PETITIONER:
TAMIL NADU CAUVERY NEERPPASANAVILAIPORULGAL VIVASAYIGAL NALA

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT04/05/1990

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
SAWANT, P.B.
RAMASWAMY, K.

CITATION:
1990 AIR 1316 1990 SCR (3) 83
1990 SCC (3) 440 JT 1990 (2) 397
1990 SCALE (1)866
CITATOR INFO :
RF 1992 SC 522 (1)

ACT:
Inter-State Water Disputes Act 1956--Sections 3, 4 & 11 Cauvery Water Dispute--Government directed to constitute Tribunal.

HEADNOTE:
The appellant is a registered society of agriculturists of Tamil Nadu, who are entitled to riparian rights of Cauvery river in cultivating their lands over the years. It seeks from this Court that directions be given to the Union of India Respondent No. 1 to refer the dispute relating to the water utilization of the Cauvery river and equitable distribution thereof in terms of section 4 of the Inter State Water Disputes Act 1956. Also to issue a mandamus to the State of Karnataka not to proceed to construct dam projects, reservoirs across the said river or its tributaries within the state and to restore supply of water to the State of Tamil Nadu as envisaged in the agreements dated 18th February, 1924. In this petition State of Karnataka, Tamil Nadu, Kerala and Union Territory of Pondicherry have also been added as Respondent No. 2 to 5 respectively.

In the year 1970, the State of Tamil Nadu requested Union of India to set up a Tribunal for settling the question of equitable distribution of waters under sec. 3 of the Act. A suit was filed under Article 131 of the Constitution in this Court but was withdrawn on political consideration so as to evolve a mutual and negotiated settlement.

According to the petitioners it is submitted that several attempts were made through bilateral and multilateral talks for a negotiated settlement but no solution could be reached and the problem continued-
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The State of Karnataka filed several affidavits opposing the maintainability of the petition and the Union of India has also opposed the application on the basis of section 11 of the Act.

The petition was filed on November 18, 1983 and on 12.12.83 the Court directed issue of notice. The State of

Tamil Nadu supported and associated itself with the petitioner seeking the same relief on 6.5.87 the State also filed an affidavit in this Court supporting the contention of the petitioner and also effectively joined the dispute by adopting the stand of the petitioner.

The mainstream of the river Cauvery has its origin in the hills of Coorg. Some tributaries of the river have origin in the State of Kerala and others in the State of Karnataka. The river flows for about 300 Kms. in the State of Karnataka and almost for an equal span within the State of Tamil Nadu before joining the Bay of Bengal. It is an inter-state river as per Article 262, Entry 56 of List I of 7th Schedule of the Constitution, so the regulation and development of the said river is under the control of the Union of India and is declared by Parliament by law to be expedient in the public interest.

Article 262 of the constitution provides for adjudication of disputes (1) with respect to the use, distribution and control of the waters (2) Parliament may by law provide that neither the Supreme Court or any other Court shall exercise jurisdiction in respect of any such dispute as is referred to in clause (1).

As per section 3 of the Act if it appears to the Government of any State that a water dispute with the Government of another State has arisen or likely to arise and the interests of the State or of any of the inhabitance, thereof are likely to be affected prejudicially, the State Government in the prescribed manner request the Central Government to refer the Water dispute to a Tribunal for adjudication.

Allowing the petition, this Court,

HELD: This dispute in question is one over which the people and the State of Tamil Nadu have been clamouring for more than 20 years. The matter has been pending in this Court for the last 6 1/2 years. It is on

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record that over these years 26 sittings of the Chief Ministers of Karnataka, Tamil Nadu have been there and in some of these even the Central Ministers of Water Resources have also participated but have not succeeded in bringing about negotiated settlement. No serious attempt seems to have been made to have the dispute resolved. This Court has given several adjournments to accommodate the attempts for negotiations because of the nature of the subject matter. Ultimately on 26.2.90 order by the Court was given that the Writ Petition would be listed for final hearing on 24.4.90 since sufficient opportunity and time to these two states at the behest of the Central Government or otherwise has been given to arrive at negotiated settlement. On 26th April 1990 the Union of India also informed the Court that Central Government did not want to undertake any further negotiations and left the matter for the disposal by this Court. [89G-H; 90B-C; 91D]

There was no reason for the dispute to protrect for such a long period. Any further delay in taking statutority mandated action is bound to exasperate the feelings further and lead to more bitterness. [91H; 92A]

Section 4 of the Act indicates that on the basis of the request referred to in Section 3, if Central Government is of the opinion that water dispute cannot be settled by negotiation, it is mandatory for the Central Government to constitute a Tribunal for adjudication of the dispute. [92B]

The Central Government to fulfil the statutory obligation notify in the official Gazette the constitution of an appropriate tribunal for the adjudication of the Water Dispute. The same should be done within a period of one

month. [92D]

JUDGMENT:
ORIGINAL JURISDICTION: Writ Petition No. 13347 of 1983.
(Under Article 32 of the Constitution of India).
K.K. Venugopal, C.S. Vaidyanathan and K.V. Viswanathan for the Petitioner.
P.K. Goswami,Additional Solicitor General, P.S. Poti, K. Parasaran, S.S. Javalai, and F.S. Nariman, B.V. Acharya, Advocate General, P.R. Ramasesh, Ms. A. Subhashini, T.T. Kunhikanan, V. Krishnamurthy, K. Ramkumar and R. Karuppan, in-person the Respondents.
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The Judgment of the Court was delivered by
RANGANATH MISRA, J. This is an application under Article 32 of the Constitution filed by the Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimal Padhugappu Sangam which is said to be a society registered under the Tamil Nadu Societies Registration Act asking this Court for direction to the Union of India, respondent No. 1, to refer the dispute relating to the water utilisation of the Cauvery river and equitable distribution thereof in terms of section 4 of the Inter-State Water Disputes Act, 1956, and for a mandamus to the State of Karnataka not to proceed with the construction of dams, projects and reservoirs across the said river and/or on any of its tributaries within the State and to restore supply of water to the State of Tamil Nadu as envisaged in the agreements dated 18th of February, 1924. To the petition States of Karnataka, Tamil Nadu and Kerala and the Union Territory of Pondicherry have been added as respondents 2 to 5 respectively.
In the petition it has been alleged that the petitioner's society is an organisation of agriculturists of Tamil Nadu and they are entitled to the lower reparian rights of Cauvery river for cultivating their lands over the years. The petitioner alleges that inflow into the Cauvery at the Mettur dam point as also down the stream has considerably diminished due to construction of new dams, projects and reservoirs across river Cauvery and its tributaries by the State of Karnataka within its own boundaries. In the year 1970 the State of Tamil Nadu had requested the Union of India to set up a tribunal and refer the question of equitable distribution of Cauvery waters under section 3 of the Act. A suit filed under Article 131 of the Constitution by the Tamil Nadu State in this Court was withdrawn on political consideration and in anticipation of the evolving of a mutual and negotiated settlement. Petitions of the present type had also been filed in this Court being writ petitions Nos. 303 and 304 of 1971 but on 24.7.75 they were withdrawn on account of suspension of the Fundamental Rights during the period of Emergency. Petitioner has further alleged that the sharing of the Cauvery waters between the then Madras State and the then princely State of Mysore was covered by a set of agreements reached in 1892 and 1924. According to the petitioner several attempts were made through bilateral and multilateral talks for a negotiated settlement for equitable distribution of the Cauvery waters but no solution could be reached and the problem continued. Since we are not on the merits of the matter relating to distribution of waters it is unnecessary to give any details of the further pleadings.
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The State of Karnataka by filing several affidavits has opposed the maintainability of the petition as also the

tenability of the plea for relief. The Union of India in the Ministry of Water Resources has also opposed the maintainability of the application. Reliance has been placed on s. 11 of the Act to which we shall presently made a reference.

At the hearing, Mr. Nariman on behalf of the State of Karnataka along with the Advocate General of the State and the Solicitor General appearing for the Union of India have reiterated the aforesaid stands.

The State of Tamil Nadu filed an affidavit in this Court on 6th of May, 1987, wherein it not only supported the contention of the petitioner but effectively joined the dispute by adopting the stand of the petitioner. The State of Kerala has left the matter to the good sense of Union of India to bring about an amicable settlement. At the hearing of the matter the Union Territory of Pondicherry was not represented though we were told that their stand was common with that of the State of Tamil Nadu.

This petition was filed on November 18, 1983; on 12.12.83 this Court directed issue of notice and as already pointed out the State of Tamil Nadu by its affidavit of 6th of May, 1987, came to the support the petitioner in toto. The adoption by the State of Tamil Nadu of the petitioner's stand by associating itself with the petitioner is perhaps total. Before this Court, societies like the petitioner as also the State of Tamil Nadu and earlier applied for the same relief as the petitioner seeks. In view of the fact that the State of Tamil Nadu has now supported the petitioner entirely and without any reservation and the Court has kept the matter before it for about 7 years, now to throw out the petition at this stage by accepting the objection raised on behalf of the State of Karnataka that a petition of a society like the petitioner for the relief indicated is not maintainable would be ignoring the actual state of affairs, would be too technical an approach and in our view would be wholly unfair and unjust. Accordingly, we treat this petition as one in which the State of Tamil Nadu is indeed the petitioner though we have not made a formal order of transposition in the absence of a specific request.

The main stream of river Cauvery has its origin in the hills of Coorg. Some tributaries have their origin in the State of Kerala while some having their origin in Karnataka have joined the river. The

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river flows for a distance of about 300 Kms. within the State of Karnataka and almost an equal span within the State of Tamil Nadu before it ultimately joins the Bay of Bengal. It has not been disputed that Cauvery is an inter-State. river within the meaning of Article 262 of the Constitution. Entry 56 of List I of the Seventh Schedule to the Constitution runs thus:

"56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Article 262 provides:

"Adjudication of disputes relating to waters of inter-State rivers or river valleys--(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or, river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)."

It is not disputed before us that the Inter-State Water Disputes Act, 1956 (33 of 1956) is a legislation within the meaning of this Article.

Section 3 of the Act provides:

"3. If it appears to the Government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or of any of the inhabitance thereof, in the waters of an inter-State river or river valley have 1Seen, or are likely to be, affected prejudicially by--

(a).....

(b).....

(c).....

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the State Government may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a tribunal for adjudication."

Section 11 of the Act provides:

"11. Notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act.

It is thus clear that s. 11 of the Act bars the jurisdiction of all courts including this Court to entertain adjudication of disputes which are referable to a tribunal under s. 3 of the Act. Therefore, this Court has no jurisdiction to enter upon the factual aspects raised in the writ petition.

No serious dispute, however, has been raised before us challenging our jurisdiction to consider the claim in the writ petition confined to the question of a reference of the dispute to a tribunal within the meaning of s. 3 of the Act.

Section 4 of the Act provides:

"4. (1) When any request under section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, by notification in the official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute.

(2).....

(3).....

Undoubtedly s. 4 while vesting power in the Central Government for setting up a Tribunal has made it conditional upon the forming of the requisite opinion by the Central Government. The dispute in question is one over which the people and the State of Tamil Nadu have been clamouring for more than 20 years now. The matter has been pending in this Court for more than 6 1/2 years. It is on record that during this period as many as 26 sittings spread over many years have been held in which the Chief Ministers of the Karnataka and Tamil Nadu have unsuccessfully tried to bring about settlement; some of

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these have been at the instance of the Central Government in which the Union Minister for Water Resources and others have participated.

There was a time, after the dispute arose, when the Governments in the States of Karnataka and Tamil Nadu as also at the Centre were run by one common political party. Perhaps if the Centre had intervened in an effective way during that period there was considerable chance of settlement by negotiation. No serious attempt seems to have been made at that time to have the dispute resolved and it has been shelved and allowed to catch up momentum and give rise

to issues of sensitivity. This case after a number of adjournments freely granted by this Court in view of the nature of the subject-matter, was called on 26.2.1990 when the following order was made:

"The writ petition is adjourned to 24.4.1990 for final hearing and is to be listed at the top of the board. No further adjournment shall be granted.

The Advocate Generals of the States of Karnataka and Tamil Nadu are present in Court. Learned Solicitor General is also present. Counsel in W.P. No. 13347/83 insists that the matter should not be further adjourned as several adjournments on the same plea of reconciliation between the two States have not borne any fruit. Learned Solicitor General has told us that in course of the month of March, the Chief Ministers of the two States shall meet. He has also told that in the month of February a meeting of Chief Ministers of Kerala, Karnataka, Tamil Nadu and Pondicherry had been called but that could not be held on account of the air crash at Bangalore. In these circumstances, leaving the parties to negotiate, we have decided that the matter shall now be heard on merits in the event no settlement takes place by then."

A long adjournment of about two months was then granted to provide a further opportunity of negotiation. We have now been told that the two Chief Ministers met on the 19th of April, 1990, and a further meeting was stipulated to be held on the following day when the Minister of Water Resources of the Central' Government was also to participate. The meeting of the two Chief Ministers failed to bring about any result and the meeting stipulated for the following day for some reason or the other did not take place. When we heard the matter on the 24th of April, 1990, the counsel for the State of Tamil

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Nadu in clearest terms indicated that the Chief Minister of the State was not further prepared to join the negotiating table. An affidavit along with the telex message received from Madras supporting its stand has now been made a part of the record.

26 attempts within a period of four to five years and several more adjournments by this Court to accommodate these attempts for negotiation were certainly sufficient opportunity and time to these two States at the behest of the Centre or otherwise to negotiate the settlement. Since these attempts have failed, it would be reasonable undoubtedly to hold that the dispute cannot be settled by negotiations. Yet, since the requisite opinion to be formed is of the Central Government as required by s 4 of the Act when we reserved judgment on the 24th of April, 1990, we allowed two days' time to the learned Additional Solicitor General for the Central Government to report to the Court the reaction of the Central Government. Mr. Goswami, learned Additional Solicitor General appearing for the Union of India informed us on the 26th April, 1990, in the presence of the counsel for the other parties that the Central Government did not want to undertake any further negotiation and left the matter for disposal by the Court. In these circumstances, we have no option but to conclude that a clear picture has emerged that settlement by negotiation cannot be arrived at and taking the developments in the matter as indicated above it must be held that the Central Government is also of that opinion particularly when the Chief Minister of Tamil Nadu has indicated that he is no more prepared to loin the negotiations.

We are cognizant of the fact that the matter is a very

sensitive one. Judicial notice can be taken of the fact that the Government at the Centre is by one political party while the respective Governments in the two States are run by different political parties. The dispute involved is, however, one which affects the southern States of Kerala, Karnataka and Tamil Nadu and the Union Territory of Pondicherry. The disputes of this nature have the potentiality of creating avoidable feelings of bitterness among _the peoples of the States concerned. The longer the disputes linger, more the bitterness. The Central Government as the guardian of the interests of the people in all the States must, therefore, on all such occasions take prompt steps to set the Constitutional machinery in motion. Fortunately, the Parliament has by enacting the law vested the Central Government with the power to resolve such disputes effectively by referring the matter to an impartial Tribunal. There was no reason, therefore, for the dispute to protract for such a long time. Any further delay in taking the statutorily
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mandate action is bound to exasperate the feelings further and lead to more bitterness. It is, therefore, necessary that the legal machinery provided by the statute is set in motion before the dispute escalates. A stitch in time saves nine. What is true for an individual is perhaps more true for the nation.

Section 4 indicates that on the basis of the request referred to in s. 3 of the Act, if Central Government is of the opinion that the water dispute cannot be settled by negotiation, it is mandatory for the' Central Government to constitute a Tribunal for adjudication of the dispute. We were shown the Bill where in s. 4 the word 'may' was used. Parliament, however, substituted that word by 'shall' in the Act. Once we come to the conclusion that a stage has reached when the Central Government must be held to be of the opinion that the water dispute can no longer be settled by negotiation, it thus becomes its obligation to constitute a Tribunal and refer the dispute to it as stipulated under s. 4 of the Act. We therefore, direct the Central Government to fulfil its statutory obligation and notify in the official gazette the constitution of an appropriate tribunal for the adjudication of the water dispute referred to in earlier part of this judgment. We further direct that the same should be done within a period of one month from today. The writ petition is accordingly allowed. There shall, however, be no order as to costs.

S.B. Petition allowed.
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