

ITEM NO.301

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.12/2016 IN I.A.NO.10 in Civil Appeal No.2456/2007

STATE OF KARNATAKA & ORS.

Appellant(s)

VERSUS

STATE OF T.NADU

Respondent(s)

(For modification of Court's order and office report)

Date : 20/09/2016 This application was called on for hearing today.

CORAM :

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

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. R.S. Ravi, Adv.  
Mr. V. N. Raghupathy, AOR  
Mr. J.M. Gangadhar, Adv.  
Mr. Ranvir Singh, Adv.

For Respondent(s) Ms. Pinky Anand, ASG  
Mr. S. Wasim A. Qadri, Adv.  
Mr. Karan Seth, Adv.  
Ms. Snidha Mehra, Adv.  
Mr. Shashank Dewan, Adv.  
Ms. Saudamini Sharma, Adv.  
Mr. D.S. Mahra, Adv.  
  
Mr. Shekhar Naphade, Sr. Adv.  
Mr. Rakesh Dwivedi, Sr. Adv.  
Mr. Subramaniam Prasad, Sr. Adv.  
Mr. G. Umopathy, Adv.  
Mr. C. Paramasivam, Adv.  
Mr. B. Balaji, 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. G. Prakash, AOR  
Mr. Jishnu M.L., Adv.  
Mrs. Priyanka Prakash, Adv.  
Mrs. Beena Prakash, Adv.  
Mr. Manu Srinath, Adv.

Mr. Ramesh Babu M. R., AOR

Mr. Harish Salve, Sr. Adv.  
Ms. Aparna Bhat, Adv.  
Mr. Pukhrambam Ramesh Kumar, Adv.  
Mr. Akashy Vats, Adv.

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

I.A. No.10 of 2016

On 5<sup>th</sup> September, 2016, while dealing with the present interlocutory application, this Court had referred to the submissions of the learned counsel for the parties and paragraph (D) of Clause IX of the final order of the Cauvery Water Disputes Tribunal (for short, 'the Tribunal'), the Notification dated 22<sup>nd</sup> May, 2013, by which the Supervisory Committee was constituted and the role of the Committee was determined and taking note of the suggestions given by Mr. Fali S. Nariman, learned senior counsel appearing for the State of Karnataka, proceeded to pass the following directions:-

"(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."

Be it stated, as it was erroneously mentioned 15 cusecs, the typographical error was rectified on the next day by making it 15000 cusecs. Needless to say, the rectification of the mistake was the agreed position.

An application for modification of the aforesaid order was filed which was taken up on 12<sup>th</sup> September, 2016. This Court modified the order by directing as follows:-

".....The Supervisory Committee is an expert body and it has been constituted vide Notification dated 22<sup>nd</sup> May, 2013. It is required to take a decision in conformity with the final order of the Tribunal.

Be it noted, though the matter was directed to be listed on 16<sup>th</sup> September, 2016, but as there is difficulty, the matter has to be listed on 20<sup>th</sup> September, 2016 at 2.00 p.m.

Regard being had to the facts and circumstances in entirety, we are inclined to modify the order dated 5<sup>th</sup> September, 2016, to the extent that the State of Karnataka shall release 12000 cusecs of water per day and the said direction, shall remain in force till 20<sup>th</sup> September, 2016."

At this juncture, we must note with profit that the ground that was urged for modification, was not appreciated by this Court and, in fact, maintenance of law and order situation in both the States was stressed upon and the role of the Executive in implementing the order passed by this Court was emphasized. Thereafter, the matter was adjourned to be taken up today.

Ms. Pinky Anand, learned Additional Solicitor General has produced the decision dated 19<sup>th</sup> September, 2016 of the Supervisory Committee. The relevant part of the said decision is to the following effect:-

2. As per the information furnished by IMD, while the rainfall during the South West Monsoon in the intermediate catchment (upto Billigundulu except Kabini and KRS catchment) is above normal, the rainfall in the catchments of Kabini and K.R. Sagar reservoirs is deficient. During the period 01.06.2016 to 31.08.2016, departure of total actual rainfall from normal value in Kabini catchment is (-)46%, in KR Sagar catchment is (-) 24%, in the intermediate catchment is (+)38%, in Cauvery catchment below Billigundulu is (+) 1.6%, and the whole Cuvery basin is (-)18%. The Committee also noted that during the period 01.06.2015 to 31.08.2015 departure of total actual rainfall from normal value in Kabini catchment was (-)25%, in KR Sagar catchment was (-)12% in the intermediate catchment was (+)12%. Moreover, during the period 01.06.2015 to 31.05.2016, departure of total actual rainfall from normal value in Kabini catchment was (-)20%, in KR Sagar catchment was (-)11%, in the intermediate catchment was (+)5%.
3. The inflow in the four reservoirs of Karnataka in Cauvery basin during the period 01.06.2016 to 31.08.2016 is 114.66 TMC against the normal (29 year average 1974-75 to 2002-03) inflow of 219.33 TMC. The inflow is 52.28% of normal.

The Outflow from four reservoirs of Karnataka in Cauvery basin during the period 01.06.2016 to 31.08.2016 is 45.28 TMC against the normal (29 year average 1974-75 to 2002-03) outflow of 115.29 TMC. The average flows observed at Billigundulu site of CWC for the water year 2016-17 for the same period is 33.02 TMC. As mentioned above, during the period 01.06.2016 to 31.08.2016, departure of total actual rainfall from normal value in the intermediate catchment is (+)38%.

4. Quantum of flows to be made available by the State of Karnataka at the inter-State contact point presently identified as Billigundulu G&D station located on the common border of Karnataka and Tamil Nadu as per Clause-IX of Order of CWDT in a normal year is 94 TMC for the period from June to August, 2016 but the average flows observed at Billigundulu site of CWC for the water year 2016-17 for the same period is 33.02 TMC. Taking into account the significant deficiency in rainfall in Cauvery basin as informed by IMD and inflow position of the four reservoirs in Karnataka in Cauvery basin, there is a distress situation and thus flows at Billigundulu could not be ensured as per normal deliveries prescribed in Clause IX of the Order of CWDT for the period from June to August, 2016. As per Clause VII of the Order of CWDT, in case the yield of Cauvery basin is less in a distress year, the allocated shares shall be proportionately reduced among the States.
5. In accordance with the Hon'ble Tribunal Order, quantum of deficit can be assessed only when the yield figures of the basin are available. In order to assess yield upto billigundulu for the three months, data of abstractions for the current year as well as average abstractions by the State of Karnataka through minor irrigation, anicut channels and small reservoir projects etc. is required.
6. Thus during the 6<sup>th</sup> meeting of the Committee, the State of Karnataka was asked to furnish the following data to the Member Secretary

of the Committee as well as to other basin States by 15.09.2016.

- (A) Abstractions (withdrawals+change in storage+evaporation) from reservoirs in Cauvery basin other than four major reservoirs u/s and d/s of KRS and Kabini separately and any other abstractions including withdrawals from Lift Irrigation Schemes and other domestic/industrial schemes. The data should pertain to year 2016 (from June to August).
- (B) Average withdrawals/abstractions during June to August for 29 year period (1974-75 to 2002-03) for minor irrigation, anicut channels, Bangalore water supply diversions, reservoirs in Cauvery basin other than four major reservoirs, Lift Irrigation Schemes and other domestic/industrial schemes u/s and d/s of KRS and Kabini separately, to the Member Secretary of the Committee as well as to other basin States by 15.09.2016.
- (C) In addition, all the basin States were also to provide data related to storage and withdrawal between Feb-May for 29 year period (1974-75 to 2002-03) as well as for the year 2015-16 to the Member Secretary of the Committee as well as to other basin states by 15.09.2016.
7. On receipt of the data mentioned at (A), (B) above from the State of Karnataka and data at (C) provided by the States of Tamil Nadu and Karnataka, the same was analyzed. On the basis of the data, the claims of basin States were discussed, Chief Secretary, Government of Karnataka on the basis of ground realities vehemently opposed any further release of water from the reservoirs as this would seriously impinge their drinking water needs in the coming months upto May, 2017. Chief Secretary, Government of Tamil Nadu, on the other hand, demanded the release as per the Order of the Hon'ble Tribunal, Chief Secretary, Union Territory of Puducherry

demanded their proportionate share.

8. As there was no consensus, the Chairman of the Supervisory Committee on Cauvery having taken into account the daily inflows into the reservoirs of Karnataka, drinking water requirement of the people of Karnataka and the requirement of Samba crop in Tamil Nadu and also the significant deficit in rainfall from June onwards as brought out by IMD during the current and previous year, ordered the State of Karnataka to release water at the rate of 3000 cusecs per day for 10 days from September 21, 2016 till September 30, 2016. The Chairman of the Committee also asked the State of Tamil Nadu to release water proportionately to Union Territory of Puducherry.
  
9. Further, in order to resolve the problem of sharing of available water on long term basis, as discussed during the sixth meeting of the Supervisory Committee, it was decided that a Technical Committee under Chairman, CWC with members from basin States should meet within ten days to finalise data acquisition protocol, methodology, mechanism and instrumentation. In 7<sup>th</sup> meeting, this issue was further discussed and it was unanimously agreed that online real time data acquisition protocol, methodology, mechanism and instrumentation shall be developed by the Technical Committee in respect of inflows, outflows, withdrawals and water levels at seven major reservoirs sites. Besides, the small reservoirs, anicuts and minor irrigation schemes shall also be covered under the online data acquisition system. The Committee directed that the Technical Committee should finalize within 10 days and to finalize the protocol at the earliest and brought it before the next Supervisory Committee meeting for necessary approval. The cost of the online data acquisition system shall be borne by the party States of Kerala, Karnataka, Tamil Nadu and UT of Puducherry in the ratio of 15:40:40:5."

We have reproduced the said order in extenso as the

said Committee was constituted by virtue of the direction given by this Court and notified vide Notification dated 22<sup>nd</sup> May, 2013.

Mr. Nariman, learned senior counsel appearing for the State of Karnataka and Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu, expressed their grievances with regard to the view expressed by the Supervisory Committee. They intend to file objections to the same. In all possibility, the matter would have been straight away adjourned to some other day to enable the learned counsel for the parties to file objections and to hear the interlocutory applications. But in the present case such course cannot be immediately taken recourse to.

In course of hearing of this application today, Mr. Nariman has taken us through various paragraphs of the decision/final order of the Tribunal. Chapter VII of the same deals with final determination of the share of the water of river Cauvery among the States of Kerala, Karnataka and Tamil Nadu and the Union Territory of Puducherry and monthly schedule of releases. Learned senior counsel has drawn our attention to paragraphs 11, 13, 15, 17, 18, 19, 20, 23, 25, 26, 28 and 29 of the decision of the Tribunal. They read as follows:-

"11. It may be mentioned that in the Cauvery basin, the major shareholders are two States namely, Karnataka and Tamil Nadu which have been allocated 270 and 419 TMC respectively, whereas, the State of Kerala has been allocated a total of 30 TMC of water for the three sub-basins viz. Kabini sub-basin - 21 TMC, Bhavani sub-basin - 6 TMC and Pambar sub-basin - 3 TMC. Since, full use of allocated waters by the State of Kerala may take some years until the proposed irrigation projects of the State come into existence, till then, the unutilized water will be flowing to the lower States namely, Karnataka

and Tamil Nadu, and that water will be flowing into the existing reservoirs of Kabini, Bhavani and Amarvathy from which the distribution is to be monitored by the Cauvery Management Board, keeping in view the decision of the Tribunal.

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13. In view of the above position, we find that specifying monthly schedule of flows which would be required to be delivered by Karnataka to Tamil Nadu at inter-State contact point during a normal year would suffice.

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15. The allocated share of Tamil Nadu is 419 TMC. Thus, the balance 182 TMC (419-237) is to be made available at the inter-State contact point. In addition, an allocation of 10 TMC for environmental protection is also to be made available at that point. Thus, the total delivery which the Kanataka State is to make available at the inter-State border would be (182+10) 192 TMC.

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17. It may be mentioned that the extent of uncontrolled catchment from below KRS and Kabini reservoirs up to Billigundulu - is of the order of over 22,000 sq. km. (Source: Karnataka Pl-I, pages 21 & 22 and E-68. Page 3) in a normal year (yield with 740 TMC). It has been estimated by our Assessors that this uncontrolled catchment can contribute about 80 TMC. As regards the Kabini reservoir, its annual yield is about 98 TMC (yield accepted by the parties), the bulk of which comes during the southwest monsoon season. The Kabini reservoir has a small storage capacity of about 16 TMC i.e. about 1/6th of its annual yield. After meeting the requirements of Kerala, the reservoir can be filled four times mostly during the southwest monsoon season. It has also been estimated by our Assessors that the Kabini arm during a normal year after meeting the Karnataka requirements would contribute

about 60 TMC to meet the downstream requirements at Billigundulu. As far the Krishnarajasagara reservoir is concerned, the bulk of the requirements of Karnataka are to be met from Hemavathy, Harangi and Krishnarajasagara reservoirs, as such, about 52 TMC of water would have to be made available by the State of Karnataka through regulated releases from Krishnarajasagara to reach the inter-State contact point.

18. It may be mentioned that at inter-State contact point 192 TMC is to be maintained in a normal year and if there is any deficiency in the quantum of inflows mentioned above, it will be open to the Cauvery Management Board/Regulatory Authority to suitably adjust the flows.
19. The monthly schedule of deliveries has been prepared in consultation and on the basis of advice given by our Assessors at the present identified site, namely, Billigundulu, would be as under "

| <u>Month</u> | <u>TMC</u> | <u>Month</u> | <u>TMC</u>     |
|--------------|------------|--------------|----------------|
| June         | 10         | December     | 8              |
| July         | 34         | January      | 3              |
| August       | 50         | February     | 2.5            |
| September    | 40         | March        | 2.5            |
| October      | 22         | April        | 2.5            |
| November     | 15         | May          | <u>2.5</u>     |
| TOTAL        |            |              | <u>192 TMC</u> |

Note (i) The annual total of 192 TMC comprises of 182 TMC from the allocated share of Tamil Nadu and 10 TMC of water allocated for environmental purposes.

(ii) The monthly releases shall be broken in 10 daily intervals by the suggested Regulatory Authority while implementing the schedule.

20. It may be mentioned that irrigation requirements of the parties have been worked out for the crops to be raised during the whole year in all their projects and water has accordingly been provided for them in

various reservoirs.

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23. The Regulatory Authority shall also monitor flows from KRS reservoir as also from Kabini and other tributaries meeting Cauvery below KRS upto Billigundulu site.

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25. The question of distress was being raised during the arguments by the party States, specially, Karnataka and Tamil Nadu. Karnataka's argument was based on the apprehension that if occurrence of southwest monsoon is below normal and the northeast monsoon is above normal, the waters cannot be brought upstream to Karnataka area and as such, the crops in the upper region of basin will suffer. It may be clarified that the crops of the upper basin areas, mostly receive support of artificial irrigation from the southwest monsoon and as mentioned above, while working out the crop water requirement, provision has already been made from the availability of southwest monsoon water in the reservoirs to meet the annual requirements of those areas. Further, there would also be some good years, bringing in more than 740 TMC of water. We have suggested mechanism for implementation of the order of the tribunal and that suggested authority will take care of conserving water during good years in the designated reservoirs and also devise conservation of water by the party States in the remaining reservoirs (capacity - 3 TMC and above), and during a deficit year permit withdrawals keeping in view the shortfall in total availability. Similarly, if the northeast monsoon happens to be below normal, it would be feasible, as also justified to provide some water from the storages in the upper regions for saving the crops of the lower region of the basin. This task has to be carried out by the Cauvery Management Board after assessing the extent of distress.

26. It may be made clear that the above schedule of deliveries relates to a normal year which has been considered as an year giving total

annual yield of 740 TMC at 50% dependability, but it is very important to note that the above schedule is a theoretical computation based on the crop water requirement of different projects and the computed withdrawals therefor, along with the data of inflows into the various reservoirs as furnished by the party States in the common format. It is common knowledge that rainfall during any monsoon season varies in space and time, besides variation in its intensity, duration, number of rainy days etc. Further, since the total catchment area of Cauvery basin is over 81,000 sq. km., the occurrence of rainfall and its pattern in different sub-basins cannot be predicted. For example, during a month, there may be heavy rainfall in the Hemavathy sub-basin and deficit rainfall in Kabini sub-basin and vice-versa. As such, it would be a rare year in which the pattern of flows in different sub-basins would tally with the flows considered for working out the above schedule, due to this variation, the contribution of each and every tributary cannot be precisely predicted and there would certainly be some variations from year to year. We have, therefore, separately suggested a mechanism - Cauvery Management Board/Regulatory Authority which would monitor with the help of Cauvery Regulation Committee and the concerned State Authorities, the available storage position in the Cauvery basin along with the trend of rainfall and make an assessment about the likely inflows which may be available for distribution amongst the party States within the overall schedule of water deliveries suggested above.

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28. In case the yield is less in a distress year, the allocated shares shall be proportionately reduced amongst the States of Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry by the Regulatory Authority.
29. It may also be mentioned that the month of June, specially, would be crucial because the irrigation season starts from 1<sup>st</sup> of June,

as also normal date of onset of southwest monsoon in Kerala is 1<sup>st</sup> of June, as such, any delay in the on-set of southwest monsoon would affect the inflows, and consequently schedule of releases from Krishnarajasagara and Kabini reservoirs. It would, therefore, be advisable that at the end of May each year, as much storage as is possible during a good year, should be consciously conserved, as that will help in adhering to the schedule of monthly deliveries. However, if there are two consecutive bad years, it would cause distress which shall have to be apportionately tackled by the Cauvery Management Board/Regulatory Authority by relaxing the schedule of deliveries and getting the reservoirs operated in an integrated manner through the States concerned to minimize any harsh affect of a bad monsoon year. In view of such practical difficulties, the Cauvery Management Board/Regulatory Authority shall have the liberty to alter monthly and/or ten-daily schedule of releases while making effort to meet the seasonal allocations for the crop as far as possible, in consultation with the party States."

Be it stated, Mr. Naphade has also relied upon some of the paragraphs reproduced hereinabove. These paragraphs have been referred to by both the sides to highlight their respective contentions. According to Mr. Nariman, learned senior counsel appearing for the State of Karnataka, the Tribunal has not determined in absolute terms with regard to the distribution of water, for the language employed is tentative in character. *Per contra*, Mr. Naphade, learned senior counsel appearing for the State of Tamil Nadu would submit that it is not tentative and, in fact, the Tribunal in various parts which have been reproduced herein-above, has referred to the concept of proportionality in case of the distress year and left it to be monitored by the competent authority as mentioned in the final order of the Tribunal. In essence, the submission of the State of Tamil Nadu is that

as mentioned in the final order of the Tribunal, even if it is assumed that the order has any characteristic of tentativeness, the State of Karnataka cannot take the position that it will not release any water.

At this juncture, we are obliged to state, as Mr. Nariman has brought to our notice, that Chapter VIII of the award deals with machinery for implementation of final decision/order of the Tribunal. The Tribunal thought it appropriate to refer to various provisions of the Inter-State River Water Disputes Act, 1956 (for brevity, 'the Act') and conceived that there should be an independent mechanism to achieve the objectives of distribution of water as per equitable shares determined by the Tribunal. The Tribunal has categorically stated about the constitution of the "Cauvery Management Board". It has also provided for the composition of the Cauvery Management Board. The said passages, being pertinent, read as follows:-

- "1. The Cauvery Management Board shall consist of a whole time Chairman and two whole time Members to be appointed by the Central Government.

The post of whole time Chairman shall be held by an Irrigation Engineer of repute of the rank of Chief Engineer having not less than 20 years experience in the field of water resources management.

2. One whole time Member shall be an Irrigation Engineer of not below the rank of Chief Engineer having sufficient field experience in the operation of reservoirs and management, maintenance and operation of large irrigation projects for a period not less than 15 years.
3. The Second whole time Member shall be an agricultural expert of repute specially in Agronomy with a field experience of not less than 15-years.

The tenure of the Chairman and the two whole time members shall be for a period of three years extendable to five years.

4. Two representatives of the Central Government shall be of the rank of Chief Engineer/Commissioner to be nominated by the Ministry of Water Resources and Ministry of Agriculture respectively. They shall be part time Members of the Board.
5. A representative each of the State Governments of Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry shall be nominated by the respective Governments, they shall be part time members of the Board. The State representatives shall again be an Irrigation Engineer of the rank of Chief Engineer. Irrigation/Water resources/Public Works Department as the case may be, nominated by the respective State Governments.
6. Vacancies of members: On any vacancy occurring in the offices of the Members, the appropriate appointing authority shall appoint a person to such vacant office.
7. Secretary of the Board: An Irrigation Engineer not belonging to any party State, and not below the rank of a Director/Superintending Engineer shall be appointed by the Board. He shall not have voting right.
8. Quorum and voting: Six members shall form a quorum and the concurrence of the majority shall be necessary for the transaction of the business of the Board except such business as the Board may from time to time prescribe as routine. The Members shall have equal powers.

The next meeting will be held within three days if the meeting is postponed for want of quorum and for that meeting quorum will not be necessary."

The Tribunal also referred to Cauvery Water

Regulation Committee. It reads as follows:-

"The Board shall constitute a committee known as Cauvery Water Regulation Committee with the following composition :

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|-----|--|-------------------|
| (1) | Full-Time Member Irrigation of the Board   | Chairman          |
| (2) | One representative each of the State of Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry not below the rank of a Sr. Superintending Engineer | Member            |
| (3) | One representative of IMD of the rank of Director  | Member            |
| (4) | One representative of Central Water Commission dealing with river gauging not below the rank of Superintending Engineer                                      | Member            |
| (5) | One representative of the Central Ministry of Agriculture not below the rank of Superintending Engineer.   | Member            |
| (6) | Secretary to Cauvery Management Board  | Member Secretary" |

Chapter VIII also articulates the functions of the Regulatory Committee and also postulates guidelines for the Cauvery Management Board. We are not reproducing the guidelines for the Cauvery Management Board at present.

On a perusal of the final order of the Tribunal, we find that it has taken pains to arrive at a solution by considering all the aspects and also thought of appropriate distribution in future keeping in view the unpredictability of the monsoon. Additionally, it has also provided for resolution mechanism so that if any problem emerges, the same can be solved. It is submitted by Mr. Nariman that the order passed by the Supervisory Committee is absolutely based on no reason and, in fact, the tenor of the language would reflect that it is a view expressed by the Chairperson alone and

there is no justification to direct the State of Karnataka to release the water at the rate of 3000 cusecs per day for ten days. According to Mr. Nariman, the Supervisory Committee could not have determined in this manner.

Mr. Naphade, in his turn, would criticize the direction of the Committee with regard to the quantum. However, without prejudice to his final argument, he has placed reliance on the deficit facet that finds mention in it. It is appropriate to state here that Mr. Nariman has seriously opposed the percentage of deficit, that is, 48%. According to him, it cannot be determined at this stage because the deficit can be only determined at the end of the season, but not mid way. As mentioned earlier, learned counsel for the parties wanted to file objections to the decision of the Supervisory Committee. Let the applicant, as well as the respondent in this interlocutory application, file their objection to the same within three days hence.

On the earlier occasion, we had directed the State of Karnataka to release 12000 cusecs of water per day. Initially, we had directed for 15000 cusecs as the State of Karnataka, by good gesture, had offered for 10000 cusecs only for a week. Today, it is argued by Mr. Nariman with all the vehemence at his command that any kind of *pro tem* arrangement made by this Court would be absolutely erroneous being not permissible. The issue does not require to be deferred. In our considered opinion, when an issue is raised that this Court cannot make an interim arrangement in case of this nature, procrastination would not be apt. We have reasons to say so. In the appeal, both the States are challenging the decision of the Tribunal. The Tribunal, as our afore-stated paragraphs would show, had fixed 192 TMC for normal year in favour of the State of Tamil Nadu and the Tribunal has also carved out monthly allocation from the month of June to May,

which is called the "water year".

On the last occasion, we had noticed that the State of Karnataka had not provided the requisite water as per the allocation. It is urged by Mr. Nariman that is not a normal year and, therefore, there has to be adjustment in monthly allocation. Learned senior counsel would also submit that if there is a deficit year and not a normal year, the yearly allocation has to reduce proportionally. That apart, it is also urged that when the State of Karnataka is in a great misery as far as the supply of water is concerned, it is not possible to release any water in favour of the State of Tamil Nadu. Additionally, it is urged by Mr. Nariman that the State of Karnataka has to part with drinking water if it is compelled to supply the water to the State of Tamil Nadu.

Mr. Naphade, learned senior counsel appearing for the State of Tamil Nadu would contend that the monthly allocation by the Tribunal is rational, inasmuch as it has taken into consideration various crops that are grown in the State of Tamil Nadu and seasonal requirement. Learned senior counsel would further submit that both the States have to embrace the principle of adjustment in deficit year. The argument relating to dwindling water is seriously controverted by Mr. Naphade on the ground that the Tribunal has not really referred to the decision pertaining to drinking water for 2/3rd of the City of Bengaluru are covered by the water basin.

Another aspect needs to be noted is that as far as the month of September is concerned, the State of Karnataka is to release 40 TMC water in a normal year. The deficit, though disputed by both sides, is approximately 48% as stated by the Committee.

Mr. Naphade has filed a chart, stating about the quantum of water that has been released in favour of the State of Tamil Nadu in pursuance of direction by this Court. According to the calculation, the State of Karnataka has yet to give 2.56 TMC.

At this stage, we may also take note of another objection raised by Mr. Nariman that at Mettur, the State of Tamil Nadu has stored more than 50 TMC water. Mr. Naphade, as has been stated on the last occasion, has contended that this arrangement by the State of Tamil Nadu is to provide water for irrigation.

Having heard learned counsel for the parties and appreciating the arrangement made in the order of the Tribunal and noting the submissions of the learned counsel for the parties, we are inclined to pass the following order:-

(a) The Union of India shall constitute the Cauvery Management Board within four weeks hence, regard being had to the directions by the Tribunal.

(b) The Union of India shall produce after four weeks the notification indicating that the Cauvery Management Board has been constituted so that, if required, appropriate directions can be issued to the Board.

(c) The applicant and the respondent shall file their respective objections to the decision of the Supervisory Committee within three days hence.

(d) Let the matter be listed at 2.00 p.m. on 27<sup>th</sup> September, 2016.

(e) As an interim measure, regard being had to the subsequent developments and the problems that have been highlighted by Mr. Nariman, we direct the State of Karnataka to release 6000 cusecs of water from tomorrow till the next date of hearing.

Call the matter on the date fixed.

(Chetan Kumar)  
Court Master

(H.S. Parasher)  
Court Master