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Inter-State River Dispute

An Uncertain Future for the Kalasa-Bandura Drinking Water Scheme

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The Mahadayi Water Disputes Tribunal's directive to Karnataka government did not impact the ongoing works of Kalasa and Bandur canal projects, coming up near Kankumbi (of Khanapur taluk) near Karantaka-Goa border.

*Water disputes between States in the Indian Union often tend to take a political colour. Presently, yet another dispute is brewing between the western Indian States of Karnataka, Goa and Maharashtra over a crucial drinking water project aimed at serving four districts of north Karnataka. **S. Rajendran** writes on the long-standing crisis.*

An ambitious project by the Government of Karnataka — the Kalasa-Bandura drinking water scheme — faces an uncertain future caught in a political game and a legal battle with the neighbouring State of Goa.

Ironically, a section of the project is nearing completion and water can be pumped to the parched Hubli-Dharwad districts in a few months provided a settlement is ironed out at the political level or the Mahadayi Water Disputes Tribunal gives a favourable direction to an interlocutory application that is expected to be filed by the State of Karnataka.

The canal work of the drinking water project (Kalasa section), which commenced over a decade ago to serve the people in four of the 30 districts in Karnataka adjoining its neighbours, Goa and Maharashtra, is almost complete and water can be pumped into the canal about six months from now. What remains to be completed is the

construction of a reservoir for the Bandura segment for which the State Government has to obtain the approval of the Union Ministry of Environment, Forests and Climate Change.

The project, conceived by Karnataka in mid-1980s, has made little progress owing to objections by the lower riparian neighbour, Goa. It aims to divert 7.56 thousand million cubic feet (tmcft) of water to the River Malaprabha, a tributary of the River Krishna. Kalasa and Bandura are tributaries of the River Mahadayi (River Mandovi in Goa), a west-flowing river, and have their origins in the Western Ghats region in the Khanapur taluk of Belagavi.

In a way, the project will enable diverting a certain quantum of water to flow eastwards given the view that most of the water of the River Mandovi (largely utilised for power generation) drains into the Arabian Sea. The catchment of 2,032 square kilometres is spread across the States of Karnataka (375 sq km) , Maharashtra (77 sq km) and Goa (1580 sq km).



Credit for commencing the civil works for the drinking water project at Khanapur in Belagavi should go to H.D. Kumaraswamy who in 2006, as the head of the coalition Government, directed that the project should be implemented irrespective of opposition. It was the Government of S.M. Krishna, which moved the Union Government to grant clearance although the project had been contemplated for several decades.

The incumbent Minister for Water Resources, M.B. Patil, is of the opinion that the drinking water project can be commissioned very quickly if the inter-State dispute is settled out of court. "It is unfortunate that the Prime Minister has taken a political stand by asking us to first work out an understanding with the Congress leadership. It should be noted that we approached him since he is the head of the Union Government and there cannot be any political interplay, more so in this issue which is to provide drinking water".

The State had earlier sought the intervention of the Prime Minister, Narendra Modi, to help in finalising an out-of-court settlement, which did not find favour with the latter who opined that it was for the Chief Minister, Siddaramaiah, to iron out a solution with the Congress leaders of Goa and Maharashtra and thereafter meet him. Both Goa and Maharashtra are presently under the rule of the Bharatiya Janata Party.

The residents of a large number of villages in the districts to be served by the project have been waging a battle against the Government for over two months demanding the linking of a tributary of the River Mandovi with a tributary of the River Krishna, which will go a long way in meeting the irrigation requirements of some of the parched areas of the State and the drinking water requirements of several lakhs of people. A Statewide bandh was organised recently as an expression of support.



The Central Water Commission in its studies conducted in October 2001 and thereafter again in March 2003 estimated that the total yield of water in the Mahadayi basin is 199.6 tmcft of water at 75 per cent dependability or

220 tmcft of water at 50 per cent dependability. Of this, the yield in the catchment areas in Karnataka works out to 44.15 tmcft at 75 per cent dependability or 52.60 tmcft at 50 per cent dependability.

That the BJP has been using the project to serve its political plans is nothing new given the fact that it was the National Democratic Alliance headed by Atal Behari Vajpayee that first put a brake on the project in 2002 although it was the very same Government that cleared the proposal five months prior to stalling it. At that point of time, the Government in Goa was headed by Manohar Parikkar who is presently the Defence Minister.

In a memorandum submitted to the Prime Minister about a month ago (by the Chief Minister), a high-level delegation of political party leaders said that "this memorandum is submitted for conveying the feelings of the people residing in the districts of Gadag, Dharwad, Bagalkot and Belagavi that the allocation of the waters of the Mahadayi between the riparian States of Goa, Karnataka and Maharashtra be resolved amicably through bilateral negotiations under your mediation as the head of the Union Government".

The Chief Minister said that the brief events leading to this memorandum are:

1. The Union Ministry of Water Resources accorded 'in-principle' clearance for Kalasa-Bandura diversion project on 30.04.2002. While giving the 'in-principle' clearance, the Central Government has stated as follows:

"The matter has been considered in the CWC in the light of the National Water Policy, which accords top most priority for drinking water and the minutes of the Second Inter-State meeting to discuss the projects proposed to be taken up by the Government of Karnataka in the inter-State Madei/Mondovi river held in New Delhi on 27.03.2002"

2. However, the said in-principle clearance was placed in abeyance vide letter dated 19.09.2002 when the State of Goa raised objections. The said in-principle clearance was given by the Central Government keeping in view the urgency in meeting the needs of drinking water supply which has the top most priority in the National Water Policy.

3. The consideration of drinking water supply which is a life-saving basic human need, cannot wait for the process of legal procedure, which is time consuming, because, the people have a fundamental right for drinking water under Article 21 of the Constitution. In this respect, the Judgement of the Hon'ble Supreme Court in the case of Delhi Water Supply and Sewerage Disposal Undertaking Vs. State of Haryana (1996) 2 SCC 572 has held that Drinking water has the highest priority. The relevant portion of the Judgement is as follows:

"Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which water is put being drinking, it would be mocking nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purposes.

So, the right to use of water for domestic purpose would prevail over other needs. It is because of this that it was contended that what has been stated in Article 262 of the Constitution dealing with adjudication of disputes relating to waters of inter-State river or river valleys, read with Inter-State Water Disputes Act, 1956, could not exclude the jurisdiction of this Court to entertain the grievance of the petitioner". [(1996) 2 SCC 572]

4. The State of Goa approached the Hon'ble Supreme Court in 2006 by filing an Original Suit for constitution of a Tribunal. During the pendency of the Suit, Goa sought ad interim orders restraining the State of Karnataka from

proceeding with the construction of diversion projects. However, no interim order as prayed was granted. The State of Karnataka started construction of “inter-connecting canal” in October 2006. The Central Government constituted the Tribunal by notification dated 16.11.2010 and referred to the Tribunal the water disputes arising from the sharing of water of inter State river Mahadayi.

5. Pending disposal of the reference, the State of Goa again sought interim orders before the Tribunal by filing an interlocutory Application (IA) in 2012. However, the Tribunal did not pass the interim orders as prayed by Goa. The Tribunal inter alia directed as follows:

“(i) The state of Karnataka is hereby directed that it shall not actually utilize the water or divert the waters under Kalasa-Bhanduri Project till the disputes arising between the three states are finally adjudicated by this Tribunal;

“(ii) In order to ensure that the water from Mahadayi basin does not get automatically diverted to Malaprabha basin through the inter-connecting canal, which has been partly constructed by the state of Karnataka, the state of Karnataka is directed to plug both the vents of the cut and cover section of the reach within Mahadayi basin of the inter-connecting canal with a brick masonry embankment, on or before 31.5.2014;”

6. The Chief Minister said the resolution of the main water dispute on allocation of Mahadayi water referred to the Tribunal may take time as the witnesses have to be examined.

7. The State of Karnataka has full faith in the adjudicatory process contemplated under the provisions of Art. 262 of the Constitution and the Inter-State River Water Disputes Act of 1956. The State hopes that its genuine demands for meeting the needs of water would be fully vindicated before the Mahadayi Water Disputes Tribunal.

8. However, at the same time, the people are equally keen to have the Mahadayi Water Dispute resolved speedily by negotiations under the mediation of the Prime Minister. The amicable resolution of the water dispute in a give-and-take manner is an underlying spirit of the provisions of the Constitution and Inter-State Water Disputes Act of 1956. Needless to recall that the Indian Constitution, reflecting the great ideals of federal system, places confidence in the highest Union executive for promoting a consensual than adversarial approach in the allocation of inter-State waters.

9. There are several instances of the Prime Minister having successfully mediated in resolving the Inter-State Water Disputes; either during the pendency or after the adjudication of disputes by the Inter-State Tribunals.

10. We draw your kind attention to Telugu Ganga Agreement dated 14.04.1976. The then Prime Minister, the late Indira Gandhi, persuaded the Chief Ministers of Karnataka, Andhra Pradesh and Maharashtra to spare 5 tmcft each from their allocated share in Krishna waters for the benefit of State of Tamil Nadu for meeting its drinking water supply to Chennai, which is outside the Krishna basin.

11. Similarly, Indira Gandhi had succeeded in persuading the riparian States of Madhya Pradesh, Gujarat and Maharashtra to enter into an Agreement on July 12, 1974 inter-alia agreeing to permit the non-riparian State of Rajasthan to claim before the Tribunal the Narmada water for out basin uses in Rajasthan.

12. In 1998, the then Prime Minister Atal Bihari Vajpayee successfully mediated in bringing an understanding between the riparian States of Karnataka, Kerala and Tamil Nadu and Union Territory of Pondicherry in the

formation of Cauvery River Authority which was formally constituted vide Notification dated 11.08.1998 for implementing the Interim Order and related Orders.

The State of Karnataka has planned utilisation of 36.558 tmcft from the total water generated in its catchment area of Mahadayi basin. Details are as below:

S. No	Water Utilisation Plan	tmcft
	Diversion of Kalasa-Bhandura to Malaprabha river for drinking water supply of Hubli-Dharwad cities, surrounding towns and enroute villages.	7.560
1.	Within the basin use	1.500
2.	Mahadayi Hydro-Electric Project (MHEP) (including evaporation losses of 0.4 tmcft)	14.971
3.	Diversion to Kali dam for augmentation for power generation	5.527
4.	Diversion of surplus water at 75% dependability from Kotni dam (MHEP) to Malaprabha river to meet irrigation and drinking water, filling minor irrigation tanks in DPAP taluks of Ramadurga, Bailhongala and Soundatti and for meeting requirement of suffering atchakat under Malaprabha project command.	7.000
5.		36.558
	TOTAL	tmcft

What led to the constitution of the Mahadayi Water Disputes Tribunal

In July, 2002, the State of Goa made a request under Section 3 of the Inter-State River Water Disputes Act, 1956 (as amended) for constitution of the Tribunal to thus ensure that the matter was referred for adjudication and decision of the water dispute.

The issues mentioned in the request included the assessment of available utilisable water resources in the basin at various points and allocation of this water to the three basin States keeping in view priority of the use of water within basin as also to decide the machinery to implement the decision of the tribunal etc.

The Act requires that the Union Government shall constitute a tribunal if it is of the opinion that water dispute cannot be settled by negotiation.

Therefore, actions and efforts of Central Government since July, 2002 were basically guided by the provisions of the River Water Disputes Act. The then Union Minister for Water Resources convened an inter-State meeting in April 2006 at the level of Chief Ministers of the States of Goa, Karnataka and Maharashtra.

Subsequent actions of the government of Goa with regard to follow up action on decisions taken in the inter-State meeting gave impression that State of Goa is not ready to pursue the negotiation process further and wants constitution of tribunal and reference of the dispute to the Tribunal immediately.

Accordingly, then Central Government concluded that the dispute contained in the request of State of Goa of July, 2002 cannot be resolved by negotiation and initiated further action in the matter as per the provisions of Inter-State River Water Disputes Act, 1956 and rules made there under.

Meanwhile the Government of Goa filed a suit in the Supreme Court in Sept, 2006 for setting up of a water dispute tribunal for adjudication of the Mandovi river water dispute and an IA for stay in construction activities. The Union Cabinet considered in its meeting held on December 10, 2009 and approved the proposal of constitution of Mahadayi Tribunal.

The Mahadayi Water Disputes Tribunal (MWDT) was constituted vide notification dated 16th November, 2010.

Reference:

1. Water Resources Department, Government of Karnataka. n.d. River Systems of Karnataka. Accessed October 13, 2015. http://waterresources.kar.nic.in/river_systems.htm

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