if there was any change of circumstance or under hardship caused in a particular year to any party, it was open to them to approach the Tribunal for appropriate orders.

Karnataka approached the Tribunal on November 25th 1991 seeking modification of the Interim order, stating that the annual and monthly releases of water stipulated were impracticable of being implemented. While the Tamil Nadu Advocate General, Mr. K. Subramanyam, expressed his happiness, as according to him, the order was tantamount to rejection of Karnataka review petition, a Karnataka counsel too claimed a victory saying that it provided a major relief to the state in the years of distress. The judges said the June 25 order could not be faulted on the ground that it made no provision for taking notice of any possible short fall or deficit in the flow of water. Pointing to the awards given by Krishna and Narmada Tribunals, they said the pro-rata sharing

\textsuperscript{44} Ibid. May 6-12, 1992, p.22282.

\textsuperscript{45} The Indian Express, April, 4th, 1992.
of distress was always adopted. The Tribunal held that their observation that the interim order would remain operative till the final adjudication does not mean that even in the case of change of circumstances or undue hardship, the parties could not approach the Tribunal for modification or alteration of the interim order.

Referring to Karnataka's contention that there was a mismatch in adopting two sets of years for fixing monthly release and annual flows, the order observed that we have done this because in the years we had selected for fixing monthly releases, there had been no intervention by way of construction of new storages and impounding of water within Karnataka, it would not be appropriate to fix monthly flows according to the regulation of releases of water imposed by Karnataka after construction of new dams. The order for regulated releases was made in public interest so that whatever water was available, it ought to be put to optimum use. The Tribunal clarified that the annual flow had been limited to 205 tmc., including 25 tmc. contributed from the catchment areas of Tamil Nadu below Biligundlu and upstream of Mettur Dam, adding that "this figures of 205 tmc. is less than the average flows between the years 1980-81 to 1989-90 recorded at Biligundlu by the Central Water Commission gauging site.

The order said it was misconceived to urge that by the interim order the Tribunal had accepted Karnataka's figure of 312 tmc. as the water required to irrigate 11,20,000 acres. The use of existing utilisation was referrable only to the irrigated area, not to the volume of water which Karnataka or Tamil Nadu claimed that they required for irrigation. Rejecting Karnataka's plea for review
of the interim order, the Tribunal said the Act provided for only an explanation and even if the expressing explanation is very liberally interpreted, it cannot mean a review to take dead lock.

CAUVERY DEADLOCK

The "clarification" given by the Cauvery Water Disputes Tribunal on April 3, 1992 is believed in Karnataka to have further damaged the interests of the State in the matter of the sharing of the Cauvery waters. It was given following an appeal by Karnataka for a reconsideration of what it felt were the discriminatory terms of the Interim Order the Tribunal issued on June 25, 1991. The initial reaction to the order, particularly in the press, was positive. The Tribunal had been generous, it was held, because (1) it made clear that the figure of 205 tmc. ft., which Karnataka was to release to Tamil Nadu annually on a monthly schedule included 25 tmc. ft., generated in Tamil Nadu's own catchment area above Mettur. Thus, the actual figure Karnataka had to release was only 180 tmc. ft., and surely Karnataka could have no objection to that; (2) The Tribunal stated that "distress" had to be shared, again a concession to Karnataka's pleasure and (3) Karnataka would go to the Tribunal if there was any new circumstance which warranted a change in the Interim order. The order was seen, if not as entirely receptive to Karnataka's demands, at least to have taken its interests forward.\(^48\)

However, a closer reading of the 'clarification' makes it clear it is both clumsy and statistically flawed. That on an extremely sensitive issue like the Cauvery dispute, an institution of the stature of the Tribunal should, through a

\(^48\) Frontline, 8 May, 1992, p.115.
sheer lack of methodological rigour, open itself to the change of bias and incompetence, is both unfortunate and a setback to the prospects for a solution. What are the flaws in the Tribunal’s "clarification" According to H.N.Nanjagowda, who was Irrigation Minister in the Devaraj Urs Cabinet and a former MP, the order is both flawed and biased on the following counts. First, Karnataka’s use has been fixed at 248 tmc. ft., for which readings by the Central Water Commission (CWC), at Biligundlu have been taken, which show more in flow than at downstream Mettur.

Secondly, the Tribunal has exploited two sets of figures, one provided by the central water commission at Biligundlu and the other at Mettur, using the former to fix Karnataka’s utilisation and the latter to assess total yield. Says Nanje Gowda by the very same statistical exercise the Tribunal could very well have arrived at figures entirely favourable to Karnataka and against Tamil Nadu. If they had done that he would have objected to it on the very same grounds. Further, the impression that the 205 tmc. ft includes the 25 tmc.ft., which comes from Tamil Nadu and therefore Karnataka actually need release only 180 tmc.ft., is misleading. If the Tribunal says that Karnataka must ensure 165 tmc.ft., upstream at Shimsha, that is another way of saying it must ensure 205 tmc.ft., at Mettur. Similarly, saying that we must ensure 180 tmc.ft., at Mettur. Similarly, saying that we must ensure 180 tmc.ft., at Biligundlu is another way of telling us we must release 205 tmc.ft., at Mettur. There is no change in the original order.47 Nanje Gowda takes objection to the use of 1964-74 figures of Mettur inflow for fixing the releases form Karnataka. "The Tribunal has refused

47 N. Ram; "Cauvery dead lock"; The Frontline, 8 May, 1992.
to take into consideration the reality that Karnataka had increased its irrigation area between 1980-1990. This is not maintaining the status quo”.

A disturbing note of belligerence is already entering the public utterances of political leaders and the leaders of farmer’s organisations such as Prof.M.D.Nanjudaswamy of the Karnataka Rajya Raitha Sangha. With the Tribunal unlikely to modify its order, the opposition threatening to "go to the people" (whatever that may mean) on the issue, the state Government dithering on its stand and the Tamil Nadu Government determined that the Interim order should be implemented in June, a deadlock of sorts seems to have been reached.

In a seminar in Bangalore, leading citizens and the users of Cauvery waters met and released a joint statement which among other things, emphasised the need to avoid confrontationist postures on the issue. The statement was widely welcomed perhaps in keeping with the spirit of that statement, if both sides could once again come together and issue an appeal to the Tribunal pointing out ambiguities and inconsistencies of the present clarification, it would represent a real advance in the ongoing process of resolving the Cauvery dispute.

The unidentifying history of a long drawn tussle between Tamil Nadu and Karnataka, their seemingly irreconcilable claims and counter claims as also their basic differences over the criterion for water sharing, any attempt to draw political mileage from a possible difficult situation by whipping up regional passions or resorting to reprehensible pressure tactics in the name of
"Protecting" the people’s interests, has to be stoutly resisted. What needs to be done is to evolve a suitable and mutually acceptable mechanism for ensuring the proper apportionment of water consistent with the dictum of sharing the distress pro-rata. It is towards this end that the centre and the riparian states, especially Tamil Nadu and Karnataka, should work preferably with the Tribunals guidance. The disputed states people will have to wait for amicable settlement on Cauvery Water Dispute.