CHAPTER IV

TAMIL NADU'S STAND ON SHARING OF CAUVERY RIVER WATERS
The sharing of the waters of the Cauvery has been a contentious issue between Karnataka (old Mysore) and Tamil Nadu (the old Madras presidency) for over a century. Tamil Nadu has had an early lead in developing irrigation with the help of it and Karnataka has rapidly begun to catch up with it. With the passage of time, Cauvery waters have been fully utilised rendering their sharing complex. Since prolonged negotiations have failed, the dispute has had to be referred to the Cauvery Water Disputes Tribunal in 1990 for adjudication. The Madras - Mysore Agreement was accepted by the Madras Government in February 1892. This agreement imposed restrictions on both Mysore and Madras which amounted to the waiver of some of its rights by Mysore as an upper riparian, and which goes against the classical theory of absolute right of the riparian states. The Mysore government shall not, without the previous consent of the Madras Government or before a decision under rule 4 of 1892 agreement, build (a) any "New irrigation Reservoirs" across any part of the fifteen main rivers.¹

The Government of India suggested arbitration and in June 1913, appointed H.D. Griffin, Judge of the Allahabad High Court, the arbitrator assisted by M. Netherhole, Inspector General of Irrigation, Government of India. The award of the arbitrator, which came to be known as the Griffin Award, was presented in 1914.² According to its interpretation the 1892 agreement entitled Madras to such rights as it had acquired by prescription and as were fair and

¹ Government of Madras; Madras Mysore agreement on cauvery river water; 18th February, 1892. p.14.
reasonable, and held that a 20 year period was required to earn a title by prescription. Specifically, the Griffin Award fixed the requirements of Madras for its existing irrigation at 22,750 cusecs equivalent to a gauge 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 flows, impounding, and exchange of information between the two parties. Finally, the arbitrator held that the scheme of regulation could be revised, readjusted, and revised by mutual agreement.

But the Madras Government did not accept the Griffin Award, which 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 gauge 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 inadequate 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 case for not ratifying the award, thereby upholding the appeal of Madras.
The 1924 agreement was signed on February 2, 1924, it was in the nature of an equitable allocation by an agreement between the two states, that was binding and constituted the law on the subject as such. Since it is based on the assessment of the respective requirements of the territories or areas involved, its rules and regulations embodying the concept of limited flows has been the fair and equitable basis on which the water could be shared and utilised. Besides, it envisaged and provided for such sharing on a day-to-day basis. Under the project of Mettur high level, 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.³

In Tamil Nadu, ayacut development in 1934-72 was much more rapid and significant. The Initial pre-Mettur extent of 14.4 lakh acres of irrigation was augmented by Mettur to an extent of 3.2 lakh acres and to an equal extent by projects implemented in the First (1951-56) and Second Plan (1956-61) periods⁴. The First Plan projects were the lower Bhavani project (covering 2.1 lakh acres) and the Mettur canal project (0.5 lakh acres). The three Second Plan projects the Amaravathy, the New Kattalai High level canal and the Pullambadi canal were to add about 0.2 lakh acres each. Post-1972 developments have been confined to a number of small schemes in sub-tributaries in the dry areas of Dharmapuri, Salem Periyar, Dindigul and Tiruchirapalli districts. Thirteen such schemes have a total ayacut of 50,000 acres and a total estimated utilisation of about 7 tmc. ft. Tamil Nadu had also proposed a project for the rehabilitation

³ A.R. Banerji; P. Hawkins; Mysore and Madras Governments agreement; Madras; 18th February 1924.

⁴ S. Guhan, op. cit. p.18.
and modernisation of irrigation and drainage in nearly 6 lakh acres of the delta. Although the proposal was appraised in 1970 for funding by the World Bank and would have resulted in economy and efficiency in water use, the Government of India’s approval for the project has been withheld in view of the dispute.⁵

NEGOTIATIONS 1968-70

At the suggestion of the then Prime Minister Indira Gandhi, the Chief Ministers of the basin states resumed their talks in 1972. At a meeting held on May 29, 1972 and attended by the then Chief Ministers Devaraj Urs, M. Karunanidhi, and C. Achutha Menon, it was decided that a serious attempt should be made to resolve the Cauvery dispute by negotiations between the states as early as possible. It was agreed that the Government of India would appoint a fact-finding committee to collect all relevant data and to examine the adequacy of the present supplies and the extent of the excessive use of water for irrigation purposes. The Committee was only to collect the data and was not to make any recommendations. The Chief Ministers agreed to hold further discussions based on the committee’s report and, with the Government of India’s assistance, to arrive at an agreed allocation of water to the respective states in six months. The CFFC was constituted in June, 1972, and gave its first report in December 1972. The Committee consisted of P.R. Ahuja (engineer), Jatindra Singh (engineer), J.S. Patel (Retired Agricultural Commissioner) and B.D. Pal (Judge). Responding to the requests made by the Chief Ministers in April, 1973 for a further verification of the data relating to area irrigated and utilisation, the CFFC gave an additional report in August

⁵ S. Guhan, op. cit. p.20.
1973. Meanwhile in June, 1972, Tamil Nadu, acting on the advice of the then Prime Minister Indira Gandhi, the then Chief Minister, M. Karunanidhi, withdrew the suit in the Supreme Court, while reserving the right to move the court again, should it become necessary. A series of meetings based on the CFFC’s reports was held in 1973 and 1974 under the chairmanship of successive Union Minister’s for Irrigation (K.L.Rao, October, 1973; K.C.Pant, June 1974; Jagjivan Ram, November, 1974). At the final meeting of this series, held on November 29, 1974, a draft agreement was tabled by the Government of India. The draft was discussed in November, 1974, and again in February, 1975, but was not acceptable to the parties., In May, 1975, Tamil Nadu renewed its request to the Government of India to refer the dispute to the Tribunal.

Efforts to resolve the dispute were to continue, although the meetings held during 1978-81 had indicated little prospect of an agreement. Following a meeting in April, 1983 under the Chairmanship of the Union Minister for irrigation, Ram Niwas Mirdha, bilateral discussions were once again held between Karnataka and Tamil Nadu in January 1984 and in November 1985. These were followed by one more meeting in June 1986 under the chairmanship of the Union Minister for Irrigation, B. Shankaranand. In July 1986 to 1987, the Government of India-implied request to refer the dispute to a Tribunal in November 1986, a farmer’s association in Tamil Nadu moved the Supreme Court to constitute a Tribunal and the Tamil Nadu Government impleaded itself in support of their prayer. In

Government of India; Draft proposal on Cauvery River waters dispute; 1974, New Delhi.

7 Ibid., p.27.
1987, a further meeting of the then Chief Ministers was proposed by the Government of India but the Chief Minister of Tamil Nadu, M.G.Ramachandran, declined to participate in it on the plea that negotiations until then had not yielded results. The next meeting, held in September 1988 on the directions of the Supreme Court, was a bilateral one between the Chief Minister of Karnataka and the Governor of Tamil Nadu (Tamil Nadu being once again under President’s rule). This meeting ended in predictable failure, and the Tamil Nadu Governor pressed the Government of India for early reference to a Tribunal. Early in 1989, M.Karunanidhi, who had again become the Chief Minister of Tamil Nadu, proposed to his counterpart in Karnataka, S.R.Bommai a bilateral meeting. But by the time a date in late April was agreed upon, it was Karnataka’s turn to come under President’s rule. In August and December 1989, Tamil Nadu once again pressed the Government of India to refer the dispute to a Tribunal. In February 1990, the writ petition filed in 1986 came up again for hearing in the Supreme Court. The Court gave a final adjournment to April, 24 and declared its intention to decide the case on merits if no settlement was reached by then. As a last ditch move, the Chief Ministers of the basin states met on April 5 under the chairmanship of the Union Minister for Irrigation, Manubhai Kotadia, and it was decided that a final bilateral discussion would be held between Karnataka and Tamil Nadu. This was held in Madras, and again proved inconclusive. Interestingly the two States were represented at this meeting - the last of the series - by Veerendra Patil and M.Karunanidhi, the same leaders who had participated in the earlier Ministerial meetings 22 years back, i.e. 1968.

Tamil Nadu Chief Minister, M.Karunanidhi, said on 18th June, 1990 that he would talk to the then Prime Minister, V.P.Singh about an interim
arrangement for water from the Cauvery to Tamil Nadu till the final verdict was given by the Tribunal. Because they have a responsibility to ensure that the farmers of Tanjavur do not suffer, Mr. M. Karunanidhi had sought the immediate intervention of the Prime Minister Chandra Sekhar, to persuade Karnataka to release at least 20 tmc. ft. of water in the Cauvery to save the standing crop in the delta. In a telex message sent to then the Prime Minister he said that the Karnataka Government had not released water in the Cauvery legitimately due to Tamil Nadu for the past several months, resulting in very poor storage in Tamil Nadu reservoirs. The water then available in the reservoirs was totally inadequate to save the standing crop in the delta and the storage position in Karnataka's reservoirs was quite good. As a personal request by Mr. M. Karunanidhi to the Karnataka Chief Minister to release water was of no avail, the Government of Tamil Nadu moved the Cauvery Water dispute Tribunal for giving interim relief by directing Karnataka to release the water required to save the standing crop. The Tribunal maintained that it was not authorised to grant interim relief as it was not one of the terms of reference. Tamil Nadu was thus unable to get relief from the Tribunal for a technical reason. Then Tamil Nadu went in appeal to the centre to use its good offices with the Karnataka Government to persuade it to release at least 20 tmc. ft. of water for the crops in the delta area.

The Cauvery Water dispute Tribunal rejected Tamil Nadu's application on the ground that the "Tribunal cannot entertain applications for grant of interim relief. It was also stated by the Tribunal that the issue regarding grant of interim relief over water dispute was not referred to it by the Central Government. Details of the "barter deal" between the two states is yet to be worked out.
Tamil Nadu has also agreed to supply power in return for water as an expedient measure to get the required water urgently to save the standing crops on about nine lakh hectares of land. Mr. Bangarappa gave the assurance on the Prime Minister’s request to him not to link the release of water to any conditionalities. The Karnataka Chief Minister had withdrawn the pending cases before the Supreme Court and the Cauvery Water disputes Tribunal as pre-conditions to consider Tamil Nadu’s request for emergency release of water. Mr. Durai Murugan said since he was the minister in charge of Energy he was making commitment. However, he agreed to talk to the Chief Minister and convey his approval. The Tamil Nadu Minister promptly contacted Mr. Karunanidhi on telephone and informed him the development. But he was not able to convey Mr. Karunanidhi’s endorsement of the consent to supply power to Karnataka.

Before the Tribunal Mr. Parasuram argued on behalf of Tamil Nadu, that suggestion that interim releases may be ensured to it on a day to day basis rested on such break up of monthly flows commencing from June does not in a way detract from the 1924 agreement. The Tribunal has taken up for hearing the Tamil Nadu plea for interim orders in the light of the supreme court ruling that it was part of the terms and reference of the Tribunal. The Tribunal had earlier rejected Tamil Nadu’s contention that it was not empowered to issue interim orders. Stating that Karnataka had breached the agreement by impounding all flows in its reservoirs from 1974-75, Mr. Parasaram questioned the wisdom of Karnataka by objecting to both the daily and weekly basis of releases and seeking abandonment of the very rational of the agreement.8 The Karnataka Government had in its argument said that there could be no tentative

The Economic Times of India, 30 May, 1991.
conclusion on equitable apportionment of water without proper investigation and collection of data on the quantum of utilisation of water in the delta region.

Mr. F.S. Nariman noted on behalf of Karnataka that in the understanding reached by the Chief Minister of Tamil Nadu and Karnataka in 1972 there was an ‘indication’ of a decision for a de novo determination of the shares of the states of the Cauvery Water on the principle of equity. It was in pursuance of an attempt to reach an overall agreement as the 1924 agreement had nothing to do with allocation of water.

In the rejoinder, Tamil Nadu sought to demolish Karnataka’s contentions and reiterated the right to get interim relief, while arguing that the concept of limit flow under the 1924 agreement and reaffirmed in the 1972 agreement were valid and relevant even today. Tamil Nadu said unfortunately Karnataka persisted with being unreasonable and in trying to sidetrack the issue. With reference to Karnataka’s plea that it had spent Rs.800 crores on irrigation projects. Tamil Nadu said that these projects were unauthorised both for being in violation of the 1924 agreement and for want of clearance by the Central Government secondly these projects were directly affecting the age old irrigation and existing uses in the Cauvery delta with severe detriment to food production agriculturists and farm labour.⁹

The sole factual justification advanced by Karnataka for its illegal impounding and utilisation of water is that its present irrigation projects are intended to ameliorate its alleged drought prone areas. But according to a report

prepared by study team appointed by the government that none of the taluks in the Cauvery basin in Karnataka have been identified as drought prone areas where as four taluks of Dharmapuri District which lie with in the Cauvery basin in Tamil Nadu have been identified as drought prone. Tamil Nadu also reiterated its right together from Krishnarajasagar on a day-to-day basis under the 1924 agreement and said since Karnataka sought to raise from that agreement it created complications for itself. Since it persisted in its stand, Tamil Nadu provided a leeway by asking for release weekly basis through the present petition. But now Tamil Nadu would have no objection limit flows envisaged by the 1924 agreement released by Krishnarajasagar and other reservoirs on day to day basis within the concept and from work of the 1924 agreement.

The Tribunal passed its order relating to interim relief on June 25, 1991. 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 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 other irrigation facilities had taken place since then. The Tribunal made it clear that its ‘Prime consideration’ was to preserve, as far as possible, the rights of a party’s pending final adjudication and to ensure that any unilateral action of one party did not prejudice the right of the other party from getting appropriate relief in the final adjudication. The Tribunal also wanted 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 Cauvery Waters.\textsuperscript{11} On July 6, 1991 both Houses of the Karnataka Legislature passed a unanimous resolution urging the Karnataka Government to reject the Interim order of the Tribunal on the ground that it adversely affected the interests of the state, was outside the jurisdiction of the Tribunal, and did not meet the legal, factual, and practical aspects of the dispute. A delegation of MPs from Tamil Nadu on July, 1991 met the Prime Minister Mr. P.V. Narasimha Rao, and demanded that the Centre gazette the interim order of the Cauvery Water disputes Tribunal and prevail upon the Karnataka Government to implement it. The delegation, which was headed by the Union Minister Mr. K. Ramamurthy and Mr. G. Swaminathan (AIADMK) said in a memorandum that the interim order was to restrain Karnataka from harming Tamil Nadu's interests further.\textsuperscript{12} Karnataka's interests would in no way be affected as the Tribunal had not interfered with the irrigation developed so far in that state though a portion of it was "unauthorised and in violation" of the original agreement on sharing of the waters.

The reported move of the Karnataka Government to get further proceedings of the Tribunal deferred until evolution of guidelines under the inter-state water disputes Act was "inappropriate and misdirected". No state would be justified in demanding modifications in the National water policy or the inter-state water disputes Act to suit its own ends and much less that the


\textsuperscript{12} The Indian Express, 13 July, 1991.
adjudicatory process of the Tribunal should await such modifications. Non-
implementation by any state of the interim orders of the Tribunal Law fully
constituted by the Central Government under the provisions of the Act, if
allowed, would not only lead to "perpetuation of the injustice caused to the
other states. But also undermine the nation's faith in Law and Justice and the
principles of federalism enshrined in the constitution". The memorandum
recalled that the Tamil Nadu Assembly had unanimously passed a resolution on
8th July, 1991 appealing to the Centre to give effect to the orders of the
Tribunal forth with. These delegations included Mr.P.R.Kumaramangalam
(Union Minister), Mr.K.Thulasaih, Mr.M.Palaniandy, Mr.B.Devaraja et al.

From the moment the interim order the Tribunal became available in June
1991, Tamil Nadu began pressing the Central Government to publish the order
in its official gazette so as to make it operative. Tamil Nadu was also highly
critical of the Centre's reference to the supreme court under Article 143 of the
Constitution, which it viewed as a move to stall the issue.

All the 39 Lok Sabha MPs of Tamil Nadu would be forced to resign if the
Union Government failed to gazette the interim order of the Cauvery Tribunal
directing Karnataka to release 205 tmc ft. of water from its reservoirs into
Mettur dam in Tamil Nadu at the earliest. This threat was conveyed to the
Prime Minister Mr.P.V.Narasimha Rao, by Mr.Era Anbaresu, Congress (I) MP
from Central Madras who along with a delegation of few other MPs from the

13 Dr. K.P.Krishnasetty, "The Law of Union" State Relations & Indian Federalism".
14 Government of Tamil Nadu; Tamil Nadu Assembly debates; Madras, July 8, 1991.
state submitted a memorandum expressing concern over the delay in notification of the order "An executive order of the Government of India to carry out the directions of the Tribunal after gazetting the award is the need of the hour, otherwise, there will be serious consequences not only on the inter-state relationship but also on Centre-State relationship", the memorandum warned.

Tamil Nadu Government planned to observe bandh on July 26, 1991 from 6 am. to condemn the Karnataka Government's failure to implement the Interim order of the Cauvery Waters Dispute Tribunal and also expressed its concern and dissatisfaction over the centre's stand in this regard. Essential services like hospitals, power, drinking water supply, milk distribution, ambulance services and newspapers would be exempt from the said bandh. This was decided at an all party meeting convened on 22nd at the secretariat by the Chief Minister, Ms. Jayalalitha, to discuss the recent developments on the dispute and further course of action needed on the part of Tamil Nadu. The situation arising out of the denial of legitimate supply of Cauvery Waters to Tamil Nadu since 1974 by the Karnataka Government going against laws and agreements could not be allowed to continue. A resolution adopted at the meeting expressing its deep concern and regret that the centre did not take any steps to gazette the notification of the interim order of the Tribunal even after a month in spite of the appeals made by the Chief Minister, and Member of Parliament and State assembly, it urged the Centre to take immediate steps to ensure justice to the people of Tamil Nadu without any further delay. The meeting endorsed the steps so far taken by the state Government to get the Interim order of the Tribunal implemented and assured the support of all the parties in whatever steps the Chief Minister might take in this respect. The
meeting was attended by the representatives of the Congress (I), DMK, CPI(M), CPI, Janatha, Samaj Vadi Janatha Dal, Janatha Party, Pattali Makkal Katchi, MGR AIADMK party, Forward Block, Republican Party and other parties.\textsuperscript{15}

They had to doubt whether the farmers could raise the Kuruvai crop in Thanjavur, the granary of the state. The intransigence of the Karnataka Government should cause concern to all those believing in the unity and integrity of the country such an attitude had created problems affecting the national integration. It was Karnataka which opposed the setting up of the Tribunal and after rejecting the interim order of the Tribunal talked of further negotiation between the two states this showed that Karnataka was bent on preventing Tamil Nadu from securing its due share of water.

The AIADMK MPs threatened to ‘resign’ on the Cauvery Water issue. The threat was contained in a memorandum submitted to the Prime Minister, Mr. P.V. Narasimha Rao by the party Parliamentary leader Mr. G. Swaminathan. The memorandum said in case, the Union Government fails to issue executive direction to the Government of Karnataka to comply with the order passed by the Tribunal within the stipulated time under Article 256 of the constitution and the release 205 tmc. ft., of water. "Even though 30 days have elapsed since the interim order was passed by the Tribunal, Karnataka has not complied with the order," the memorandum said on the other hand, the state Chief Minister has been issuing statements which amount to flouting the orders passed by the Tribunal. Apart from Mr. G. Swaminathan, AIADMK members who signed the memorandum are Mr. P. G. Narayanan, leader of the party group in Lok Sabha,
Mr. M.R. Janarthanan, Mr. A. Ashok Raj, Mr. C. Srinivasan, Mr. B. Raja Ravi Varma, Dr. K. S. Soundaram, Dr. N. Murugesan, Dr. R. Sridharan, Dr. R. Ranaga Govindarajulu, Mr. R. Ramaaswamy and Mr. S. S. R. Rajendra Kumar.¹⁶

GAZETTING OF THE INTERIM ORDER AND ITS AFTERMATH

The Supreme Court having conveyed its opinion in clear and categorical terms, and against a background of persistent pressure from Tamil Nadu, the interim order was published by the Government of India in its official gazette of December 11, 1991.¹⁷ 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, 1991 and ordered the closure of all schools and colleges for 10 days from December 12. On the same day, there was a massive procession in Bangalore and stray incidents of violence. These developed, continues over next three days, into large-scale disturbances including acts of arson, and the eviction of Tamil people for their homes in parts of Bangalore and its suburbs, particularly concentrated in slum areas with large Tamil population.

In the second phase, from December 24 to 27, 1991, violence spread to parts of Mysore and Mandya districts and to districts bordering Tamil Nadu.¹⁸ In this phase, farm houses owned by Tamilians were attacked, looted and set on fire and Tamil cultivators and agricultural labourers were driven away from their home and hearth. In the third phase, action shifted to Tamil Nadu,


¹⁷ S. Guhan; The Cauvery River Dispute, Frontline, Madras, 1993, P.41.

¹⁸ The Indian Express, 28 December, 1991.
their home and hearth. In the third phase, action shifted to Tamil Nadu, following a bandh called by the government on December 27. In the days which followed Kannadiga homes were attacked and land owners belonging to Karnataka in the Gudalur area of Nilgiris district were driven out. Vehicles with Karnataka registration plates entering or leaving Tamil Nadu were set on fire in some cases and normal road traffic between the two states was interrupted for several days. At the peak of these incidents, about 100,000 Tamil people moved from Karnataka to Tamil Nadu. The independent Indian people's Human Rights Commission, which investigated these incidents, estimated the loss of property to a minimum of Rs.17 crores. Both Governments instituted arrangements for compensating the victims. However, there had been criticism that compensation amounts actually paid were not adequate or timely and that the coverage was not comprehensive.

The three-week suspense was excruciating. But it was worth the wait for Tamil Nadu. The mood turned buoyant when the news came on November 22, 1991 that the Supreme Court had upheld the Interim order of the Cauvery Water disputes Tribunal awarding 205 tmc. ft. of water to the state and held the Karnataka Cauvery Basin Irrigation (protection) ordinance, 1991 - "Illegal and Ultra vires of the constitution". The Government and the people of Tamil Nadu could not be tolerated far more. As statements, both for and against the gazetting of the interim order, were attributed to Prime Minister P.V. Narasimha Rao and Union Minister for water Resources V.C. Shukla, expectations started diminishing. When it looked as if the people of the state were at the end of their
latter, Shukla sprang a surprise, on December '91.\textsuperscript{16} He announced in both houses of Parliament that the Centre had decided to notify the order while MPs from Tamil Nadu thumped their desks and hailed the decision as a 'victory' for the state,\textsuperscript{20} protracted legal battle, those from Karnataka called it a "betrayal" of their state's interest by the Centre.

Tamil Nadu Chief Minister Jayalalitha promptly expressed 'profound gratitude' to Narasimha Rao. The State's people would 'ever be grateful to the Prime Minister for having ensured that the lifeline of Tamil Nadu, the Cauvery, will remain alive and continue to be a source of sustenance for them. She had led an all-party-delegation to meet Narasimha Rao on December 3, and presented a memorandum explaining Tamil Nadu's case. It argued that since the Constitution Bench of the Supreme Court and unanimously asserted that the interim order constituted a 'report and decision' under section 5(2) of the Interstate water disputes Act of 1956, the Centre required to gazette it under section 6. The Act to make it effective. The Centre should do so without any delay and render 'justice to the people of Tamil Nadu'.\textsuperscript{21} Section 6 of the Act unambiguously states that "the Central Government should publish the decision of the Tribunal in the official gazette and decision shall be final and binding on the parties of the dispute" and it "shall be given effect". The Act also enjoins on the centre to constitute an authority to implement the decision or directions of the Tribunal. The memorandum also contained a background detailing the


\textsuperscript{20} Govt. of India; Parliamentary debates; New Delhi, December 10, 1990.

\textsuperscript{21} Ibid.
circumstances under which the Tribunal gave the interim order, the Karnataka Government’s attempt to pre-empt its implementation, the presidential reference to the supreme court and the court’s opinion in favour of Tamil Nadu.\textsuperscript{22}

During the 30-minute meeting with the Prime Minister, Ms. Jayalalitha reportedly expressed full confidence in the Prime Minister’s ability to resolve the issue at a very early date. And Prime Minister P. V. Narasimha Rao, was reported to have told the delegation "leave it to me, we will see what best can be done". As if to emphasise the unanimous opinion in the state the delegation included three Union Ministers from Tamil Nadu - P. Chidambaram, Arunachalam and P. Rangarajan Kumaramangalam - two MPs of the opposition Dravida Munnetra Kazhagam (DMK) and representatives of the Cauvery Delta Farmer’s Association only the Communist Party of India (Marxist) did not join.\textsuperscript{23} The presence of Chidambaram and Arunachalam pointed the relationship between the ruling All India Anna Dravida Munnetra Kazhagam (AIADMK) and the Congress (I). When the interim order came in July 1991, while Jayalalitha demanded that the Centre gazette it so that Karnataka started releasing water to Tamil Nadu. Chidambaram and Arunachalam said they would abide by the decision of the Union Cabinet on the issue. But the Tamil Nadu Congress (I) committee President, K. Ramamurthy, who would make no bones about his support to Jayalalitha, rebelled.

There was an unmistakable sense of \textit{deja vu} about the latest round of talks among the Chief Ministers. For this 28th meeting also failed to produce

\textsuperscript{22} N. Ram, Frontline, January, 1992, p.20.

\textsuperscript{23} Ibid.
a solution. When the talks between former Chief Ministers of Tamil Nadu and Karnataka, M. Karunanidhi and Veerandra Patil, failed, the former had remakred jocularly that the "Silver Jubilee" of the talks had been celebrated. Failure had become so routine that when the latest round collapsed, it hardly evoked any reaction from the political parties in Tamil Nadu. Only karunanidhi reacted saying: where was any need for talks when the Tribunal had already given an award of 205 tmc.ft. to Tamil Nadu and the people of the state were waiting for final order. 24

In another end of the spectrum of the Janatha Dal President S.R. Bommai (who was then in Madras), reflecting his home-state’s stand, once again placed his faith in a negotiated settlement, aruing that judicial verdicts would lead to bitterness. It was inexplicable that the Centre should have convened the meeting without preparing a compromise formula. In fact, the meeting did not even have an agenda to speak of if the centre’s thinking was that the talks would help break the ice between Tamil Nadu Chief Minister and Karnataka counterpart, its calculations went wrong. In fact, there was no direct meeting at all between them. The talks were deemed to be failure when Ms. Jayalalitha took the stand that the interim award was "not negotiable" - which was the consensus at an all-party conference in Madras on February 15, 1992 and that the talks should proceed from that promise. The DMK, which had boycotted the conference, said it was an eyewash as Ms. Jayalalitha had already decided to attend the talks in Delhi without consulting other parties. When Ms. Jayalalitha accepted the Prime Minister’s invitation for talks out of

‘decency’ and ‘courtesy’ and because the further of the solution had cooled down in Karnataka after the anti-Tamil violence, it was more of a gesture.  

More important, the threat of Karnataka MPs that they would resign if a solution was not found before Parliament began its budget session (1992) hung like the sword of Damocles over Narasimha Rao’s Ministry. Probably Jayalalitha agreed to attend the negotiations to bail out the Prime Minister out of this situation. As a Quid proque, she obviously expected a definite assurance from the centre that Karnataka would implement the interim award and that the union government would order a probe by a Supreme Court judge into the anti-Tamil violence to fix the compensation for the victims. (The Tamil Nadu Government has estimated that Tamil’s property worth over Rs. 300 crores was destroyed). Jayalalitha declared that as she “did not receive the assurance there was no point in further talks”. There was no mention of the implementation of the interim award in the joint communiqué issued after the talks. It said the states agreed to facilitate the expeditious completion of all proceedings before the Tribunal”. It pussy-footed on the question of compensation to Tamils. “The Chief Ministers agreed to expeditiously complete the relief and rehabilitation measures for persons affected by the recent disorders”, it said further nor was there any hint of a probe by a supreme court Judge.

Jayalalitha is partly to be blamed for the fiasco. She raised hopes unnecessarily by not spelling out clearly why she had agreed to participate in the talks; her stand was full of contradictions. First she said she had agreed to attend them out of “decency” and “courtesy” and because the initiative had

26 Ibid.
come from the Prime Minister. Later she said the interim award was not negotiable. Only after the talks collapsed did she disclose she had attended them because she had expected to get an assurance from the centre on the implementation of the interim award and wanted to press the compensation issue. She asserted the centre had an obligation under Article 256 of the constitution to enforce the interim award. She also threatened that her government would file a plea for a writ of mandamus in the Supreme Court to compel Karnataka to implement it. Karunanidhi was not only prescient about the futility of the talks when the interim award favoured Tamil Nadu but increasingly exposed the contradiction in Jayalalitha’s agreeing to attend the Delhi meeting. He was worried her participation might undo the efforts of earlier governments in Tamil Nadu to get the issue referred to a Tribunal, for it was karunanidhi who, as the then Chief Minister in the early 1970s and from January 1989 to January, 1991, had fought for setting up the Tribunal. His efforts bore fruit when the ‘friendly’ National Front Government of V.P.Singh set up the Tribunal - a victory for Tamil Nadu and a defeat for Karnataka which had always insisted on a negotiated settlement.

Several progressive and important agriculturists of Karnataka have accepted in principle the interim order of the Cauvery Water dispute Tribunal. But the opposition and certain minority parties in that state refused to see the truth of the case and were observed with ‘politicising’ the issue for personal and political ends. This attitude of the opposition parties and minority groups caused concern for them, the members of the team said. The concern in Karnataka was that their requirements of water for irrigation would be adversely affected. However, the delegation member said that when they explained in a
seminar at Bangalore on March 28, 1992 the real state of affairs of water availability, regulation and the like., with facts and figures, all those who attended the seminar really appreciated the plight of the delta farmers in Tamil Nadu.26 The seminar paved the way for a mutual appreciation of the problems and had generated a lot of goodwill and cordial relations between the agriculturists of Karnataka and the delta farmers, 'emphasised Mr. Ranganathan. The delegation members appreciated the legal panel, experts group and the Tamil Nadu Chief Minister for their stand on the Cauvery Waters issue before the Tribunal.

Mr. Ranganathan clarified that the visit of the delegation and the report they had established with their counterparts in Karnataka would in no way jeopardise the cases they had filed or the one filed by the Tamil Nadu Government before the Tribunal. Their mission to Karnataka, the speakers emphasised, was to erase the feeling of animosity and enmity that had been created between the people of the two states and to persuade the Karnataka Government to accept the verdict of the interim order of the Tribunal.27

ALL RIVERS ARE NATIONAL

Commenting on the sharing of Cauvery river water between Tamil Nadu and Karnataka, Mr. Ramakrishna Hegde, Janata Dal leader and former Chief Minister of Karnataka, wondered how rivers could be nationalised. Every perennial river in the country was no doubt national and the river Ganga could even be called international because it passed through several countries.

26 Indian Express, 8th April, 1992.
Reiterating his stand he said, if it is for the purpose of pooling all the waters for the best use to benefit the country as a whole, I, for one, will support nationalisation'. He pointed out whenever Tamil Nadu was in their need of water for irrigation at the time of the Chief Ministership of Mr.Karunanidhi or the late M.G.Ramachandran later, Mr.Hegde had released from 4000 million cubic feet to a maximum of 10,000 million cubic feet of water. This was made possible through dialogues. He recalled that M.G.Ramachandran was about to finalise an agreement when he died. Mr.Hegde said the Karnataka Government did not give convincing argument before the Tribunal. Even now the problem could be solved through mutual dialogues and in a spirit of give and take.

Mr. Hedge said he strongly believed that the Tribunal’s findings were impracticable and unimplementable. If there is no water in Karnataka, what can Karnataka do? The order said Karnataka should restrict the use and should not add one acre more. In that state, the total irrigated area was 11.5 lakh acres. In Tamil Nadu also, modern irrigation methods such as drip and sprinkler systems if adopted could help irrigate ten to eleven thousand acres for every one thousand million cubic feet of water. 'Why does not Tamil Nadu adopt modern methods' he asked. He pointed out that what had happened over the Cauvery issue in Bangalore was ‘barbarous’ for which he would hold the Chief Minister, Mr. Bangarappa, wholly responsible. He alleged that Mr. Bangarappa’s men were behind the ‘selective’ destruction.

28 Indian Express, 16th April, 1992.
A large number of Thanjavur farmers including Mr. S. Ranganathan, Secretary, Cauvery Delta farmers welfare Association and Mr. K.G.Krishnamurthy, Vice president, Dist. Agriculturists association expressed their surprise at the call by the opposition leaders in Karnataka, including Mr.M.D.Nanjundswami and Mr.H.N.Nanjegowda to boycott the Cauvery Tribunal. Reacting sharply to the call, the Thanjavur farmer leaders urged the Prime Minister to announce the immediate implementation of the interim award. They said Tamil Nadu farmers had always been prepared to discuss the issue and even after the Supreme Court and the Tribunal gave their verdict in favour of Tamil Nadu more than once. The Cauvery delta farmers had gone to Bangalore to create a congenial atmosphere for implementing the award. The Tribunal had made it clear that any distress should be shared by the two states fully during lean years. But now Karnataka had politicised the issue, and its opposition leaders had threatened the Centre and State Governments of dire consequences if they implemented the Tribunal award. The Karnataka opposition leaders had a fortnight back convened a meeting of Cauvery delta farmers in Bangalore to depoliticise the issue for an amicable solution to the water dispute.

Mr. S.G.Balakundray, irrigation expert to Karnataka who was adviser to the Karnataka Government had said the state had released less than nine tmc. ft. of water to Tamil Nadu on an average a year during the last 10 years. This was false and contrary to the affidavit filed by Karnataka before the Tribunal during its hearings. It was, therefore clear that the Karnataka leaders, both in

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power and in the opposition, were out to scuttle all efforts to implement the interim award, the Tamil Nadu farmer leaders said and appealed to the centre to take immediate steps to implement the award. The goodwill generated by the recent visit by farmers had been eroded by the hasty action of politicians who had threatened to take the matter to the people again. Mr. Ranganathan and Mr. Krishnamurthi said that if the centre failed again to take steps to implement the interim award, no state or people in the country would have any faith in the rule of the law, the Supreme Court, or the centre. The farmers also appealed to the Tamil Nadu Chief Minister, Ms. Jayalalitha to take up the issue with the centre immediately the farmers felt that if Mr. Narasimha Rao or the centre delayed the issue any further the patience of the peace-loving Tamil Nadu farmers would wear thin.

TAMIL NADU FARMER S PLIGHT

Mr. S.Ranganathan, General Secretary, Tamil Nadu Cauvery Delta farmers welfare Association, Thanjavur, in a statement says, it is unfortunate that authorities like Mr. Balakundri, an irrigation expert of Karnataka have been issuing statements based on serious misconceptions about the state of affairs in Cauvery Delta in Tamil Nadu. Some of them, to cite a few examples are:

i. That Cauvery delta has groundwater potential and this is not being utilised at all;

ii. That a substantial quantity of water every year is being wasted into the sea; and

iii. That it has a very ‘comfortable’ storage for the season (1992-93) and can even face a bad monsoon and so on.
It is equally unfortunate the during the year 1989-90 with just 176 tmc. of water receipt from Karnataka, Tamil Nadu was able to produce nearly 25 lakh tonnes of paddy in the delta and he continues to argue that "propriety" demands that 176 tmc. should be sufficient as representing the present use by Tamil Nadu against 205 tmc., which was an average for a decade implying wasteful use of water with wrong cropping patterns.\textsuperscript{30} Such statements, instead of clearing doubts on the minds of lay public only create suspicion and animosity and acrimony. It is equally unfortunate that the figures indicate by Mr. Balakundri had been drawn from a report that appeared in a leading daily some months back and is not an authenticated version at all. A team of farmers from the Delta visited Bangalore in March 1992, mainly with a purpose to clear all doubts about the state of affairs that obtain in Tamil Nadu. Unfortunately, not much was reported in the papers and the problems of misunderstanding continues to harass the people the farmers, who live in total animated suspense and in darkness, without realising the truth that obtains in the delta.\textsuperscript{31}

1. Nearly 20 lakh landless labours depend only on agriculture for their livelihood here. They were enjoying two crops of paddy grown in an extent of about 4 lakh acres and the rest is all single cropped area. Nowhere do we raise three crops in the Delta.

2. Paddy is the single established mono-crop for the whole delta, barring a few thousands of acres under sugar-cane banana and Casurina-coconut plantations along the coast. The physiography of the delta does not permit any crop other than paddy, similarly, the geographical pattern and

\textsuperscript{30} The Hindu, 11 June, 1992.

\textsuperscript{31} Indian Express, 10 June, 1992.
the distribution of monsoon (with its severity of cyclones and flooding) at the best has established paddy as the only sustainable crop in the whole area.

3. It is a misconception that delta possesses a good ground-water potential. There is hardly a potential of just over 35 tmc., of ground water only in certain belts and this has been fully utilised. Nearly 80 per cent of the total area of the delta lacks ground water. This has also been confirmed by the central ground water commission, which undertook a survey between 1986 and 1991, a report of which was recently released by them. Even an earlier study conducted by UNDP had also revealed that only 37 tmc., is available.

4. A report of the Agriculture Department of Tamil Nadu Government reveals a sorry state of affairs that agriculture in Tamil Nadu continues to be gamble and two out of three acres in all areas other than the Delta are a certain a failure.

Thus it would be clear to every one that Tamil Nadu depends on the cauvery Delta and delta alone for an assured supply of food and any disturbance would seriously jeopardise its annual food production and its interests. Already with an established annual production of about 60 lakh tonnes (out of which Delta contributes 32 lakh tonnes), Tamil Nadu imparts a nearly 20 lakh tonnes by allotment from the Central pool and direct purchases from rice-rich areas like Andhra Pradesh, Punjab and Haryana. If there is any serious threat to the deltaic irrigation, Tamil Nadu and expects an impact in the entire state.
5. The pattern of rain in the delta is around 1000mm annually in a ratio of 33:67 between South-West and North East. While the former is well distributed, the latter is normally in torrents and accompanied by cyclones and floods. At times, the daily downpour exceeds 400 mm (on a single day) and the remaining part of the period, there is no rain at all. This extraordinary rain pattern causes serious setback and flooding along the coast-belt. Water wastage, if any, will be felt only during such extraordinary situations.

It is generally feared by the Tamil Nadu farmers that there is an attempt to thwart the proceedings of the Tribunal on some misconceived notions and they have serious doubts that it is all due to political compulsions - An interim award cannot and need not be final. It is at best based on the average flow, usage and employment potential.

The present attempts do not appear to be so. In fact, Tamil Nadu's requirement would be almost twice as much as has been awarded in the interim order. It is the farmer's genuine appeal to Government which made it accept the interim order. The same gesture on the part of either Karnataka farmers or its political leadership is totally absent. This will positively help the Tribunal hasten to find a final solution at a great-speed. Make it very clear to breathe in Karnataka that agriculture has not been a bed of roses now for the last decade or so and hopeful that there will be some assured releases with time-bound irrigation practices that will ensure continuity of work and an assured return from the lands. There is no industry worth its name anywhere in the Tanjore delta and depend only on agriculture for sustenance. If this is not forthcoming inspite of our best efforts, there will be choes all over.
A word about the need for a legal solution: Karnataka farmers supported by their political big-wigs appear to denounce a legal solution for this burning issue. Any river water dispute in our country has so far been solved only by a Tribunal. While being so, there seems to be lot of aversion to such a Tribunal for the Cauvery Waters. Both Tamil Nadu and Karnataka have been ruled by Governments under the aegis of a variety of political parties.

The Tiruchi district Cauvery delta farmers association have expressed shock over the threat hurled out at the all party meeting in Karnataka of boycotting the proceedings of the Cauvery Water disputes' Tribunal. The association has urged the Tamil Nadu government to press the centre for immediate implementation of the interim award of the Tribunal.32 The association has pointed out that only on the release of 205 tmc of water from Karnataka, as per the Tribunal's award, would Tamil Nadu be able to release water from Mettur on June 12 that year 1992 for starting short term Kuruval paddy cultivation and for supplementing future flow upto October and November of the year. The association called for speedy action by the centre and the state governments in this regard. Mr. G. Kanakasabhai, president of the association has issued a statement in this regard. Mr. Kanakasabhai has asserted that this threatening attitude of the Karnataka farmers has no ethical basis. He recalled that when the centre agreed to set up a Tribunal in 1990 and when the hearing of both the parties, Tamil Nadu and Karnataka, by the Tribunal commenced, Karnataka argued their case and this only meant that they had agreed on the Tribunal and would abide by its ruling. The members of the

32 Indian Express, 10th June, 1992.
Tribunal had made a thorough study of the flow of Cauvery from the beginning to the end, the annual rainfall, the extent covered under irrigation and the crop pattern. The Tribunal members had also made an on-the-spot study of the Cauvery basin and gave an interim award that Tamil Nadu should be given 205 tmc. of water. Mr. Kanakasabhai, in his statement pointed out that the interim award of the Tribunal was upheld by the Supreme Court and the Government of India had gazetted the same. The Karnataka Government should obey the verdict of the supreme court—the highest court of the land—otherwise, it would mean contempt of court. He also pointed out that at the all party meeting in Karnataka, only political dignitaries participated and not the genuine Karnataka ryots' association led by Mr. Nanjundaswamy, the sitting Karnataka MLA, and the communists, who champion the cause of farmers.33

Tamil Nadu planned to move the Supreme Court for a direction to the Karnataka Government to implement the interim award of the Cauvery Water dispute Tribunal and release water by the first week of June 1992. Chief Minister Jayalalitha told that this had become imperative as four former Karnataka Chief Ministers had reportedly asked their state to boycott the proceedings of the Tribunal. Also the time for the release of water-first week of June, 1992 - was fast approaching. On the statement of Karnataka Chief Minister S. Bangarappa, calling for a negotiated settlement, Ms. Jayalalitha maintained that the interim award was not negotiated and there was no scope for any talk on this subject. Under the Tribunal’s award, the Karnataka government should release water to Mettur dam by the first week of June, 1992. As for Karnataka’s suggestion that the Prime Minister should convene a

33 The Hindu, 10th June, 1992.
meeting of the two Chief Ministers, she said there was no point in holding such meetings. Ms. Jayalalitha observed that the Tribunal had insisted that Karnataka should first implement the interim award when it filed a petition for a review of the award.

The Tribunal set up by the V.P. Singh government following the DMK government’s persistent plea that justice be rendered to the water-starved Thanjavur delta, which was once known as the ‘granary of the south’. The interim award of June, 1991 stipulated that Karnataka should release 205 tmc. of water annually. There was strong public reaction and the Karnataka Government moved to the Tribunal for a review of its order. The Tribunal rejected Karnataka’s request and directed it to release the stipulated quantum of water to Tamil Nadu on a monthly roster basis. It accepted the plea for sharing the distress caused by diminution in the supply of water on a pro-rata basis. Meanwhile, Karnataka government decided to dissociate itself from the deliberations of the Tribunal. Four former Chief Ministers of the state had recently met the Prime Minister and represented the state’s case. The Tamil Nadu government committed itself to release Mettur water for irrigation in the delta on the appointed day this year, i.e. June 12, 1992. Never in the past decade and more, the state had been able to stick to the date to poor storage in the reservoir, which has a storage capacity of about 90 tmc. (full reservoir level is 120 ft.). The level in June 1992 was around 90 ft., which can meet the requirements for raising paddy nurseries.

In June 1992 the Tamil Nadu Government has received a ‘flood warning’ from the Karnataka government. According to official sources in Madras, the-
inflows might be of the order of 35,000 cusecs spread over three or four days. Reports reaching the official quarters from the meteorological department and other sources indicate that heavy rains are lashing wynnaad and adjoining areas. This means more inflows into Kabini in the coming days. The kabini is already discharging about 70,000 cusecs and the inflow is 45,150 cusecs. While Tamil Nadu should receive 10 tmc., of Cauvery Water from Karnataka during June, under the terms of the interim award of the Cauvery Waters Tribunal, only 4 tmc., has been received so far. The anticipated heavy inflows in Mettur from the Kabini discharges may make good the shortfall to some extent.

"We should abandon river-water chauvinism and opt for river-water states-manship and evolve an authentic, concrete, dispute-resolving machinery", Mr.V.R.Krishna Iyer, jurist said while inaugurating a seminar on "the Cauvery problem and Kerala" under the auspices of the Kerala Law Academy former Students Association. Asserting that all the southern states have common interest in the Cauvery Water dispute, Mr.Iyer said it was not simply a matter to be resolved between Karnataka and Tamil Nadu. The material implication of the river-water flow should be recognised, for the country's prosperity depended on agriculture "thinking only in terms of tmc., of water makes us lose our perspective". He averred that parliament "has failed us, because the inter-state River Water Dispute Act prescribes no criterion for the sharing of river waters. The Act should have been amended suitably, but we unfortunately lack constructive statesmanship. Punjab is the largest producer of foodgrains and yet it is embroiled in a dispute over river water sharing with Haryana. He said "I do not think that Tribunals or courts can resolve these
disputes. We must let the farmers from various states sit together and come to a solution.

He said Kerala was entitled to 20 per cent of the water from the Cauvery. But the way the issue has been handled would make it appear that the river has been mortgaged permanently to Tamil Nadu. The Kuttiyadi and Mananthavady projects of Kerala suffered for want of water. But Kerala was not pressing its case. "Today militancy appears to have replaced rationalism. What should have been under discussion was how best the country could utilise the waters of its rivers. The tmc. factor was only a technical point. We need a pragmatic, Indian and justica-oriented approach and we are to be concerned about the India of 1992 and not the India of 1924. We fall because we do not consider the people as a whole". Mr. Iyer said and called for an adequate parliamentary legislation. This is a problem the people of India face as a family and not one they face with Pakistan or Bangaladesh.

Dr. K.C. Thomas, a former secretary to the Central Water Commission said the matter should have been considered right from the beginning as a national problem "we should have examined how practicable are the suggestions made and how rationale they were". This certainly was not a question which the Supreme Court should resolve. There should have been greater accommodation by the states, and in the case of the Cauvery just because Tamil Nadu had been using more than its share, if did not mean that it can go on using that much all the while.

In July, 1992 according to information reading the P.W.D. headquarters, Madras, the storage at Mettur stood at 56.265 tmc. ft., on 3 July, 1992 morning, compared to 56.145 tmc. ft., yesterday, as the inflow from the Kabin reservoir in Karnataka increased to 15,155 cusecs from 11,000 cusecs. While the discharge was maintained at 13,500 cusecs. The Mettur reservoir in Tamil Nadu had received 11.6 tmc. feet of water so far this month as against 10.16 tmc. ft., prescribed for the whole of June in the interim award of the Cauvery Waters dispute Tribunal. The inflow into Mettur which was 45,426 cusecs on 25th July, 1992 morning following flood water discharge from the Kabin reservoir in Karnataka, came down to 39,342 cusecs on 27th July morning.\footnote{The Times of India, 27th July, 1992.}

The CPI (M) has urged the Centre to convene a meeting of the Karnataka and Tamil Nadu governments to discuss the urgent need for releasing adequate water in the Cauvery to save the standing Kuruval crop in the delta area. The two day meeting of the Tamil Nadu unit of the CPM, which concluded session, demanded the state government to find a permanent solution to the water problem in Madras city and to continue the unemployment dole scheme. P.R. Kuppawamy, an advocate from Karur and convener of the committee for protection of Cauvery, voiced serious concern over the dwindling storage in the Mettur reservoir posing threat to the standing Kuruval crop in the Cauvery delta, and said Tamil Nadu faced the danger of incurring a loss of Rs. 700 crore during Kuruva. He urged the MPs from Tamil Nadu to meet the Prime Minister and impress upon him the need to direct Karnataka to release the 205 tmc. of water impounded by Karnataka, otherwise, the people of Tamil Nadu would be
forced to gherao the MPs from the state. Kuppuswamy, who addressed a press conference in Tiruchi, pointed out that due to the poor inflow and the dwindling storage in the Mettur reservoir, the position of standing Kuruval paddy crop in about six lakh acres in the Cauvery delta had become precarious. The farmers in the delta areas were facing the danger of incurring a loss of about Rs.700 crore. The complacency of the central and state governments deserved to be strongly condemned. The Tamil Nadu government was reluctant to force the central government which had been refusing to direct Karnataka to implement the interim award of the Cauvery Water Dispute Tribunal. Kuppuswamy said a seminar under the joint auspices of the Cauvery protection committee, and Tamil Nadu cauvery Delta farmers' welfare Association, would be held in Tiruchi on July, 1993 the meeting would consider further measures needed to move the Supreme Court.

JAYALALITHA'S FAST

Chief Minister Jayalalitha's fast devoted on the Cauvery issue - which began on a note of imperious confrontation on July 18, 1993 ended in an atmosphere of In one confusion on July 21, Chief Minister herself did not reveal the specific demand for the fulfilment of which she decided to embark, without any prior announcement on an indefinite fast. However, press reports based on statements from those around her made it clear that she was insisting on a directive from the central government under Article 256 of the Constitution to the Karnataka Government to implement the Interim order of the Cauvery water disputes Tribunal of June 25, 1991. As it turned out, the outcome from the fast, in operational terms, was a far cry from this demand. The announcement

Indian Express, 13 July, 1993.
made by V.C. Shukla, Union Minister for water Resources, based on which the Chief Minister ended her fast, was only that two committees of officials, would be set up by the centre. One was a monitoring committee "to provide accurate and scientific data which would help the centre to take appropriate action". The Committee was to monitor the actual flow of water in the Cauvery basin states and would resolve any misunderstandings between them in regard to the facts on ground. It was to consist of the Chief Engineers of the four basin states - Tamil Nadu, Karnataka, Kerala and Pondicherry - and a chief Engineer from the Centre.

The second committee was to be a high-level implementation committee comprising the chief secretaries of the basin states and presided over by the secretary, water Resources Ministry, or the Cabinet Secretary. This committee was to resolve problems referred to it by the monitoring committee. It was not clear what "appropriate action" the centre could or would take on the basis of the actual flows and what sanctions were available to the implementation committee consisting of mere officials. Shukla said that "Karnataka, which had not previously accepted the constitution of a monitoring committee, had now agreed". Within an hour of this piece of falsehood, deliberate or otherwise, the unpleasant truth triumphed in the form of an official statement from Veerappa Moily, the Karnataka Chief Minister. It said: "Karnataka has consistently taken the position of opposing the constitution of any monitoring committee. The present proposal is not acceptable to Karnataka". Since Karnataka had not accepted even the working-level, data related monitoring committee, it was clear, by implication, that there was no question of its accepting the high-level

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37 S. Guhans, "Dead lock on Cauvery", Frontline, 13 August, 1993
implementation committee. Shukla's announcement underwent, therefore, a case of neonatal infant mortality.

Tamil Nadu Chief Minister Ms. Jayalalitha, being elated with her "great victory", was unperturbed by the contradiction. She claimed that the centre had now agreed "to set up a mechanism to implement the interim award of the Tribunal". Asked whether Karnataka had agreed to implement the interim award, she said "that was not our concern. We wanted the Central Government to ensure the implementation and the Central Government has agreed to it". In saying this, she chose to ignore the fact that no such assurance had been given either by the Prime Minister or by the Union Minister of Water Resources. The same evening, all the congress MPs from Tamil Nadu, led by Vazhapadi K. Ramamurthy, were able to extract from the Prime Minister was that "the centre would consider the demand of Tamil Nadu for immediate implementation of the award once the surcharged atmosphere created by the Chief Minister, Ms. Jayalalitha’s hunger-strike was defused". Shukla himself said, "the constitutional directive sought by Ms. Jayalalitha would normally be issued only when a state flouted the law or a constitutional provision. No such instance had come to the notice of the centre. In case there was such an instance, the centre would bring it to the notice of the state and get it corrected. The provision for a directive was only an extreme measure and such a step was taken rarely".

In a nutshell, the fact turned out to be a bizarre attempt to enact Hamlet without the prince of Denmark - in this case the government of Karnataka. If Karnataka was willing to implement the interim order of the Tribunal,
Committees would not be necessary to monitor the actual flow of water into Mettur, the annual quantum and monthly pattern of which is the subject matter of the order. Tamil Nadu can itself monitor flows into Mettur as it has, in fact, been doing on a daily basis for the last 59 years since the construction of the reservoir in 1934. On the other hand, if Karnataka is unwilling to comply with the interim order, the proposed committees would serve no purpose and would, in fact, not be able to function at all.

Leaving aside the political tantrum, let us turn to the substantive aspects of the current stage of the Cauvery basin in Tamil Nadu as was amply clear in a seminar held in Tiruchi on July 15, 1993 in which both N. Ram, Editor, frontline and S. Guhan Participated - are vitally interested in a long-term solution between Karnataka and Tamil Nadu whereby they would be assured of timely and adequate supplies of water. The legitimate impatience of the Cauvery farmers cannot be kept at bay any longer if the due process of law is not seen to be upheld and if Karnataka is allowed to ignore the Tribunal's award. An effective approach to secure the implementation of the Tribunal's interim order 25, therefore, of the utmost importance and urgency. Unless Karnataka abides by the interim order, there is no prospect that it will comply with the final award either.

At the same time, the manner of making Karnataka comply with the interim order should be such that tensions between the two states - which have accumulated over the past three decades during the latest phase of the century-old Cauvery dispute - are not exacerbated further. This is equally important because of the nature of the Cauvery dispute. Fundamentally, They must realise
that the dispute relates to the sharing of the waters in a river which is already being almost fully utilised unlike other river disputes (such as those relating to the Narmada, the Krishna and the Godavari) which were mainly about the utilisation of hitherto untapped surplus waters. This means that any sharing arrangement that is arrived at should be such that it could be implemented season after season and year after year subject to the fluctuations of water availability on account of varying inflows from the catchment into the reservoirs. A continuing arrangement of this nature can work only if there is sustained goodwill and cooperation among the parties concerned. In other words, there can be no escape from the fact that any settlement, if it is to prove durable, has to be grounded on the willing and active consensus of the parties involved.

The basic question, therefore, is how best to secure the implementation of the interim order so as not to jeopardise long-term goodwill and co-operation between Karnataka and Tamil Nadu. In order to find an answer to this difficult question, we have to trace briefly the sequence of events on the immediate past which provides the background to the constitution and functioning of the Cauvery water disputes Tribunal. The tribunal was constituted in 1990 after 22 years of protracted and inconclusive negotiations between the two states. Throughout this period, Karnataka consistently opposed the reference of the Cauvery dispute to a Tribunal because, quite obviously, it was interested in developing irrigation within its borders to the fullest extent possible and did not want legal adjudication to constrain its efforts at doing so. After the Tribunal was constituted, Karnataka took the position that the Tribunal had no jurisdiction to pass any interim order at all and Tamil Nadu to secure a judgment
from the Supreme Court before the Tribunal could entertain its application for interim relief.

After the Tribunal gave its interim order on June 25, 1991, both Houses of the Karnataka Legislature passed a unanimous resolution urging the Karnataka Government to reject the interim order and to press the Central Government to stay all further proceedings before the Tribunal. It was in this period that the Bangarappa Government promulgated an ordinance appropriating all the waters of the Cauvery within Karnataka to its exclusive control. Faced with this situation, the Central Government had to make a reference to the Supreme Court under Article 143 of the Constitution. The Supreme Court held that the Karnataka ordinance was unconstitutional and ordered the gazetting of the interim order. When the interim order was gazetted on December 11, 1991, violence broke out first in Bangalore and later in Mysore districts against the migrated Tamils. This led to a large influx of the Tamil refugees to their Tamil Nadu and there took counter violence against Kannadigas in the districts of Tamil Nadu bordering Karnataka. Around this time, Karnataka also moved the Tribunal for a clarificatory order on the ground that it was impracticable to effect releases to Mettur as ordered by the Tribunal, since they were not linked to seasonal flows and to storage levels in Karnataka's reservoirs.

Finally, on April 3, 1992, the Tribunal passed a clarificatory order which confirmed that Karnataka had to release 205 tmc. ft., of water per annum at

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38 Government of Karnataka; Karnataka Assembly Debates; Bangalore; June 25, 1991.
Mettur to Tamil Nadu according to the monthly pattern of releases stipulated in the original interim order of June 25, 1991. However, the Tribunal did recognise in principle that in years of poor rainfall, both the annual quantum and the monthly pattern might have to be revised, and affirmed its willingness to alter or vary its interim order for this purpose. Specifically, the Tribunal made it clear that if, due to any change in circumstance, "undue hardship" is caused in a particular year to any party, it will be open to such party to approach the Tribunal for "appropriate orders". It also indicated that if in future, a "situation of distress" is caused by the diminishing of supply of water for meeting the releases ordered, "pro-rata sharing" of the water could be adopted.

While, the Tribunal left the door open for a reconsideration of the quantum and monthly pattern of releases stipulated in the original interim order, it did not quantify or precisely define key expressions such as "undue hardship," "appropriate orders", "situation of distress", and "pro-rata sharing". Evidently, the Tribunal was waiting for a concrete situation to arise in which modifications to its interim order might become of revisions that might be required in the light of a set of specific circumstances. Fortunately, no such situation of distress emerged during the first two years since the interim order was passed. The irrigation season of 1991-92 (June 91 to May 92) was taken up by the disputes relating to the interim order such as its gazetting and the request for clarification by Karnataka. Moreover, the south-west (SW) monsoon proved to be a good one during 1991-92 and left behind a comfortable opening stock of water at Mettur at the beginning of June 1992. The south west monsoon of 1992-93 was also normal. As a result of the two consecutive good years, there was no hardship during 1992-93 either to Tamil Nadu or to
Karnataka and it is understood that a total quantum of 243 tmc. ft., and received at Mettur during 1992-93 as against 205 tmc. ft., awarded by the Tribunal. While all this was gratifying, it must be pointed out that all the three governments responsible for, or interested in, the implementation of the interim order - the Central Government, the Karnataka Government and the Tamil Nadu Government - failed to take the public into confidence about the implementation of the interim order during 1992-93. Tamil Nadu Government did not choose to disclose any information to its public during 1992-93 about monthly receipts into Mettur or about the annual quantum. It is not known whether it was satisfied itself with that the monthly pattern of releases ordered by the Tribunal and whether it was adhered by Karnataka in 1992-93 and if not, what actions it took with Karnataka or with the Tribunal or with the Central Government to ensure the stipulated supplies, for its part, the Karnataka Government evaded confirming or denying whether it was implementing the interim order since it wanted to avoid trouble with its opposition parties on the one hand and with the centre and Tamil Nadu on the other. The Central Government also opted for being totally silent on this crucial vital issue. In these circumstances, the interim order was not transparently tested out during 1992-93. An important opportunity was lost thus.

If we turn to the irrigation year of 1993-94 which began in June, 1993 and according to the schedules stipulated by the Tribunal, Tamil Nadu should have received a total of 31.54 tmc. ft., of water at Mettur between June 1 and July 15 (10.16 in June plus 21.38 for the first half of July). As against this, according to press reports, Tamil Nadu has indicated that only 15.36 tmc. ft., was received in Mettur until July 19, while Karnataka claimed that it had
released 17.77 tmc. ft., to Tamil Nadu up to July 15.\textsuperscript{39} The discrepancy between the two figures arises because they are based on readings at two different locations (Biligudi in Karnataka and Mettur in Tamil Nadu) monitored by two different agencies (the Central Water Commission (CWC) and the Tamil Nadu PWD) based on different methods of estimation (flow readings in one case and changes in storage in the other). These discrepancies have continued for a longtime and need to be resolved in the future at a technical level. However, whether actual inflows up to about the middle of July have been around 16 or 18 tmc. ft., there has indisputably been a sizeable deficit with reference to the quantum of about 32 tmc. ft., that Tamil Nadu was entitled to in this period according to the interim order. Karnataka has not denied the fact of the shortfall. It has only sought to explain it by pleading difficulties in fulfilling the requirements of the interim order on account of ‘distress’ conditions arising from insufficient rainfall, poor inflows and how storages in its reservoirs. It has also claimed that it has released water to Tamil Nadu on ‘a pro-rata basis’ in this distress and helpless situation.

Further pressure was mounted on by the Chief Minister of Tamil Nadu by recourse to indefinite fast from 18, 7.93\textsuperscript{40}. This is a very unusual stand of the head of a State Government to resort to such an unprecedent agitational approach leaving out the constitutional decorous approach, especially when the matter was before the Tribunal and also when Tamil Nadu Government had failed a suit under Articles 131 before the supreme court of India for the

\textsuperscript{39} N.Ram, Frontline, August 13, 1993.

\textsuperscript{40} Irrigation Department; The cauvery water dispute, Bangalore; July 1993.
implementation of the interim order. This step was actually to take advantage and to put pressure on the centre in the prevailing political atmosphere in the country. This resulted in tense atmosphere in both the states of Karnataka and Tamil Nadu causing large scale disruption of traffic and normal life. In this connection, it is unfortunate that some 'Eminent' citizens, including a former president of the republic, issued a statement on July 20, 1993 urging the Central Government to issue a directive under Article 256 of the constitution of Karnataka to implement the interim order. Such an extreme step will be neither expedient nor wise. It will not be in the best interests of Tamil Nadu itself. Feelings are running as high in Karnataka as they are in Tamil Nadu.\(^4\)

In view of these circumstances the centre deputed the chairman, Central Water Commission to Bangalore on the evening of 19.7.1993. The Chairman held discussions with officers of Karnataka. He had been fully apprised of the position of the deficient flows during the current year and unsatisfactory state of storage in reservoirs. The Chairman left for Madras on 20 July, 1993. Shri V.C. Shukla, Union Minister for Water Resources flew to Bangalore on the night of 20.7.1993 and held discussions during the late night and early hours of 21.7.1993 when the matter was discussed at length. The increase of area in Tamil Nadu to the extent of one lakh hectare in Kuruval as per the press statement issued on the information of state agriculture Department and the very heavy drawals during the last 5 weeks after the Mettur reservoir was opened on 12.6.1993 were also brought to the notice of the Union Minister who was also apprised of the distress situation in Karnataka as the flows to its reservoirs

\(^4\) Frontline, August 13, 1993.
were badly deficient and the storage positions were unsatisfactory. The Union Minister mooted the idea to set up of a monitoring body. The Union Minister was informed that it would be in inexpedient and unnecessary to issue a notification under Section 6-A of the Act of the Constitution of a Monitoring Body at the interim stage as major substantial issues concerning the dispute are yet to be resolved by the Tribunal. The views of the Government were also given through a letter before his departure for Madras.

Some surprising development took place on 21st July, 1993 at Madras. The Chief Minister of Tamil Nadu broke her fast presumably on the assurance given by the Union Minister for water Resources that the Centre would constitute a Monitoring Committee to implement the interim order which had opposed strongly by the Karnataka. The Union Minister stated that the states had agreed for such a committee and announced the centre's intention to constitute such a committee by disregarding the interest of the farmers of Karnataka.

The explosion of people and flurry of activity that rapidly engulfed the Merina site of the Chief Minister's fast, made for at least two ironies. As Ms. Jayalalitha dismissed all attempts to persuade her to eat, food vendors poured into the arena with wares, to cash in on the lucrative sales potential posed by the thousands of supporters who came in various drives to see her. Her faithful followers were spoiled for choice. Barely a hundred metres away from the bed on which she took fast, Her supporters could buy roasted corn-on-the-cob.

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43 Ibid.
fresh peeled fruit, ice cream, and steaming hot tea or coffee. In deed 5,000 pockets of curd-rice were distributed free every day to anyone who queued for it by the courtesy of the AIADMK. And while the Chief Minister took fast in pursuit of the Cauvery’s water, Madras City water authority, Metro-water, laid on special tanks for the area and supplied thousands of litres of water, every day for the thirsty crowds. Mineral water was provided free of cost to Ministers, officials, journalist and police personnel.  

Every day and night, people from all walks of life flooded the area to have a glimpse of the fasting Chief Minister. They came from far and wide, and arrived by all forms of Transport like lorries, scooters. The eight-lane road was closed to traffic on the stretch where the fast has taking place, and a shamiana was erected to shield the Chief Minister and her sit-down supporters from the blazing sun for an hour’s queuing, supporters were rewarded with a fleeting glance of their fasting matinee idol heroine as they filed slowly past the platform supporting her bed, near the Samadhi of her political mentor, M.G.Ramachandran, a former Tamil Nadu Chief Minister and a matinee idol. Police Officers were deployed all over the lane that kept the stream of supporters move on. There was only limited space for sitting. Many had taken leave from work to be there and others had even sacrificed their daily earnings. A vegetable seller from the Kothwal Market said that he was losing over Rs.100 in his trade every day. "of course, I am losing money, but money is not as important as supporting the Chief Minister", he proudly declared. A few feel away, a lawyer from the Madras High Court said the same thing. He was forseaking Rs.2,000 of every day’s support, and he had been there from the

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4 Sam Greenhill; (a Freelance Journalist from England), Frontline, 1993.
5 Ibid.
start. "I am not bothered about the money", he said, "I am worried about our beloved Chief Minister's health said, with more concern for his idol of worship. He had brought also his car to sleep in.

All this, combined with the jubilant cheers and explosion of crackers when the Chief Minister ended her fast which all, made for a carnival. There was activity day and night, and there was no let up in the continuous stream of supporters. In fact, the only passive part of the entire festival was Jayalalitha herself and, presiding over the hubbub, it was perhaps fitting that she was once in show business. But this show was a show of support and a deadly serious one at that time. Despite the diverse nature of her followers they all had one thing in common. Determination that her mission would not be undertaken alone. They stood by her through thick and thin. The total requirement for the existing major and medium irrigation schemes in Tamil Nadu adds up to 601.5 tmc., ft., in addition, the Cauvery Fact Finding Committee has indicated utilisation of 58 tmc. ft., for minor irrigation and 5 tmc.ft., for water supply. The overall requirement will, therefore, be 564.5 tmc.ft.,

While waiting for the Tribunal's final decision based on such principles, all the four basin states i.e., Karnataka, Tamil Nadu, Kerala and Pondicherry can defuse tensions by getting together to co-operate a number of matters of common interest. Catchment treatment, desiltation and other measures for the augmentation and conservation of water; the economic and efficient use of water during conveyance and in the field; the ecological protection of the Cauvery basin; and the development of projects of common benefit. Above all, the basin states should pledge themselves to safeguard their traditional good neighbourly relations through public education and political consensus.