

## Cauvery (Kavery) River Water Dispute.

### A. Earlier History of the Dispute

A brief description of the Kavery river has already been given in Chapter 8. The river has a number of tributaries both in Tamil Nadu (formerly Madras) and Karnataka (formerly Mysore). Out of the total water of the Kavery basin 75 per cent is contributed by Karnataka and 75 per cent of the catchment area of Kavery basin also lies in Karnataka.<sup>1</sup>

The inter-State differences over the use of the waters of Kavery river arose in the beginning of the nineteenth century when the then Province of Madras and the erstwhile Princely State of Mysore put forward their respective conflicting claims for the utilization of these waters.

A brief history of the dispute between Madras and Mysore for the utilization of the waters of Kavery river and the detailed accounts of the two main agreements, namely, the Agreement of February 18, 1892 and the Agreement of February 18, 1924 as also of the Awards of February 23, 1914 and May 12, 1914, have already been given in Chapter 9, with a view to examining the Kavery water dispute as a typical model of a water dispute between a former Province of the British India and an erstwhile Princely State.

In pursuance of clause 8 of Annexure I to the Agreement of February 18, 1924 a Supplemental Agreement was arrived at on June 17, 1929 between Madras and Mysore, whereby, in view of an award in that behalf, the two parties agreed to adopt finally for all regulation subsequent to July 1, 1929 specific discharges for the respective months in place of the averages referred to in clause 8 of Annexure I of the Agreement of February 18, 1924.<sup>2</sup>

Under another Supplemental Agreement dated 22nd June, 1929 the two parties reached some decisions regarding fixation of transmission losses and calculation of evaporation from the reservoir as also about restricting the excess area of irrigation, under canals and channels above the three standard gauging stations, by Mysore, to 5,000 acres.<sup>3</sup>

But virtue of a subsequent Agreement reached on 4-5 September, 1933 Madras and Mysore agreed, inter alia, to the construction of some new anicuts

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1. For reference see S.N. Jain, Alice Jacob and Subhash C. Jain, *Inter-State Water Disputes in India*, 1971, 45, 48.
  2. For text of the Supplement Agreement of 17 June 1929 see Government of India, Ministry of Agriculture and Irrigation, *Central Water Commission, Agreements on Development of Inter-State and International Rivers*, 1978, 312
  3. *Ibid* , 313-14

and tanks and distribution of water of the Swaranamukhi tributary of the Hagari between the British Agali Channel and the Mysore Kittagali Channel.<sup>4</sup>

In the light of these details and the observations made in Chapter 9, the focus of the present chapter will be on the analysis of the problems faced in the post-Independence period.

#### B. Change in Contesting Parties to the Dispute

As a result of Post-Independence reorganization of political units some Princely States got merged with the neighbouring bigger Princely States or Provinces (now known as States) and through the States Reorganisation Act, 1956 the boundaries of certain States were also changed. Thus, the erstwhile Princely State of Travancore became a part of Kerala and, therefore, Kerala also started laying claims to some share in the Kavery waters as some tributaries of Kavery have their catchment area in erstwhile Travancore State. Kerala made these claims notwithstanding the fact that Travancore was not a party to the Agreement of 1892 or that of 1924.

Coorg, formerly lying in Madras, merged in Mysore and Mysore became Karnataka and after bifurcation of Madras Tamil Nadu is the successor of Madras in regard to the catchment areas of Kavery, which fell in erstwhile Madras and lie now in Tamil Nadu.

Consequently, in the present context of the Kavery Water dispute the States of Tamil Nadu, Karnataka and Kerala are the contending parties to the said dispute.

#### C. The Current Problems.

Before coming to grips with the current problems it may be mentioned here that the Agreement of 1924 contemplated the reconsideration of certain arrangements after a lapse and an experience of 50 years, i.e., in 1974. It may also be pointed out that Mysore (now Karnataka) has been feeling that the Agreement of 1924 has operated harshly for it for the reason that despite 75 per cent of the catchment area of Kavery lying in Karnataka its utilization of water of Kavery is proportionately much less since the irrigated area in Karnataka is hardly 176,039 ha. (3,45,000 acres) as against over 1.01 million ha. (2.5 million acres) in Tamil Nadu.<sup>5</sup>

Besides the provisions in the Agreement of 1924 contemplating its reconsideration, a revision of the said agreement also became necessary because of the States Re-organisation Act, 1956, section 108 of which stipulated that the agreements affected by the reorganization of States should be revised by the reorganised States by November 1, 1957, in order to make them respond to the new territorial adjustments.

In 1950, the implementation of the three new irrigation projects by Madras (now Tamil Nadu) on the main river, namely, (i) Mettur High Level Canal, (ii)

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4. For text see *ibid.*, 214-16

5. See S.N. Jain and others, *supra* note 1, 48

Kattalai Bed Regulator and (iii) Pullambady scheme, created some difficulties. The Mettur High Level Canal is taken off directly from the Mettur dam and the other two schemes are on the main Kavery river below the Mettur dam. Objecting to these projects Mysore (now Karnataka) contended that the Agreement of 1924 did not permit Madras to take up and construct new irrigation works on the main river and develop irrigation beyond the prescribed limit of 121, 811 ha. (301,000 acres) in the main river basin. According to Mysore the agreement permitted Madras to construct new irrigation projects only on its three tributaries, namely Bhavani, Amravati and Noyil rivers.

Mysore pointed out that if Madras went ahead with these projects then Mysore would also be at liberty to construct new reservoirs, on the tributaries of the river Kavery falling within the territory of Mysore, to the extent of 60 per cent of the capacity of the new reservoir in Madras. This stand of Mysore arose from the apprehensions that since the Agreement of 1924 was to be revised in 1974, the new uses of the river by Madras might seriously prejudice Mysore's case at the time of such revision since Madras might term those uses as existing uses and therefore might use the same for creating and claiming prescriptive rights in favour of Madras.

However, Madras agreed that the utilization of water for the Kattalai Bed Regulator and Pullambady Scheme might not be considered to bestow any prescriptive rights on Madras and that while considering the division of surplus water at the time of the revision of the said agreement, these schemes should be treated as if not implemented. On these assurances the Planning Commission cleared these projects with the stipulation that these projects would utilize the surplus waters of the Kavery river without prejudicing the ultimate distribution of such waters between Madras and Mysore.

Regarding Mettur High Level Canal no specific approval of the Planning Commission was obtained since Madras contended that the Mettur High Level Canal take-off from the Mettur dam formed a part of the Kavery High Level Mettur Project whereunder even in terms of the agreement of 1924 Madras was entitled to extend irrigation up to the limit of 301,000 acres and that Mysore should not have any objection to the location of the area of irrigation as long as such irrigation remained within this limit.

When Mysore referred to the arbitration proceedings in support of its view Madras raised a jurisprudential question that the negotiations leading to the agreement between the States were inadmissible in arguments, subsequent to the conclusion of the agreement, on issues already dealt with by the agreement in clear and unambiguous terms.<sup>6</sup>

The two Governments had also been complaining against each other regarding lack of communication of information in respect of projects of common interests. In this connection they referred to the provisions of clause 10 (viii), of the said Agreement of 1924 which created an obligation of unilateral

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6. *Ibid.*, 46-47

nature as also those of clause 10(vi) which created obligations of bilateral character. In fact, in this regard both the State Governments, have been alleging that the other party is going ahead with its schemes without supplying to it proper prior information as stipulated in the said Agreement.

Since the Tamil Nadu Government undertook the above-mentioned three projects without concurrence of the Karnataka Government, the latter appointed a technical committee which suggested that the Karnataka Government might utilize the Kavery water within its territory at the optimum level without prejudice to the existing supply in Tamil Nadu. The said committee urged the Karnataka Government to go ahead and execute six major projects for damming and division of Kavery before 1974, even without waiting for approval of the Tamil Nadu Government.

In a meeting of the Southern Zonal Council, Tamil Nadu, Karnataka and Kerala agreed to settle among themselves disputes relating to the Hemavathi Irrigation Project on River Hemavathi, a tributary of Kavery, lying in Karnataka. It was also decided that the Karnataka-Kerala dispute regarding Kabini project on Kabini river, another tributary of Kavery, should be settled between these two States.<sup>7</sup>

Subsequently, an Agreement was signed amongst the Governments of Mysore (Karnataka), Tamil Nadu and Kerala, regarding Kavery waters, on May 31, 1972, wherein it was resolved that serious attempts should be made to resolve by negotiations, the Kavery dispute as early as possible and that, to facilitate that, the Central Government may appoint a fact-finding committee consisting of engineers, retired judges and, if necessary, agricultural experts, to collect data and that the Central Government would assist with the help of the said fact-finding committee, in arriving at a settlement of the dispute within six months.<sup>8</sup>

Later, an 'Understanding' was reached, amongst the Governments of Karnataka, Kerala and Tamil Nadu, in an inter-State meeting held on 25 and 26 August 1976, regarding the use and development of Kavery waters. As a result of this 'Understanding' the 'existing utilization' of Kavery waters was agreed as 671 T.M.C. comprising 489 T.M.C. by Tamil Nadu, 177 T.M.C. by Karnataka and 5 T.M.C. by Kerala. It was also agreed that in a normal year the existing areas under irrigation shall be fully protected. The surplus waters were to be shared by Tamil Nadu, Karnataka and Kerala respectively, in the ratio of 30:53:17. The said 'Understanding' also envisaged the creation of 'Kavery Valley Authority', for whose effective functioning, rules were to be prepared by the Committee of Secretaries of the said three States.<sup>9</sup>

Tamil Nadu farmers also filed a writ petition in the Supreme Court for the protection and enforcement of their rights to an appropriate share in the waters of Kavery river.

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7. For reference see 'Hemavathy River Project Dispute to be settled by Consultation', *The Hindu*; also cited by S.N. Jain and others, *supra*, note 1, 49.

8. For text see Agreements, *supra* note 2, 316-17

9. *Ibid.*, 318-19

The negotiations and mutual consultations failed to produce satisfactory result and hence the parties became impatient. The Tamil Nadu Government convened an all-party Conference on July 27, 1989, which decided that if the bilateral talks failed, the dispute should be referred to a Tribunal. Subsequent to this Conference the Tamil Nadu Chief Minister in a statement alleged that the Karnataka Government, then under President's rule, was using delaying tactics, and announced that the Tamil Nadu Government, pursuant to the resolution of all-party meeting, would request the Union Government to refer the issue to a Tribunal.<sup>10</sup>

While handling the writ petition of the farmers of Tamil Nadu the Division Bench of the Supreme Court, comprising JJ Ranganath Misra, P.B. Sawant and K. Ramaswamy, directed the Union Government on May 4, 1990, to fulfill its statutory obligation under section 4 of the Inter-State Water Disputes Act 1956 and notify in the official gazette the constitution of an appropriate tribunal, within a period of one month, for the adjudication of the (Kavery) Water Dispute.<sup>11</sup>

Pursuant to the above mentioned direction of the Supreme Court the Union Government on 2nd June, 1990 constituted a Tribunal with Mr. Justice Chittotosh Mookerjee, Chief Justice of Bombay High Court, as its Chairman and Justice S.D. Agarwal of the Allahabad High Court and Justice N.S. Rao of the Patna High Court as its other members. The Tribunal was required to have its headquarters in New Delhi.

The Notification No. S.O. 437(E) dated 2nd June, 1990 issued by the Ministry of Water Resources of the Union Government in this regard, stated that the Central Government was of the opinion that the said water dispute could not be settled by negotiations.<sup>12</sup> Such a failure was in fact a pre-requisite for issuing the notification. The verdict of the Tribunal is expected to come in due course. The earlier it comes the better it will be for the parties to the dispute and their inhabitants to enable them to utilize their respective share of the disputed waters for their socio-economic welfare and development.

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10. See Indian Express, August 1, 1989.

11. See Indian Express, May 5, 1990, 7.

12. See Indian Express, June, 1990, 1.