CHAPTER III

THE CENTRE'S EFFORTS FOR RESOLVING THE CAUVERY RIVER WATERS TANGLE
As early as 1807, there was correspondence between Madras and Mysore on the latter's use of waters of the Cauvery and in its tributaries to the possible detriment of the interest of Madras. This was the period (1800-1810) when a number of tank restoration schemes and minor irrigation works in Mysore were initiated under Dewan Poornayya. During 1831-1881, when the Mysore administration was taken over by the British, schemes for irrigation and development were established in 1856. In 1868, a master plan was prepared by Col. R.J. Sankey for the restoration, improvement and extension of tanks and other irrigation works in Mysore so as to fully utilize the rainfall over the Mysore plateau and secure the whole of the territory against drought and famine.

These schemes were broadly approved by the Government of India and the Secretary of State in 1872 and a separate department of Irrigation was created to implement them. Col. Sankey's schemes were, however, only partially carried out; the financial stringency that followed the famine of 1877-78 put a stop to all but the least costly public works. The schemes were revised again with the restoration of the Maharaja's administration (or Dubar) in 1881. Meanwhile, apprehensions began to develop in Madras about the possible implications to it, as the lower riparian of Mysore's small, but steady and extensive investment in reservoirs, anicuts and regulating works began. Around 1870, the Madras Government raised its concern with the Mysore Government. An inconclusive exchange of correspondence in subsequent years led to a conference in May 1890 at Ootacamund. The conference was attended on the Mysore side by the Resident, Oliver St. John, the Dewan, K. Seshadri

Ayyar, and the Chief Engineer, Col. C.Bowen and Madras was represented by the Member of the Governor’s Council. H.E.Stokes and the Chief Engineer, Irrigation, G.T.Walch. The objective of the conference was to agree to the principles of a *modus vivendi*, which would, on the one hand allow Mysore to reasonable freedom in dealing with her irrigation works, and on the other, to give to Madras practical security against injury to her interests. This conference was followed by an exchange of proposals and counter-proposals between the two Governments and by a second conference in May 1891. Following this meeting, Mysore proposed a set of ‘Rules’ which were accepted by the Madras Government in February 1892 after it secured certain modifications and clarifications on *Irrigation Works in Mysore State*. These rules came to be known as the Madras-Mysore Agreement of 1892.

Proposals for both the Mysore and the Madras projects were formulated almost simultaneously at the end of 1910 when the dispute occurred on the Cauvery River Waters. Then the Government of India intervened and had been trying to solve the dispute. This was followed by correspondence between the two Governments on the one hand and between each of them and the Government of India (GOI) on the other. Mysore pressed for immediate clearance to the first phase (11tmc.ft.) of Kannambadi project retaining the option to take up the second phase at a subsequent stage. It objected to the additional irrigation envisaged under the Madras project and insisted on linking the two projects for the purpose of clearance. For its part, Madras while consenting to the first phase of the Kannambadi Project, wished to be assured that adequate inflows would be available at the upper anicut before it agreed

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2 Ibid.
to the second phase. Madras, in fact, wanted Mysore not to proceed at all with
the second phase of the Kannambadi dam, and it urged the Government of India
to delink the Government of India's clearance for the Madras project from the
Madras concurrence with the Mysore Project. Before the construction of
Kannambadi dam, a hydro station at Sivasamudram to supply power to the
Kolar gold fields was the first proposal to be mooted by Mysore under the 1892
Agreement. Since it was a run-of-the-river scheme that did not involve any
irrigation or interception of water, Madras gave its concurrence. This happened
in 1900.

According to 1892 Agreement, Krishnaraja Sagar Dam and reservoir was
intended to be constructed on the Cauvery river by Mysore Government.
Whereas a dispute arose as to the construction of the dam in the manner and
form proposed by them. The dispute was referred to the arbitration of Sir
H.D.Griffin who gave an award in the year 1914 as the terms and conditions
under which the Madras Government consented to the construction of the
Krishnaraja Sagar Dam and reservoir. After the said award of the said Arbitrator
was ratified by the Government of India³ it was appealed to the Secretary of
State for India who reopened the question. Thereupon, the Mysore Government
and the Madras Government with a view to an amicable settlement of the
dispute entered into negotiations with each other. Certain Rules and Regulation
of the Krishnaraja Sagar Reservoir were framed and agreed to by the Chief
Engineers of the Mysore and Madras Government on the 26th of July 1921.⁴

³ M.Basheer Hussain, The Cauvery Water Dispute, Bangalore, p.6.
⁴ P.Hawkins and A.R.Banerji, "Mysore and Madras Government Agreement" Feb
18, 1924.
At Bangalore, Madras Government Chief Engineer for Irrigation and the Special Officer, Krishnaraja Sagar works had a conference on the 14th day of September 1923. In that conference certain points with respect to such extension were agreed.

RULES OF REGULATION OF THE KRISHNARAJA SAGAR RESERVOIR

The following rules of regulation of the Krishnaraja Sagara (formaly known and referred to, in the rules of regulation previously in force, as the Kannambadi Reservoir) shall supersede into those forming part of the award, dated 21st April 1914, on term of reference 3(a) given by the Arbitrator appointed by the Government of India to arbitrate between the Madras and the Mysore Governments on the question of the storage of the waters of the river Cauvery within Mysore territory.

1. The carrying out of these of regulation shall, in so far as they relate to the regulation of the Krishnaraja Sagare, be the duty of controlling officer appointed by the Government of Mysore, and of a subordinate staff working under his orders.

2. The only discretion to be cours ed by the controlling officer, in operating the rules of regulation shall be as to the means by which the water to be passed from the reservoir to the river shall be passed and such discretion shall be exercised in general in accordance with the instructions of the Mysore Government.

3. The curves of discharge of all gauging places in the Mysore State shall be verifed by gauging at intervals of three years. Cross-sections of the
rivers at the gauging sites shall be taken twice a year, in the first fortnight in June and in the first fortnight of October. If a cross-section taken in June, at any gauging site, indicates a marked change in cross-sectional area, gauge for gauge, joint gaugings shall be made at once, on the request of either party, to verify the discharge curve for the section. Any modification in the curve, found necessary shall not, however, be applied to regulation for the year in which the gaugings are made.

In lieu of 9,274 acres of old irrigation to be submerged by the Krishnarajasagara with F.R.L. at 118 feet above the bed of river or 106 feet above the sill of the low level sluices now in existence, Mysore shall be entitled to extend irrigation to an area of 12,500 acres, without passing compensation water to Madras under canals or channels taking off from the Hemavathy, the Lakshmanathirtha or the Cauvery, constructed subsequent to the year 1910 and above the Krishnarajasagar. In the event of the Krishnarajasagara being constructed of such a capacity as to submerge fewer than 9,274 acres, the permissible extension shall be reduced according to the area actually submerged and in the ratio of 12,500 to 9,294 and where a larger area is submerged owing to the capacity of the reservoir being increased to 44,827 millions cubic feet (F.R.L.124 feet above bed of river or 112 feet above the sill of the low level sluices now in existence) the permissible extension shall be similarly increased in the same proportion on such larger area as any be actually submerged.\(^5\)

After 1929 Agreement, the dispute was once again raised with the constructions of the Hemavathi, Harangi and the Kabini on Cauvery river by

Karnataka. 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 rejected 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 India held a series of discussions with the Chief Ministers of the basin states. Though 25 meetings were held, the issue came near solution only in 1974. At the meeting of the Chief Ministers held on November 29 and 30, 1974, under the chairmanship of Mr. Jagjivan Ram, the then Union Irrigation Minister, the pattern of utilisation in the three basin states of Karnataka, Tamil Nadu, Kerala and Pondicherry was agreed upon. A draft agreement was also prepared. One of the principle features of the draft agreement was setting up of a Cauvery Valley Authority. The Agreement fell through for want of ratification as Tamil Nadu rejected it on the ground that it was evolved when the State was under the President rule.

Since then, no agreement could be reached between the two main parties Karnataka and Tamil Nadu. While Tamil Nadu contended that the 1924 Agreement was still valid, Karnataka wanted a denova approach as it felt the 1924 Agreement weighed heavily in favour of Tamil Nadu. While Kerala had supported Karnataka’s stand, Pondicherry went along with Tamil Nadu. Pending settlement of the dispute Karnataka had been releasing water to Tamil Nadu now and then on humanitarian grounds. It had released 138 tmc. ft., water to save standing crops in Thanjavur region in exchange for power. With the failure of the talks between the Karnataka Chief Minister and his Tamil Nadu counterpart, Mr. M. Karunanidhi, Tamil Nadu pressed before the Supreme Court.

The Indian Express 30-11-1974.
that a Tribunal had to be appointed as there was no scope for negotiations. It may be recalled that the Supreme Court on a petition by the State of Tamil Nadu requested the Centre on 4 May, 1990 to set up a Tribunal within a month for adjudication in the water sharing dispute, mainly with Karnataka. The Tamil Nadu Government, in its affidavit had submitted that the bilateral discussion with Karnataka had filed and wanted the Supreme Court to direct the Central Government for referring the water sharing dispute to a Tribunal. Karnataka on the other hand, maintained that the issue could be settled through negotiations. 7

The Supreme Court had directed the Centre to appoint a Tribunal within a month. So, the Cauvery Water Disputes Tribunal was constituted on June 2, 1990 under Section 4 of the ISWD Act, 1956 by the Govt. of India. The three member Tribunal under the Chairmanship of the Bombay High Court Justice Mr. Justice Chittotosh Mookerjee has started functioning since 28th July 1990. The other members of the Tribunal were Mr. Justice S.D. Agarwal of the Allahabad High Court and Mr. Justice N.S. Rao of the Patna High Court. A notification issued by the Water Resources Ministry said the Tribunal would have its Headquarters in New Delhi. The notification said the Tribunal was set up by the Government as it had come to the "opinion that the water dispute cannot be settled by negotiations". It added that the three judges for the Tribunal were nominated by the Chief Justice of India.

The then Karnataka Law minister Mr. M. Veerappa Moily said the National Front Government at the Centre had 'totally betrayed' the interests of people of Karnataka with the appointment of a Cauvery Tribunal. The leader of the opposition and state Janata Dal President Mr. D. B. Chandra Gowda felt that the

7 The Hindu, 4 May, 1990.
Centre should have waited for the reaction of the Supreme Court on the review petition filed by the Karnataka Government. After some sittings by the Tribunal, the Tamil Nadu Government appealed to the Tribunal for interim relief to save the crops. The Cauvery Water Disputes Tribunal held that 'it cannot' entertain the applications for grant of interim relief sought by Tamil Nadu for the release of 20 tmc.ft. of water by Karnataka as a first instalment pending final orders of the Tribunal on the dispute over the sharing of the Cauvery water among the four basin states saying it did not form part of its terms of reference.

The Tribunal, which also rejected two other applications filed by Pondicherry and Tamil Nadu as not maintainable, dismissed the interim relief application saying the "Tribunal is authorised to decide only the water dispute or disputes which have been referred to it". The Tribunal held that since the petitions were not maintainable in law the Tribunal could not entertain them. Besides, it elaborated that if the Central Government is of the opinion that there is any other matter connected with or relevant to the water dispute, which has already been referred to the Tribunal it is always open to the Central Government to refer this matter also as a dispute to the Tribunal constituted and Sec. 4 of the Inter-state Water Dispute Act 1956. It also pointed out that there is no Government in these petitions that the dispute related to interim relief cannot be settled by negotiations and that the Central Government has already formed the opinion that it shall be referred to the Tribunal. It said if Tamil Nadu and Pondichery felt that they have been "aggrieved" and an emergent situation had arisen, as claimed, they could have raised a dispute before the Central Government who had the power to refer it to the Tribunal after satisfying itself that it could not be settled through negotiation.
Referring to the Tamil Nadu’s plea that while exercising the powers of granting interim relief, the Tribunal will only be using "incidental and ancillary powers" as the interim reliefs sought arise out of the water disputes referred to it, the Tribunal said it had not been vested with such power. Pondicherry had in its petition in September, 1990 sought an interim order directing Karnataka and Tamil Nadu to release the water already agreed to (9.355 tmc.ft.) during the month of September to March. Tamil Nadu in its earlier petition filed during the initial proceedings had sought a restraint on Karnataka from undertaking any new projects, proceeding with the construction of existing projects in the Cauvery basin. It also wanted that Karnataka should be directed not to impound or utilise the water Cauvery river beyond the extent impounded or utilised by them as on 31st May, 1972 as per the agreements of the Chief Ministers of the basin states and the Union Minister for Irrigation and Power.

The then Prime Minister Mr. M. Chandra Sekhar informed the House of Parliament that he had written a letter to the Chief Minister of Karnataka to consider sympathetically the request of Tamil Nadu Government for the immediate release of 20 tcm.ft., of the Cauvery water.6 Responding to the plea of the agitated members of Tamil Nadu in both the Houses to direct the Karnataka Government for the immediate release of Cauvery water, the Prime Minister made it clear that the Union Government had no role in the matter. The matter rocked Parliament immediately after the day's proceedings began in both the houses. Members belonging to Tamil Nadu entered the well protesting against the Cauvery Water Tribunals rejection of the Tamil Nadu Government's petition seeking release of water by Karnataka to save the standing crop.

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The Chief Justice, Mr. Justice Ranganath Misra, on 11 January, 1991 in the Supreme Court directed that the two connected Special Leave Petitions (SLP) from the State of Tamil Nadu against the orders of the Cauvery Water Dispute Tribunal—rejecting the petitions of Tamil Nadu for interim relief by way of direction to the states of Karnataka to immediately release 20 tmc. of Cauvery water to Tamil Nadu would be listed for hearing before the court. The Chief Justice, who was sitting with Mr. Justice A.M. Ahmadi and Mr. Justice R.M. Sahai, gave this direction when Mr. M.S. Ganesh, Counsel for State of Tamil Nadu during "mention time" made a request for urgent hearing of these SLPs. The impugned order of the Tribunal on Tamil Nadu's appeal to release 20 tmc. of Cauvery water to Tamil Nadu is erroneous and unsustainable being also contrary to the language and amendment of Article 262 of the Constitution, Inter-state Water Disputes Act, "The principles of implied powers and of incidental and ancillary powers" as enunciated by various apex court ruling and also the Supreme Courts orders dated May 4, 1990 in what is known as "Cauvery Waters Dispute Case" pursuant to which Cauvery Water Disputes raised by Tamil Nadu stood referred to the Tribunal the Special Leave Petition submitted.

The State of Tamil Nadu's Civil Miscellaneous Applications (CMPS) while seeking the 'stay' of the operation of the impugned order of the Tribunal also requested for the apex courts direction to the State of Karnataka 'to release immediately at least 20 tmc.ft. of water from the Krishna Raja Sagar and other reservoirs in Karnataka as the first instalment, pending final orders on the present applications. These Civil Miscellaneous Petitions also prayed the Court to direct the State of Karnataka not to impound or utilise the waters of
the Cauvery beyond the extent impounded or utilised by it as on May 31, 1972 as agreed to by the Chief Ministers.

THE INTER-STATE WATER DISPUTE ACT 1956

Inter-State Water Disputes Act, 1956 was enacted by the parliament in the Seventh year of the Republic of India. It extends to the whole of India. Prescribed rules made under this Act. The "Water Disputes Tribunal" may be constituted under section 4 of ISWD Act by the Government of India. Disputes would be considered in the matter of the use, distribution or control of the waters of, or in any Inter-state river or river valley; or the interpretation of the terms of any agreement relating to the use or distribution. If it appears to the Government of any state that a water dispute with the Government of another state has arisen or is likely to arise by reason of the fact that the interests of the state, or of any of the inhabitants thereof, in the waters of an inter-state river or river valley have been, or are likely to be, affected prejudicial. The failure of the other state to implement the terms of any agreement relating to the use, distribution or control of such waters; the State Government may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to the Tribunal for adjudication.

If any State Government request under section 3 of ISWD Act 1956, in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, than Central Government shall constitute a Water Dispute Tribunal for the adjudication of the water dispute.

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9 Government of India; inter-State Water Dispute Act, 1956, New Delhi; 1980
10 Ibid.
The Tribunal shall consist of Chairman and two other members nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are judges of the Supreme Court or of a High Court. There has been criticism about the inordinate delay in referring the Inter-State River Water disputes to the Tribunal under Section 4 of the Inter-State River Water Disputes Act. The Study Team of the Administrative Reforms Commission on Centre-State Relations has, therefore, suggested that there should be a mandatory time limit within which, after an application under Section-3 is received from the State Government, the dispute must be referred to a Tribunal by the Central Government. It has been suggested that this should be incorporated in the Inter-State River Water Disputes Act, 1956 by an amendment thereof.

The Tribunal's awards should by law be required to be given within a period of 3 years. This also will require an amendment of the River Water Disputes Act. It has been suggested that Section 11 may be amended to enable the aggrieved State or States to approach the Supreme Court for the enforcement of the duty enjoined on the Central Government to constitute the Tribunal and refer the dispute to it. One of the difficulties in the expeditious disposal of Inter-State River Water disputes by the Tribunal may be the lack of availability of data, or delay in supply of the data by the State Governments. It has been, therefore, suggested by some experts that if the State Governments do not provide necessary data in time, the Tribunal may proceed to give its award on best-judgement basis making use of the existing data before it. This will require building up of necessary database in respect of the existing Inter-State Rivers and river valleys. At present, Central Water Commission has some
arrangements to collect data of the waters of such Inter-State rivers and river valleys.

Without prejudice to the provisions of section 6, the Central Government may, by notification in the official gazette, frame a scheme or schemes whereby provision may be made for all matters necessary to give effect to the decision of a Tribunal. In making provision in any scheme framed under sub-section (1) for the establishment of an authority for giving effect to the decision of a Tribunal, the Central Government may; having regard to the nature of jurisdiction; powers and functions required to be vested in such authority in accordance with such decision and all other relevant circumstances, declare in the said scheme that such authority shall, under the name specified in the said scheme, have capacity to acquire, hold and dispose of property, enter into contracts, sue and be sued and do all such acts as may be necessary for the proper exercise and discharge of its jurisdiction, powers and function.

Every scheme and every regulation made under a scheme shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or in two or more successive sessions, aforesaid, both Houses agree making any modification in the scheme or the regulation should not be made, the scheme or the regulation should not be made, the scheme or the regulation shall thereafter have effect only in such

11 Government of India Inserted by Act 45 of 1980, Section 2 (with effect from 27.8.1980. New Delhi.)
modified form or be of no effect as the case may be, so however that any such modification or annulment of any thing previously done under that scheme or regulation. Notwithstanding anything contained in Section 3 or Section 5, no reference shall be made to a Tribunal of any dispute that may arise regarding any matter which may be referred to arbitration under the River Boards Act (1956) 49 of 1956.\(^\text{12}\)

The Tribunal may require any State Government as to carry out, or permit to be carried out such surveys and investigations may be considered necessary for the adjudication of any water dispute pending before it. A decision of the Tribunal may contain directions as to be Government by which the expenses of the Tribunal and any costs incurred by any State Government in appearing before the Tribunal are to be paid, and may fix the amount of any expenses, or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the supreme court. Subject to the provisions of this Act and any rules that may be made thereunder the Tribunal may, by order, regulate its practice and procedure.\(^\text{13}\) The Central Government shall dissolve the Tribunal after it has forwarded its report and as soon as the Central Government is satisfied that no further reference to the Tribunal in the matter would be necessary.

Every rule made under this section shall be laid as soon as may be after it is made, before each house of Parliament while it is in session of a total

\(^\text{12}\) Government of India; River Board Act 1956; Substituted by Act 36 of 1957 section 3 and schedule 11, for 1956.

\(^\text{13}\) Government of India substituted by Act 35 of 1968 Section 5, for certain words; New Delhi.
period of thirty days.\textsuperscript{14} Which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid\textsuperscript{15} both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

The Supreme Court granted Special Leave to the State of Tamil Nadu (Petitions) to appeal against the orders of the Cauvery Water Dispute Tribunal rejecting the petitions of the petitioner-state for interim relief by any of directions to the State of Karnataka immediately release 20 tmc. of Cauvery water to Tamil Nadu. The Bench, consisting of Mr.Justice K.N.Singh and Mr.Justice P.B.Swami, also said that, as this matter raised the question of interpretation of relevant provisions of the Inter-State Water Disputes (ISWD) Act, this appeal by Special Leave should be heard by a Bench of three judges of the Apex Court. The Bench, therefore, directed that the appeal papers be placed before the Chief Justice so that the appeal be listed for hearing on March, 1991.

The counsels for Karnataka and Kerala and the Pondicherry, who were present in the court accepted notices on the appeal by Special Leave. The Bench directed that the notice on this appeal be served on the standing counsel

\textsuperscript{14} Government of India substituted by section 7, ibid., for the former sub-section

\textsuperscript{15} Government of India Substituted by Act 45 of 1980, section 3, for certain words (with effect from 27.8.1980; New Delhi.
for the Union of India in the Supreme Court. It directed the parties to file their affidavits with in four weeks. The Tribunal rejected the Tamil Nadu’s application on the ground that it cannot entertain these applications for grant of interim relief. It also stated that the issue regarding grant of interim relief over water dispute was not referred to it by the Union Government.¹⁸

At the first sitting of the Tribunal, July 28, 1990 Tamil Nadu filed a petition for interim relief. Pondicherry filed a similar petition for release of waters for the 1990-91 session. In this order of January 5, 1991, the Tribunal dismissed the petitions for interim relief as not maintainable since the Central Government had as yet made no reference to the Tribunal for adjudication of any interim relief for Tamil Nadu and Pondicherry. In the proceedings before the Supreme Court, Karnataka and Kerala were also agreeable to the application for interim relief to be decided on merits. The matter was, accordingly, taken up again by the Tribunal. At this stage, Tamil Nadu made an additional prayer to the Tribunal to direct Karnataka to make timely and adequate releases of water from its storages and reservoirs so as to ensure availability of inflow into the Mettur reservoir on a week to week basis. Tamil Nadu also proposed a schedule for the purpose. The Tribunal passed its order relating to interim relief on June 25, 1991.¹⁷

The Tribunal made it clear that at this stage it was not going into the validity or subsistence of legal entitlements under the 1892 and 1924


¹⁷ Cauvery Water Tribunal; interim order on Cauvery Water Disputes; New Delhi; June 25; 1991.
Agreements. What is more, the Tribunal did not find it 'appropriate' to determine the inflow at Mettur on the basis of the position that obtained at the time of the Chief Ministers' consensus in May 1972, because more than eighteen years had elapsed and various events such as construction of additional dams, reservoirs and irrigation facilities had taken place since then. The Tribunal took the view that the ends of (interim) justice could be met if release into Mettur by Karnataka were fixed on the basis of averages in the 'proximate period', excluding 'abnormally good and abnormally bad years'. The approximate period', taken by the Tribunal as the reference period was the decade 1980-81 to 1989-90. In this run of 10 years, the figures for 1980-81 and 1981-82 were excluded on the basis that they related to abnormally good years. Likewise, the figures for 1985-86 and 1987-88 were excluded as deriving from 'abnormally bad years. The average annual inflow into Mettur in the remaining six years worked out to 205.3 tmc.ft., the Tribunal required it off to 205 tmc.ft., Karnataka was directed to ensure that 205 tmc.ft., of water was made available at Mettur from its reservoirs in a 12 month period from June to May, calendar year effective from July 1, 1991 until the final adjudication of the dispute by the Tribunal.\textsuperscript{18} In turn, Tamil Nadu was to release 6 tmc. ft., to Pondicherry.

Formation of a 'Southern India Water Grid' with supply from surplus basins such as the Mahanadi to Vaigai such as the Cauvery and the Krishna could solve permanently the water dispute among the Southern States. Mr.M.L.Nanje Gowda former Karnataka Minister made this suggestion while inaugurating an all party convention against the interim order of the Cauvery

\textsuperscript{18} S.Guhan; The Cauvery Water Dispute, Madras; 1993. P.39.
Water Disputes Tribunal organised by the Cauvery Agitation Committee. It also formed the Central theme of a resolution adopted by the convention. The resolution also wanted formulation of a South India co-ordinated crop pattern apart of the suggestion and wanted the states involved in the disputes and M.Ps and Central ministers from the states concerned to initiate action in this direction.

Through another resolution the convention rejected the interim order as it was 'detrimental' to the interest of Karnataka farmers and urged the State Government to boycott further proceedings before the Tribunal. The Centre should not only not honour the order but also order winding up of Tribunal. The meeting was scheduled to be addressed by 18 persons representing various political parties but right of them did not turn up. In his inaugural address Mr. Gowda said the State had failed both legally and politically in the case it should have consulted the opposition on the stand it should take after the order of the Supreme Court asking the Tribunal to consider the request of Tamil Nadu.

The Minister for Water Resources, Mr. V. C. Shukla said the Government was engaged in finding out an amicable settlement to the Cauvery Water Dispute and was hopeful of its resolution. He had not called any body for talks on recent interim order of the Cauvery Water Dispute neither the Tamil Nadu Chief Minister nor the Karnataka Chief Minister. The Tribunal has directed Karnataka to release 205 tmc.ft., (thousand million cubic feet) of water to Tamil

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Nadu, while Karnataka has urged the Centre to ensure that the interim order does not become effective.

The Minister said one of his main priorities was setting up river valley authorities and settlement of long-pending water disputes. Such high powered bodies would help resolve inter-state water disputes as the authorities would be. Totally unconnected with politics. Since most of the major rivers are inter-state, the issue of sharing of their waters could be impartially settled only by a mechanism like the River Valley Authority. The MPs from both the houses met the Prime Minister the previous night at the house of Mr. Oscar Fernandes the State Congress (I) Chief, and requested him to immediately convene a meeting of the States concerned. The MPs included the Petroleum Minister, Mr. B. Shankaranand, the Railway Minister, Mr. C. K. Jaffer Sharief, the Minister of State for Public Grievances, Mrs. Margaret Alva, the Minister of State for Health, Mrs. Tara Devi and the Deputy Union Minister for Coal, Mr. S. Nyama Gowda.

THE CENTRE FAVOURS NEGOTIATIONS

The Union Minister of Petroleum and Natural Gas, Mr. B. Shankaranand said that it was his "firm personal" opinion that all inter-state river water disputes including the Cauvery waters dispute, should be settled across the table by hammering out mutually agreeable solution. The constitution of the Cauvery Waters Disputes Tribunal and its interim award would not bar arriving at an "amicable solution" through negotiations among the States concerned. In reply to a question on the stand of the Union Government in gazetting the

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interim award, the Minister said that it was legal question and, hence, legal opinion had to be sought for and he did not wish to comment on the interim award. He stated, "I am interested in solving the disputes without causing any injustice to any of the states involved in the dispute." He said that he was optimistic that both Tamil Nadu and Karnataka would be able to arrive at a mutually agreeable solution through negotiations and he further added that he was much against any form of agitation and confrontation. No issue could be settled through such an approach. The legal and constitutional methods were the only way out, he asserted.

The Prime Minister Mr. P. V. Narasimha Rao has conveyed to the Tamil Nadu Chief Minister Ms. Jayalalitha over telephone that the discussions on the Cauvery issue could be held during his visit to Madras. The call was in response to a letter from the Chief Minister demanding the publication of the interim award of the Cauvery Water Disputes Tribunal in the Gazette. In the course of the conversation, Ms. Jayalalitha reiterated Tamil Nadu’s demand that under Section 6 of the Inter-state Water Disputes Act 1956, it is obligatory for the Central Government to publish the award in the Official Gazette.

The Cabinet Committee on Political Affairs began, with Mr. P. V. Narasimha Rao’s initiative, meeting the Members of Parliament from the two states, the Law Ministers, the Attorney General and the Water Resource Ministry would also be involved in discussions, apart from other things, on the legal issues thrown up by the Karnataka Government ordinance to protect and preserve irrigation in the Cauvery basin in the State. The focus was on the implications of Section 4, dealing with the overriding effect of the ordinance.
The provisions of this Ordinance (and of any rules and orders made thereunder) shall have effect notwithstanding anything contained in any order, report or decision of any Court or Tribunal (whether made before or after the commencement of this Ordinance) save and except a final decision under the provisions of sub-section (2) of Section 5 read with Section 6 of the "Inter-State Water Dispute Act, 1956". The Karnataka action was intended to nullify the effect of the interim order, recently passed by the Cauvery Water Disputes Tribunal requiring the State to release waters to Tamil Nadu. An additional legal dimension was added to the complexities arising from political and emotional factors.

The Constitutional provisions relevant to the issue thrown up by the Ordinance are the entries 17 (water) 14 (agriculture) 18 (land) in the State List of subjects and entry 56, of the Union List under entry 17, States will be responsible for water, that is to say, water supplies irrigation and canals, drainage and embankments, water storage and water power subject to entry 56 of list (Union List) under entry 56 the Centre has exclusive powers in regard to "regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development and the control of the Union is declared by Parliament by law to be expedient in the public interest". Apart from the Constitutional and legal issues the question that arises now in whether the Centre has any leverage at the informal level to sort out differences between the two State Governments and bring them together. The trouble erupted even though one of the States was ruled by the Congress (I) and the other by its ally AIADMK. In his meetings with Members of Parliament from the two States, the Prime Minister Mr. P.V.Narasimha Rao, confined himself to
appeal against precipitating the situation, and refrained from expressing himself on substantive issues. That was also the tenor of the brief comment by the Congress (I) spokesperson that the water dispute was exercising the minds of people in both States, the Congress (I) appealed to both the Government of the States to avoid confrontation and come to some amicable settlement.21

The Government of India had decided to approach the President and requested him to make a reference to the Supreme Court under Article 143 of the Constitution regarding the Constitutional aspects and other issues connected with the Cauvery issue. The Court will be asked to give its advice expeditiously. All members of the (CCPA) Cabinet Committee of Political Affairs, the Water Resources minister Mr. V. C. Shukla and the Minister of State for Parliamentary Affairs and Law Justice, Mr. P. R. Kumaramangalam participated. Article 143 under which the Government has decided to refer the matter to the Supreme Court, reads as follows:-

(1) If any time it appears to the President that a question of law or fact has arisen or is likely to arise, which is such nature and of such public importance that it is expedient to obtain the opinion of Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding, anything in the proviso to Article 131 refer a dispute of the kind mentioned in the (side-proviso) to the

Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

According to the Government sources, the decision to seek for advice had been promoted by the earlier representation given by the Karnataka Government questioning the jurisdiction of the Tribunal to give an interim award. The Tamil Nadu Chief Minister, Ms. Jayalalitha, during her recent visit to the capital, had represented to the Prime Minister, to invoke Article 256 and direct the Karnataka Government to honour the interim award of the Tribunal, however, the over-riding effect of Karnataka’s Ordinance of the Tribunal award had complicated the matter for the minority Government at the Centre. The inflow into the Mettur Reservoir was estimated at 103 per cent from June 1 to July 19, 1991 in relation to the direction of the Cauvery Water Disputes Tribunal. As for Karnataka, the water position in four reservoirs Krishnarajasagar, Harangi, Hemavathi and Kabini was estimated at 192 per cent for the last seven years.

The Union Water Resources Minister, Mr. V.C. Shukla, told the Rajya Sabha that the Government of India would bring all the concerned parties in the Cauvery Water Dispute to the negotiating table and strive towards a negotiated settlement on the ticklish issue as soon as the Supreme Court rendered its advice on four points on which its opinion had been sought. The Minister clarified that the Government had no intention to straightway refer to the advice rendered by the Apex Court to the Tribunal, if it was not possible for all parties concerned to arrive at a negotiated settlement on the advice of the Supreme Court.

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Court the only course open was to let the Tribunal give its verdict which should be binding on all concerned. They wanted to know whether the Attorney General had held the Ordinance of Karnataka illegal, whether in the opinion of the Union Government the interim orders of the Tribunal was binding on Karnataka whether the Union Government had executive power under Article 256 to direct Karnataka, to honour the award and as to why the Centre had delayed the action on the interim of the Tribunal. The Supreme Court Registry issued notice to the Attorney General (AG) in what is known as "Presidential reference on Cauvery waters matter" to be present in the Court on July 31, 1991 when the matter would be listed for directions. The Attorney General would inform the Court on that day the names of parties to whom notices had to be sent in connection with the hearing of the reference.

SUPREME COURT ISSUED NOTICE ON CAUVERY DISPUTE

The Supreme Court issued notices to the States of Tamil Nadu, Karnataka, Kerala and Pondicherry on a Presidential reference in the Cauvery Water Dispute matter. The Advocate General of Tamil Nadu, Mr. K. Subramanian, accepted the notice on behalf of Tamil Nadu Government, Mr. Javali, Senior Counsel appearing for Karnataka accepted the notice on behalf of that State the standing counsels for Kerala and Pondicherry also accepted the notice. The Bench made the notices returnable on August, 1991. It gave two weeks' time thereafter, for the parties to file the affidavits. The Bench consisting of the Chief Justice, Mr. Ranganath Misra, Mr. Justice, M.A. Kania and Mr. Justice

Kuldip Singh, also directed the issue of notice to the Advocates General of Tamil Nadu, Karnataka, Kerala and Pondicherry on the Presidential reference.\textsuperscript{24}

The question number 3 that figured in the three questions referred by the President to the Supreme Court for its opinion is whether a water disputes Tribunal constituted under the Inter-State water Dispute (ISWA) Act is competent enough to grant any interim relief to the parties under dispute. The other questions that have been referred by the President under Article 143 of the Constitution to the Supreme Court for its opinion in the Cauvery Water Disputes matter are:

\begin{enumerate}
\item Whether the ordinance and the provisions contained in it are in accordance with the provisions of the Constitution of India.
\item Whether the order of the Tribunal is required to be published by the Central Government in order to make it effective.
\item Whether a water dispute Tribunal constituted under the Act is competent to grant any interim relief to the parties to the dispute.\textsuperscript{26}
\end{enumerate}

Earlier, when Mr. Javali submitted that if there was any concern for emergency, (the Karnataka Council) would like to dispel all doubts and that the supply of water to Tamil Nadu would be taken care of. The Chief Justice orally observed that "we are not concerned whether the supply of water was taken care of or rain God has been kind" Following the widespread public concern on

\begin{footnotes}
\item[26] Government of India; Parliamentary Affairs, New Delhi, January 1992.
\end{footnotes}
this issue in the context of the interim orders of the Tribunal and the Karnataka Ordinance.

A Constitution Bench of the Supreme Court would commence regular hearing of the Presidential reference on the Cauvery Water Dispute on August 21, 1991. The Chief Justice, Mr. Ranganath Misra who was sitting with Mr. Justice Kuldip Singh gave this direction when the Presidential reference came up before the Court for directions. The find of Cauvery waters was but the latest among the inter-state disputes. This was referred to the Supreme Court's 'final' decision. If experience is any guide, such a judicial verdict is not going to be treated as final by the disputants; instead, it is more than likely that the verdict will be repudiated by one party or other, thereby continuing instead of concluding the political conflict.

No blame need be attached to the learned judges, if their verdict does not command compliance. It will not be their fault if their verdict, however carefully contrived, fails to satisfy. The problem is not with the judges, but with the nature of the problem itself, inherently, all disputes concerning "distributive justice" are ambiguous and cannot be resolved unequivocally. That is because, there are varieties and varieties of distributive justice. Amartya Sen has listed as many as eight different types to appreciate law. For instance, in a single dispute involving one flute which has several claims. A flute has been chosen in the example because it is comparatively a trivial object. Yet, it can become an unresolvably contentious issue because the judgement will depend on what kind of distributive justice one like to uphold.
If even handing out a simple flute can be so controversial, it should not be a wonder that the far more complex inter-state disputes are virtually unsolvable judicially. No doubt we can take guidance from the Helsinki agreement which is used by the International Court of Justice in international disputes concerning riparian rights. However, even a cursory glance at this Agreement will show that it is so intricate that it is most unlikely to lead to acceptable decisions. For instance, it accepts the verdict to take into account geography, hydrology, climate, economic and social needs, availability of alternative resources, prior utilisation and the like.

In the ultimate analysis, as this is a property dispute, the proper way to discipline recalcitrant litigants is to penalise them monetarily. One way to do so is to transfer income from the disputed part of the waters to the Central Government that State Government will have to pay the Centre each year for the use of these waters. They may be asked to do so in proportion to the total amount of water, used by each State. A little reflection will show that this formula is likely to induce the litigants to come to a compromise.

Obviously, this is the ideal-agreement arrived at by mutual consent without recourse to a battle, legal, political, or otherwise. Here, the traditional method of selecting the pope is of interest. The Pope is selected by locking up all the Cardinals until they come to an agreed decision. This is a method that invariably produces an acceptable decision sooner or later. In fact, sooner than later consider, for instance, locking up all the prominent political personalities of Tamil Nadu and Karnataka together with the stipulation that they will be released when and only when, they have agreed to a solution. If on top of it,
they are allowed only an austere meal, say Kanji and nothing else till they come out, the probability is they will find a compromise in quite time.

In the proceedings before the Supreme Court, which commenced on April 24, 1990, Counsel for the Tamil Nadu Government made it clear that the Chief Minister of the State was not further prepared to join the negotiating table. On behalf of the Government of India, the Additional Solicitor General informed the Court that the Central Government did not want to undertake any further negotiation and left the matter for disposal of the Court. In these circumstances, the Court held that it had 'no option but to conclude that a clear picture had emerged that settlement by negotiation cannot be arrived at and it must be held that the Central Government is also of the opinion, particularly when the Chief Minister of Tamil Nadu has indicated that he is no more prepared to join negotiations'. The Court pointed out that once we 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 (i.e. the ISWDA et. 1956). Accordingly, the Court directed the Central Government to fulfill its statutory obligation and notify in the Official Gazette within one month the constitution of appropriate Tribunal for the adjudication of the Cauvery Waters Dispute.

The Supreme Court having conveyed its opinion in clear and categorical terms, and against a background of persistent pressure from Tamil Nadu, the

\[26\] S. Guhan; The Cauvery River Dispute, Madras; 1993, p. 27.

\[7\] Ibid
interim order was published by the Government of India in its Official Gazette of December 11, 1991. The Gazette publication set off the worst episode of conflict in the history of the Cauvery dispute. The Karnataka Government called a bandh on December 13, and ordered the closure of all schools and colleges for 10 days from December 12, 1991. On December 12, there was a massive procession in Bangalore and stray incidents of violence take place. In the next three days, large-scale disturbances, forward including acts of arson, and the eviction of Tamil migrant people from their homes in parts of Bangalore and its suburbs, particularly concentrated in slum areas with large Tamil populations.

SUPREME COURT'S OPINION

The Supreme Court of India constituted a Special Bench under the Chairmanship of the Chief Justice Sri Ranganatha Misra, the other judges being Justice Mr.K.N.Singh, Justice Mr.A.M.Ahmadi, Justice Mr.Kuldip Singh and Justice Mr.P.B.Sawant for this purpose. The Five Member Bench delivered its opinion on 22.11.91 and it was sought by the President of Indian on Cauvery water Dispute which as follows:28

Question No:1.
The Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 promulgated by the Governor of Karnataka on 25th July, 1991 (now the Act) is beyond the legislative competence of the State and is, therefore, ultra vires of the Constitution.

28 Supreme Court of India; On Cauvery Water Dispute tendered by the president of India; New Delhi; November 22; 1991.
Question No. 2.

(i) The order of the Tribunal dated June 25, 1991 constitutes a report and a decision within the meaning of Section 5 (2) of the Inter-state Water Disputes Act, 1956.

(ii) The said order is, therefore, required to be published by the Central Government in the Official Gazette under Section 6 of the Act in order to make it effective.

Question No. 3.

(i) A Water Disputes Tribunal constituted under the Act is competent to grant any interim to the parties to the dispute when a reference for such relief is made by the Central Government.

(ii) Whether the Tribunal has power to grant interim relief when no reference is made by the Central Government for such relief in a question which does not arise in the facts and circumstances under which the reference is made. Hence, we do not deem it necessary to answer the same.

The Judges have further opined that their advisory opinion is entitled to due weight and respect and normally it should be followed.

The River Cauvery is an inter-state River as it flows through Karnataka, Tamil Nadu, Kerala and Pondicherry running about 802 kms. The Cauvery River basin in Tamil Nadu is 43,868 sq.km. and 34,273 sq.km. in Karnataka. The total flow of the Cauvery river varies according to different sources from 671 to 790 tmc. 's, Agreements were entered into in 1892 and 1924 for sharing the river waters between Karnataka and Tamil Nadu. The last agreement expired In
1974. The River Boards Act 1956 for the purpose of regulation and
development of inter-state rivers and river valleys while the Inter-State Water
Disputes Act, 1956 for adjudication of disputes with regard to the use,
distribution or control of the said waters are in force.

In 1970 Tamil Nadu Government requested the Central Government to
refer the water disputes to a Tribunal as per Section (3) of the Inter-state water
disputes Act 1956. Accordingly the central Government initiated negotiation
between the two States. Meanwhile, the Tamil Nadu Government filed a suit
in 1971 with the Supreme Court of India to direct the Government of India to
constitute a Tribunal and refer the dispute to it and also stay the execution of
projects in Karnataka. However, this letter of request was dismissed on
25.1.1991 by the Supreme Court of India. In 1972 a fact finding committee
was set up which submitted its report in December 1972 and August 1973.

A Study Team under the Chairmanship of the then Additional Secretary
Sri C.C.Patel was appointed. The 1976 understanding envisaged the
appointment of the surplus water is in the ratio of 30:53:17 among the States
of Tamil Nadu, Karnataka and Kerala respectively and in the case of savings the
apportionment is in the ratio of 87, 4 and 34 tmc., between Karnataka, Tamil
Nadu and Kerala respectively. In June 1986, Tamil Nadu lodged a letter of
request (Section 3 of the Act) with the Central Government for the Constitution
of a Tribunal and stopping project work in Karnataka and implementation action
of agreements of 1892 and 1924. The Supreme Court in their judgement May 4,
1990 held that the negotiation between the two States had failed and directed

26 Government of India; Draft proposal agreement of 1976; New Delhi.
the Union Government to constitute a Tribunal under Section 4 of the Act. Accordingly, the Cauvery Water Disputes Tribunal was constituted on June 2, 1990 by the Union Government. It commenced working on 20th July, 1990.

Tamil Nadu sought an interim relief on the same day from the Tribunal. The interim was that Karnataka should not expand or utilise Cauvery water beyond 31-5-1972 utilisation level to which Chief Ministers of the riparian States were parties. Tamil Nadu filed an urgent petition C.M.P.No.9/90 to direct Karnataka to release 20 tmc.s of water as the first instalment to save samba crop under Mettur reservoir. The Tribunal opined that it could award interim relief as the same is not included in the terms of reference. Tamil Nadu filed Special Leave Petition in the Supreme Court of India (Article 136 of the Constitution) against the Tribunal’s dismissal of the request for interim relief. The Supreme Court held that the interim relief prayed by the Tamil Nadu was included under the reference made by the Central Government. Even the Counsel for the Karnataka Government accepted that the Interim relief be determined by the Tribunal on merits of the case.

The Tribunal by considering the balance of convenience and maintenance of the existing utilisation, to preserve the existing rights of the parties till the final adjudication desired to pass interim order directing Karnataka to release 205 tmc.s of water to Tamil Nadu from June to May and that irrigation in Cauvery basin not exceed beyond 11.2 lakh acres. The Karnataka Government promulgated an Ordinance on 25.7.1991 which was replaced by an Act later. Karnataka filed a suit (121 Article) for declaring the Tribunal order granting interim relief as null and void. President of India then sought Supreme Court for opinion. The arguments advanced by the Counsels for Tamil Nadu, Kerala and
Pondicherry were heard by the Bench of the Supreme Court before giving their advisory opinion to the President of India.

In the second phase, from December 24 to 27, 1992 violence spread to parts of Mysore and Mandhya districts and the districts bordering Tamil Nadu, on the interim award of the Cauvery Water Disputes Tribunal. This came as a shock to those Kannadigas in whom Bangaroppa’s son-of-the-soil sentimentality had bred false hopes. After the chauvinist hysteria of the December 13 an all-party state bandh, was organised, and there was another gory replay on December 23, 1992. Vicious attacks on the migrated Tamil began at Gundpet when after 300 Tamilians crossed to Tamil Nadu with tales of terror originating at Cherambadi. By next evening Mysore district was on fire. Tamilian-owned farm houses and even Tamil Nadu - registered vehicles went up in to flames.

The Cauvery may quieten down when the flow is lean, but without altering much the course of confrontation over the sharing of its waters among the riparian states. Though the matter was before the Tribunal, the political implications of a verdict at this juncture could snuff out any hope of a negotiated settlement. It is against this background that the New Delhi meeting in the second week of February turned out to be an “exercise in futility” as Tamil Nadu Chief Minister Ms. Jayalalitha remarked. Not because of the reason adduced by her that it did not give her any assurance about the implementation of the interim order of the Cauvery Water Disputes Tribunal but because of the lack of seriousness on the part of the Centre. The bland joint statement issued on behalf of the four Chief Ministers after the meeting was only to play down

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the failure to persuade Ms. Jayalalitha and her Karnataka counterpart, Mr. S. Bangarappa to reach an understanding. Even the brave protestations of Kerala Chief Minister Mr. K. Karunakaran and Mr. Bangarappa that the talks were satisfactory and were soon believed by the emphatic denial of these by Ms. Jayalalitha, underscored the helplessness of the Centre. With the stand of the Tamil Nadu Chief Minister well known, it was surprising that the Centre had not prepared the ground to thrash out the issue. Though it denied it had a four point formula the suggestions attributed to it and published by the media made some sense. There was a plausible ground for a dialogue, but their premature leak perhaps rendered the meeting ineffective, forcing the Government to deny their existence. This was perhaps why the Prime Minister Sri P.V. Narasimha Rao chose to meet the four Chief Ministers separately before the discussions.

Prime Minister Sri P.V. Narasimha Rao’s February 17, 1992 initiative has helped avert for the movement a possible Constitutional crisis in Karnataka and provided a measure of comfort to the then Chief Minister, S. Bangarappa. A number of political leaders have said the Prime Minister had made a good beginning. His comments and also reports of an approach paper recognising river waters as a national asset created in the State an impression that Sri Narasimha Rao had realised the dispute could not be solved exclusively by Court verdicts or Tribunal decisions and these had to be reconciled with the realities of the situation. Sri Bangarappa, in fact, wanted the Prime Minister to fix the next meeting of the Chief Minister’s as early as possible. The Chief Ministers meeting had defused the tension in the State on the Cauvery dispute. An all-party meeting of legislators in Mandya in the first week of January had fixed February 19, 1992 as the deadline for the Prime Minister to initiate talks. The
meet had made it clear that if the initiative was not forthcoming, all the legislators, including the members of Parliament threatened that they would resign.

The Hawkish attitude of the critics could now be blunted if not muted. They knew the first meeting could not have produced miracles and that the quest for an acceptable solution would be a long-drawn process. This view was stressed, among others, by the Janata Dal Leader of the opposition in the Assembly, Mr. D.B. Chandra Gowda. Kannada Chauvaligar leader Vatal Nagaraj viewed the Delhi Conference as a play by the Prime Minister to neutralise the Mandya Conference decision. The Samajwadi Janata Party (SJP) leader and MLA, Mr. C. Byre Gowda, was disappointed and he said that Sri Bangarappa did not throw his full weight to force the Prime Minister to spell out the centre’s plan to correct the wrong Karnataka suffered under the interim order of the Tribunal the Karnataka Rajya Ralitha Sangha leader, Prof. M.D. Nanjadeswamy, who had sent his resignation from the Assembly, was also among the hawks, though he had been a bit charitable to the Prime Minister. His threat to block the flow of the Cauvery into Tamil Nadu and block the Vidhana Soudha, the State Secretariat, were well publicised postures against the Centre’s handling of the issue.

The Tamil Nadu Chief Minister Jayalalitha’s threat to go to the Supreme Court has produced mixed reactions. There is, of course, concern that the dispute might go on, exacerbating inter-state relations which suffered a setback with the anti-Tamil and anti-Kannadiga agitation in the two States during last

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December, 1991. Just as the Prime Minister initially appeared to be placating Jayalalitha by gazetti ng the Tribunal’s interim order, provoking Karnataka, this time he buckled under pressure from Bangarappa to take the route of negotiations. Karnataka’s case was that though it banned to release water to Tamil Nadu the Tribunal’s scheme and time-table could not be implemented without harming Karnataka’s interests. The State Government had its hands full with petitions, including that before the Tribunal, for a review of its order.

The Union Water Resources Minister, Mr. V.C. Shukla stated categorically that his ministry had not discovered any default in Karnataka’s compliance of the Cauvery Tribunal’s interim award. Addressing a press conference in the city of Madras he said the Central Water Commission (CWC) had been closely monitoring the implementation of the award ‘in letter and in spirit’ and, to date, both the Karnataka and Tamil Nadu Governments had been cooperating with the Central Water Commission. He also reiterated his ministry’s resolve to ensure that ‘no default crept in’. He also asserted that the implementation had commenced the day the centre gazetted the award. The Minister, however, evaded a pointed question whether the Centre was aware that the Karnataka Government had ‘stealthily’ released Cauvery water in the past week, as charged by the opposition in Karnataka. He said, ”the Central Water Commission is ensuring that action is being taken to implement the award and the action is being monitored on a continuous basis”. He dismissed the Karnataka opposition’s charge against the Bangarappa Government asking as to how any secrecy could be maintained in releasing the Cauvery water.

Nothing could have been politically more embarrassing to the Karnataka Government than the Union Water Resources Minister, Mr. V.C. Shukla’s assertion
that the interim order of the Cauvery waters dispute tribunal would be implemented and that there had so far been no reports of "violation", nor had the Union Ministry "detected any default". According to the schedule drawn up by the Tribunal for the release of the 205 tmc. ft., of water which if ordered Karnataka to spare Tamil Nadu (a small quantity of it is to go to Pondicherry) annually a little over 183 tmc. ft., is to be made available during the seven-month period June to November the time by which the north-east monsoon was expected to set in. And from January to May, the lower riparian was to get 2-plus tmc. ft., every month, not by any means a significant quantity. However, some of the opposition leaders in Karnataka had charged only a few days ago that the Bangarappa regime had released on the sly and on "Political considerations" 4.5 tmc. ft., of water for Tamil Nadu a fortnight from May 20, 1992. For its part, the Karnataka Government had refuted the allegation maintaining that whatever depletion had occurred was only on account of meeting the normal irrigation and drinking water needs in the State and not because water has been spread to Tamil Nadu.\textsuperscript{32} Almost simultaneously has come Mr. Shukla's forthright remark about the Central Water Commission closely monitoring the implementation of the interim award and there being no instance of non-cooperation by any state.

Karnataka according to the interim order, should release 10 tmc. ft., of water in June, 1991 but receipts had been only 1.25 tmc. ft., Even this small quantity had come in the normal course following the setting in of the monsoon. But irrigation department sources here said that there was no

question of releasing any water from the main reservoirs in the Cauvery basin like Krishnarajasagar, Hemavathi, Harangl and Kabini, in view of the depleted levels of storage. In fact, these sources say that the inflows into Krishnarajasagar were ‘alarmingly’ low. On June 8, 1991 for example, the storage level was just 80 feet and the inflow a mere 1,184 cusecs into the the reservoir while on the same day in 1991 it was 4, 186 cusecs. The storage in these reservoirs was only half of what was specified to be released to Tamil Nadu in the interim order. On the other hand, irrigation experts here contended that Tamil Nadu need not have to depend on any release from Karnataka in the year as the storage in Tamil Nadu’s reservoirs were more than sufficient to meet the demand for the season and was even capable of facing a bad monsoon in 1992-93. They point out that the storage at Mettur had filled thrice over due to a bountiful monsoon last year. There was also, according to them, a carry over stock of 75 tmc. ft., of water in Tamil Nadu’s reservoirs.\textsuperscript{33}

The Government of India’s proposals of 1974 and 1976 covered in detail aspects related to availability, utilisation, savings and regulation. The Government of India drafts refrained from referring to the long-term yield or utilisation in the basin. Their starting point was ‘present use’ defined as utilisation during the 5 years ending 1971-72 i.e. during 1967-72. This was assessed state-wise as Tamil Nadu 489 tmc.ft., Karnataka 177 tmc.ft., and Kerala 5 tmc.ft. With reference to the ‘present use’ the Government of India proposals envisaged savings of 100 tmc.ft., by Tamil Nadu and 25 tmc.ft., by Karnataka to be achieved in a phased manner over 15 year.\textsuperscript{34} Of this, a saving

\textsuperscript{33} B.S.Nagaraj, "Cauvery Issue", Indian Express - 22 June, 1992.

\textsuperscript{34} Government of India; Draft proposals agreement of 1974; New Delhi.
of 25 tmc. ft. (20 ft., by Tamil Nadu and 5 ft., by Karnataka) was to be effected in the first five years. Savings were to be achieved through measures such as the modernisation of existing irrigation systems, improvements in water management, and the reduction of seepage losses. Necessary outlays, including central assistance, were to be provided in States' plans.35

The Government of India (1976) also proposed that the estimate of water surplus to 'present use' be worked out by a Committee of representatives of the Central and State Governments and that the surplus be shared in the ratio of 30:53:17 between Tamil Nadu, Karnataka and Kerala.36 This ratio was based on the yield from the respective States in the period 1934-72. On the question of regulation, the Government of India (1974) proposed that waters surplus above, or deficit below the 'present use' in both 'good' and 'lean' years, should be shared pro-rata of the 'present use' i.e. in the ratio of 72.9:26.4:0.7 for Tamil Nadu, Karnataka and Kerala respectively. The major reservoirs in the Cauvery basin were to be regulated in an integrated manner with a view to deriving maximum benefit consistent with the equitable distribution of water as indicated. The Government of India (1976) also proposed that in a 'normal' year, the 'existing area' under irrigation should be 'fully protected'. It left the manner of sharing available waters in lean years to be worked out by a committee of representatives of the Central and State Governments. The Committee's report would be submitted to the Chief Ministers for consideration.

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3 Government of India; Draft proposal agreements; on cauvery water dispute of 1976; New Delhi.
The Government of India drafts did not attempt to quantify or to otherwise precisely define terms such as 'good' normal and lean years or 'existing area' or 'full protection'. Nor did they go into the question of regulating water within a given year according to crop seasonal needs. The Government of India proposals envisage that the States concerned should be free to utilise the waters allocated to them for new irrigation or for other projects would not help up for want of agreement on inter-state aspects. An allocation of 2 tmc. ft., to meet new industrial and domestic water supply needs in each of the States was indicated from out of the projected savings of 125 tmc. ft.\textsuperscript{37}

The Sarkaria Commission noted that the Government of India lacked any means to enforce an award, if any State refused to give effect to the award fully or even partially. The commission was of the view that in order to make the award binding and effectively enforceable, the Inter-State Water Dispute Act should be amended to give it the same sanction as an order or decree of the Supreme Court. The Commission also recommended time-limits for reference to Tribunals (one year from the date of receipt of the complaint) and for the effectiveness of the award (five years from the date of Constitution of the Tribunal).

Between September 1992 and January 1993, all the party states have completed the opening of the case. Tamil Nadu in its opening has stressed about the validity of the 1892 and 1924 agreements, violations of the said agreements by Karnataka and has pleaded that equitable allocation should be

within the framework of existing agreements, and for protection of prescriptive rights. Pondicherry’s claim is for the protection of its age old irrigation and settlements on the basis of earlier accords. Kerala’s arguments are for recognition of its shares, based on equitable allocation on the principle of general public interest. Prior uses cannot be a sole factor in equitable allocation. Claims for westward diversion of Cauvery waters for power and irrigation in Kerala State should be conferred. Karnataka has contended that re-Constitutional agreements do not survive and are not binding on the State. As there are no valid agreements, the shares of the states are to be decided based on the principles of equitable allocation taking into consideration the factors such as population, drainage area, yield contribution drought prone area, availability of alternative or additional resource and the like. The Tribunal dismissed the Karnataka Government’s representation on 30-6-94. Karnataka represented because the Tamil Nadu Government already submitted all its reports but the Karnataka Government wanted to inspect the reports of Tamil Nadu. Under the Chairperson of Justice Chittatos Mukarji the representation was dismissed and the enquiry on Cauvery Water Dispute was postponed till July 14, 1994. On that day the cross-examine was completed. The Tamil Nadu government sought an injection order from the Supreme Court on the implement the interim order which was given by the Cauvery Water Dispute Tribunal.

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8 Irrigation Department "The Cauvery Water Dispute", Bangalore, 1993.