

ITEM NO.57

COURT NO.4

SECTION XIV

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

I.A. No.10/2016 In Civil Appeal No.2456/2007

STATE OF T.NADU

Appellant(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

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

Date : 05/09/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Shekhar Naphade, Sr. Adv.
Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Subramaniam Prasad, Sr. Adv.
Mr. G. Umapathy, Adv.
Mr. C. Paramasivam, Adv.
Mr. B. Balaji, AOR

For Respondent(s) Mr. F.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. R.S. Ravi, Adv.
Mr. V. N. Raghupathy, AOR
Mr. J.M. Gangadhar, Adv.
Mr. Ranvir Singh, Adv.

Mr. G. Prakash, AOR

Mr. A.S. Nambiar, Sr. Adv.
Mr. V. G. Pragasam, AOR
Mr. Prabu Ramasubramanian, Adv.
Mr. P.K. Manohar, Adv.
Mr. Shanta Vasudhuan, Adv.

Mr. Ramesh Babu M. R., AOR

Mr. R. Nedumaran, AOR

Mr. S. Wasim A. Qadri, Adv.

Mr. S.S. Rawat, Adv.

Mr. Ajay Kumar Singh, Adv.

Mr. Zaid Ali, Adv.

Mr. D.S. Mahra, AOR

Mr. Rajesh Mahale, AOR

Mr. Ajit S. Bhasme, AOR

UPON hearing the counsel the Court made the following
O R D E R

On 2nd September, 2016, this Court had adverted to various clauses in the final order passed by the Cauvery Water Disputes Tribunal (for short, 'the Tribunal') and noted the submissions of Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu and that of Mr. F.S. Nariman, learned senior counsel appearing for the State of Karnataka.

As prayed for on the earlier occasion, additional affidavit has been filed by the State of Tamil Nadu. The same is taken on record.

Be it noted, in course of hearing on 2nd September, 2016, certain suggestions were given to the learned counsel for the parties, regard being had to the formula prescribed by the Tribunal in the order and the quantum of deficit of water; how the court shall address the issue keeping in view the grievances of the inhabitants of both the States.

Mr. Naphade, learned senior counsel appearing for the State of Tamil Nadu contends that the State of Karnataka has not been complying with the directions given by the Tribunal in the final order and there has been flagrant violation of the same. Learned senior counsel has taken us through various aspects which need not be adverted to today.

According to Mr. Naphade, if the water is not released by the State of Karnataka, the 'samba' crops will be absolutely damaged, which will lead to an unacceptable plight to be faced by the farmers of the State of Tamil Nadu.

Mr. Nariman, learned senior counsel appearing for the State of Karnataka has drawn our attention to paragraph 'D' of Clause IX of the final order of the Tribunal. It reads as follows:-

"D. The Authority shall properly monitor the working of monthly schedule with the help of the concerned States and Central Water Commission for a period of five years and if any modification/adjustment is needed in the schedule thereafter, it may be worked out in consultation with the party States, and help of Central Water Commission for future adoption without changing the annual allocation amongst the parties."

Learned senior counsel for the State of Karnataka would submit that it is obligatory on the part of the State of Tamil Nadu to approach the Supervisory Committee that has been constituted vide Notification dated 22nd May, 2013. Learned senior counsel has drawn our attention to paragraphs 2 and 3 of the Notification, which deal with the constitution of the Supervisory Committee and the role of the Committee. For appropriate appreciation, we reproduce the said paragraphs. They read as under:-

"Constitution of the Supervisory Committee:- (1) There shall be a Committee under this scheme to be known as the Supervisory Committee (hereinafter referred to as the Committee).

(2) The Committee referred to in sub-rule(1) shall consist of the following, namely:-

(a) Secretary, the Ministry of Water
Resources, Government of India

Chairman,
ex officio

- | | | |
|-----|--|-------------------------------|
| (b) | Chief Secretaries to the State Governments of Karnataka, Tamil Nadu, Kerala and the Union Territory of Puducherry or his duly nominated representative | Members,
<i>ex officio</i> |
| (c) | Chairman, Central Water Commission | Members,
<i>ex officio</i> |
| (d) | Chief Engineer, Central Water Commission | Member-Secretary |

3. Role of the Committee:- The role of the Committee shall be to give effect to the implementation of the Order dated the 5th February, 2007 of the Tribunal:

Provided that in case of any doubt or difficulty, the Chairman, Supervisory Committee and, if necessary, any of the parties may apply to Hon'ble Supreme Court for appropriate directions with notice to the other States and the Union Territory."

At this juncture, we must appreciably state what the State of Karnataka has stated. We have been handed over a note by Mr. Nariman and paragraphs 2 and 3 of the same contain certain suggestions. We think it seemly to reproduce the said suggestions. They are as follows:-

"2. Meanwhile the Supervisory Committee constituted under notification dated 22.05.2013 shall meet immediately from day to day and take decision on the further releases, if any, to be made by Karnataka in the month of September, but after ascertaining ground realities in the Cauvery Basin in Karnataka and Tamil Nadu. The Supervisory Committee shall meet at least once in a month to monitor the flows till the end of the season in December, 2016.

3. In response to the Hon'ble Court's observation's made on 02.09.2016, the Respondent State of Karnataka as a goodwill gesture will ensure flows at the Inter-State Border, Biligundlu, at the rate of not less than 10000 cusecs⁶ per day (about 0.86 tmc), as measured by the gauge station of the Central Water Commission as from 7th September, 2016 to 12th September, 2016."

Mr. Naphade, learned senior counsel has submitted that the State of Tamil Nadu has no objection to approach the Supervisory Committee, but as far as the sustenance of the crops and interest of the farmers in the State of Tamil Nadu is concerned, instead of 10 cusecs of water per day (about 0.86 TMC), there should be release of 20 cusecs of water per day.

Having heard learned counsel for the parties, we think it condign to direct as follows:-

(a) The applicant, the State of Tamil Nadu, shall approach the Supervisory Committee within three days from today. Response, if any, by the State of Karnataka be filed within three days therefrom.

(b) The Supervisory Committee shall pass appropriate direction in this regard within four days from the date of filing of the reference keeping in view the language employed in the final order of the Tribunal. Be it clarified, the Supervisory Committee is bound by the language used in the order passed by the Tribunal.

(c) Coming to the immediate arrangement, keeping in view the gesture shown by the State of Karnataka and the plight that has been projected with agony by Mr. Naphade, we think it appropriate to direct that 15 cusecs of water per day be released at Biligundulu by the State of Karnataka for ten days.

(d) The State of Tamil Nadu is directed to release water proportionately to the Union Territory of Puducherry.

Let the matter be listed on 16th September, 2016.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master