

BJCA 2453/2007

1

ITEM NO.7

COURT NO.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No.2453/2007

STATE OF KARNATAKA

Appellant(s)

VERSUS

STATE OF T.NADU & ORS.

Respondent(s)

(With appln.(s) for directions, intervention, modification of Court's order, revocation, early hearing, permission to file additional documents, taking on record the additional affidavit, taking on record additional documents and office report)

WITH C.A. No.2454/2007

(With appln.(s) for directions, stay and office report)

C.A. No.2456/2007

(With appln.(s) for modification of Court's order and permission to file additional documents and directions and intervention and office report)

Date : 18/10/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE AMITAVA ROY

HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Appellant(s) Mr. Fali S. Nariman, Sr. Adv.

Mr. Anil B. Divan, Sr. Adv.

Mr. S.S. Javali, Sr. Adv.

Mr. M.R. Naik, Adv. Gen.

Mr. Mohan V. Katarki, Adv.

Mr. S.C. Sharma, Adv.

Mr. V. N. Raghupathy, AOR

Mr. R.S. Ravi, Adv.

Mr. J.M. Gangadhar, Adv.

Mr. Ranvir Singh, Adv.

CA 2454/2007 Dr. Rajeev Dhawan, Sr. Adv.

Mr. Jaideep gupta, Sr. Adv.

Mr. G. Prakash, AOR

Mr. Jishnu, Adv.

Mrs. Priyanka Prakash, Adv.

CA 2453/2007

2

Mrs. Beena Prakash, Adv.

Mr. Manu Srinath, Adv.

CA 2456/2007 Mr. B. Balaji, AOR

For Respondent(s) Mr. Mukul Rohatgi, AG

Ms. Pinky Anand, ASG

Mr. Ajay Sharma, Adv.

Mr. S. Wasim A. Qadri, Adv.

Ms. Madhavi Divan, Adv.

Ms. Nidhi Khanna, Adv.

Mr. Zaid Ali, Adv.

Ms. Snidha Mehra, Adv.

Ms. Somya Rathore, Adv.

Mr. Karan Seth, Adv.

Ms. Saudamini Sharma, Adv.

Ms. Kritika Sachdeva, Adv.

Mr. D. S. Mahra, AOR

Mr. Shekhar Naphade, Sr. Adv.

Mr. Rakesh Dwivedi, Sr. Adv.

Mr. Subramonium Prasad, Sr. Adv.

Mr. G. Umapathy, Adv.

Mr. C. Paramasivam, Adv.

Mr. B. Balaji, AOR

Mr. Rajesh Mahale, AOR

Mr. A.S. Nambiar, Sr. Adv.

Mr. V. G. Pragasam, AOR

Mr. P.K. Manohar, Adv.
Ms. Shania Vasudevan, Adv.
Mr. Prabu Ramasubramanian, Adv.
Mr. Pankaj Kr. Mishra, Adv.
 Mr. A. S. Bhasme, AOR
 Mr. B. Balaji, AOR
 Mr. Ramesh Babu M. R., AOR

UPON hearing the counsel the Court made the following

O R D E R

Mr. Mukul Rohatgi, learned Attorney General for India being assisted by Ms. Pinky Anand, learned Additional Solicitor General has filed the Report of the Committee. The conclusion of the Report reads as under:-

CA 2453/2007

3

S Social Aspects

1. The plights of farmers in both the states have been witnessed. In the absence of required water the labour employment for farming and fishing is also limited creating a scenario of unemployment and financial hardship to them.
2. There has been large number of suicides reported in Mandya district of Karnataka.
3. The Government of Karnataka has declared 42 out of 48 Talukas under Cauvery basin as drought affected Talukas based on Central Government guidelines.
4. Both the States of Karnataka and Tamil Nadu need to appreciate interest of Tamil Nadu and Puducherry in protection of their established irrigation and Karnataka's aspirations for development respectively and should educate their people accordingly.

Technical Aspects

1. The deficit impact on account of water allocation at 50% dependability can be neutralised to some extent by optimal, dynamic and resilient planning of the cropped area considering the flow pattern and forecast. This can address the issue of unemployment and financial hardship in the basin States.
2. The water application techniques are outdated and unscientific and the value of water is not realised. The water applied to the field is on the concept of flooding from one field to another adjacent field and as such the water consumption is on the higher side and during period of distress this becomes very significant depending upon the soil condition. The infrastructure to deliver water to the farmers is century old and has very low conveyance efficiency. This needs to be modernised for optimal use of scarce water. The conveyance efficiency can be further improved by piped distribution network and application efficiency by micro irrigation (sprinkler and drip) and precision irrigation. In addition, on-farm development (OFD) works may be provided to ensure equitable distribution of water to individual farmer's field.

CA 2453/2007

4

3. At places near the coast the ground water cannot be utilised for the reason that water is saline due to ingress from sea water. The only source of irrigation in such areas is surface

water from Mettur reservoir.

4. The efforts made by Government of Tamil Nadu by way of providing subsidised agricultural inputs can bear fruits only when sufficient water is made available for the full crop period.

5. The drinking water demands needs to be optimised and efficient delivery mechanism needs to be put in place.

6. Automated water measuring instrumentation needs to be provided for transparent recording of flows and water diversion along with system for online transmission and retrieval of data through dashboard.

7. Crop alignment and crop diversification need to be practiced.

8. Participatory Irrigation Management is to be encouraged for optimal, efficient and equitable distribution of water amongst the farmers.â- \235

As we find from the Report, the Committee has not suggested with regard to any quantity of water. Mr. Rohatgi, learned Attorney General has, when the matter was taken up at forenoon session, submitted that the appeals by special leave filed by all the States, namely, Karnataka, Tamil Nadu and Kerala are not maintainable. Mr. A.S. Nambiar, learned senior counsel appearing for the Union Territory of Puducherry echoed the same argument.

Mr. Rohatgi addressed at length with regard to the maintainability of the appeals and after he has finished, Mr. Fali S. Nariman, learned senior counsel appearing for the State of Karnataka commenced his submission. The stand of Mr. Nariman is that the appeal by special leave is maintainable. We intend to adjudicate the maintainability of

CA 2453/2007

5

the appeals which have been preferred by special leave under Article 136 of the Constitution first.

At this juncture, the issue that arises for consideration is what should be the nature of interim order.

On 4th

October, 2016, we had directed the State of Karnataka to release 2000 cusecs of water from 7th

October till

18th

October, 2016. It is submitted by Mr. M.R. Naik, learned Advocate General appearing for the State of Karnataka that the order has been complied with.

Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu submits that the State is in dire need of water. We take note of it. Mr. Nariman, learned senior counsel appearing for the State of Karnataka submitted with quite promptitude that the Karnataka is also

not in a better stage. Mr. Rohatgi, learned Attorney General referred to the Report to highlight the issue that both the States are in the state of dire need of water. We have been apprised that north-east monsoon has not yet set in and the prediction is that it is likely to set in from 25th

October,

2016. We have so recorded as the learned counsel at the Bar have apprised us so.

Let the matter be listed on 19th

October, 2016 for

further hearing. The interim order passed on the earlier occasion shall continue until further orders.

At this stage, we are compelled to reiterate our earlier order in which we had expressed with certitude that the Executive of both the States shall see to it that the peace and harmony be maintained in both the States and

citizens do not become law unto themselves. It will be the obligation of the Executive to see that when the matter is heard and the interim order has been passed and the State of

CA 2453/2007

6

Karnataka is complying with the order and is bound to comply, mutuality of respect between both the States and the citizens should be maintained. Maintenance of law and order and care for public property is a sign of elevated democracy.

(Chetan Kumar)

Court Master (H.S. Parasher)

Court Master