

**THE REPORT
OF
THE CAUVERY WATER DISPUTES
TRIBUNAL
WITH THE DECISION**

**IN THE MATTER OF WATER DISPUTES REGARDING THE INTER-STATE
RIVER CAUVERY
AND
THE RIVER VALLEY THEREOF**

BETWEEN

- 1. The State of Tamil Nadu**
- 2. The State of Karnataka**
- 3. The State of Kerala**
- 4. The Union Territory of Pondicherry**

VOLUME I

**BACKGROUND OF THE DISPUTE
&
FRAMING OF ISSUES**

**NEW DELHI
2007**

COMPOSITION OF THE CAUVERY WATER DISPUTES TRIBUNAL

CHAIRMAN:

Shri N. P. Singh
(Judge of the Supreme Court of India
upto 25-12-1996)

MEMBERS:

Shri N. S. Rao
(Judge of the Patna High Court
upto 04-01-1994)

Shri Sudhir Narain
(Judge of the Allahabad High Court
upto 09-07-2003)

The following were also in the composition of the Cauvery Water Disputes Tribunal for the period indicated:-

CHAIRMAN:

Shri Chittatosh Mookerjee
Chief Justice of Bombay High Court
(from 02-06-1990 to June 1996)

MEMBER:

Shri S. D. Agarwala
Judge of Allahabad High Court
(from 02-06-1990 to 26-11-2002)

BEFORE THE CAUVERY WATER DISPUTES TRIBUNAL

ASSESSORS

1. J.I. Gianchandani,
Retired Chief Engineer,
Irrigation Department of Rajasthan
& Former Director General,
National Water Development Agency,
Govt. of India.

(Whole-time – From January, 1991 – Till Date)

2. S.R. Sahasrabudhe,
Retired Commissioner,
Central Water Commission,
Ministry of Water Resources.

(Whole-time – From September, 1994 – Till Date)

The following were also Assessors for the period indicated:-

J.R. Malhotra

(Part-time – From January, 1991 to June, 1991)

Y.D. Pendse

(Whole-time – From January, 1992 to March, 1994)

Representatives of the State Governments before the Cauvery Water Disputes Tribunal

I. For the State of Tamil Nadu.

Advocates

1. Senior Counsel
Shri K. Parasaran,
Shri C.S. Vaidyanathan
Shri A.K. Ganguly
2. Advocates General/Addl. Advocates General
Shri K. Subramaniam
Shri R. Krishnamoorthy
Shri K.V. Venkatapathy
Shri N.R. Chandran
Shri R. Muthukumarasamy
3. Advocates/Advocate-on-Record
Shri G. Umapathy
Shri M.S. Ganesh
Shri A. Subba Rao
Shri E.C. Agrawala
Shri Ajit Kumar Sinha
Shri V. Krishnamoorthy
Shri P.N. Ramalingam
Shri Nikhil Nayyar
Shri S. Vadivelu
Shri C. Paramasivam
Shri K. Parthasarathy

Other Representatives/Technical Personnel

1. Thiru R. Tirumalai, Advisor to Government
2. Secretaries to Government
Thiru D. Murugaraj
Thiru C. Chellappan
Thiru M. Kutralingam
Thiru S. Rajarethinan
3. Special/Additional Secretaries to Government
Thiru T.R. Ramasamy
Thiru S. Audiseshiah
Thiru D. Jothi Jagarajan
4. Prof. A. Mohanakrishnan, Chairman, Cauvery Technical Cell
5. Shri P.V. Shadevan, Vice-Chairman, Cauvery Technical Cell
6. Shri D. Hariram, Vice-Chairman, Cauvery Technical Cell

7. Members

Shri B. Manickavasagam
 Shri A. Loghanathan
 Shri R. Subramanian
 Shri G. Balakrishnan
 Shri D. Annamalai
 Shri D. Bhoopathy
 Shri R. Muralidharan
 Shri T.R.V. Balakrishnan
 Shri M.S. Ramamurthi
 Shri S. Kulathu
 Shri A.V. Raghavan
 Shri C.V.S. Gupta
 Shri S. Parthasarathi
 Shri V. Sairam Venkata

8. Member Secretaries

Shri O.N. Mohan Raj
 Shri T. Rajabather
 Shri R. Kuppusamy
 Shri S. Santhanaraman

9. Assistant Executive Engineers

Shri T.N. Gopal
 Shri K. Nagarajan
 Shri P. Ameer Hamsa
 Shri Ram Dahin Singh

10. Shri R. Raghavendran, Deputy Director of Agriculture

11. Shri K.S. Meenakshi Sundaram, Agriculture Officer

II. For the State of Karnataka**Advocates**

1. Senior Counsel

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 Shri Anil B. Divan
 Shri Sharat S. Javali
 Shri T. Andhyarjina

2. Advocates General

Shri B.V. Acharya
 Shri C. Shivappa
 Shri P.P. Muthanna
 Shri M.R. Janardhana
 Shri S. Vijay Shankar
 Shri A.N. Jayaram
 Shri B.T. Parthasarathy

3. Advocates/Advocate-on-Record

Shri Mohan V. Katarki
 Shri Deepak Nargoalkar
 Shri Shambhu Prasad Singh
 Shri Subhash C. Sharma
 Shri Atul Chitale
 Shri Syed Naqvi
 Shri Brijesh Kalappa
 Shri Ranvir Singh

Other Representatives/Technical Personnel

1. Secretaries, Department of Irrigation/Water Resources, Govt. of Karnataka

Shri G. Ashwathanarayana
 Shri M. Krishnappa
 Shri N.R. Venkatesha Prasad
 Shri S.M. Panchaghatti
 Shri K. Shivashankar
 Shri L. Basavaraju
 Shri S.K. Dhruva
 Shri S.J. Channabasappa

2. Shri Abhaya Prakash, Principal Secretary
3. Shri A.K.M. Nayak, Principal Secretary
4. Smt. Amita Prasad, Commissioner & Ex-Officio Secretary
5. Shri P.R. Nayak, Chief Coordinator
6. Shri B.C. Angadi, Chairman, Cauvery Technical Cell
7. Shri A.V. Shankara Rao, Chairman, Cauvery Technical Cell
8. Shri S. Raghuram, Technical Advisor
9. Shri R. Manu, Technical Advisor
10. Chief Engineers, Water Resources Development Organisation

Shri T.S. Rudrappa
 Capt. S. Raja Rao
 Shri B.S. Panduranga Rao,
 Shri S.N. Prasad
 Shri R.M. Chandrashekarappa
 Shri R. Hrushikesh,
 Shri N. Vijayaraghavan

III. For the State of Kerala**Advocates**

1. Senior Counsel

Shri Shanti Bhushan
 Shri Kapil Sibal
 Shri Milan K. Banerjee
 Shri R.F. Nariman
 Shri Rajeev Dhavan
 Shri Raju Ramachandran

2. Advocates/Advocate-on-Record

Shri Jayant Bhushan
Shri M.A.Feroz
Shri Gourav K. Banerjee
Shri T.T. Kunhikannan
Shri Deepak
Shri Dayan Krishnan
Shri Kumar Subir Ranjan
Shri Gautham Narayan
Shri Raghenth Basant
Shri Johan Mathew & Shri Sasi Prabhu, M/s. R.S. Prabhu & Co.,

Law Firm

Other Representatives/Technical Personnel

1. Shri T.K. Sasi, Chief Engineer, Irrigation
2. Shri K. Divakaran, Chief Engineer, ISW
3. Shri P.S. Sasi, Additional Director, Agriculture
4. Dr. E.J. James, Director, CWRDM
5. Shri P. Krishnan, Superintending Engineer
6. Shri K.K. Ramesan, Superintending Engineer,
7. Shri K.K. Sajeevan, Superintending Engineer
8. Shri V.K. Mahanudevan, Superintending Engineer
9. Shri A.D. Vincent, Executive Engineer
10. Smt. Gracy John, Joint Director, ISW
11. Shri P. Naveen Kumar, Assistant Executive Engineer
12. Shri Zachariah Koshy, Deputy Director, ISW
13. Shri O. Jogi Antony, Assistant Engineer
14. Shri S. Jayaram, Assistant Director, ISW

IV. For the Union Territory of Pondicherry

Advocates

1. Senior Counsel
Shri A.S. Nambiar
2. Advocates/Advocate-on-Record
Shri P.K. Manohar,
Smt. Shanta Vasudevan
Shri V.G. Pragasam

Other Representatives/Technical Personnel

1. Late Shri Laurent Saint Andre, Executive Engineer
2. Shri S. Ramamurthy, Executive Engineer
3. Shri B. Balagandhi, Agriculture Officer

(vii)

UNITS & CONVERSION TABLE

LINEAR

1 cm	=	0.39 inches
1 meter	=	3.28 feet
1 km	=	0.62 miles
1 inch	=	25.4 millimetres
1 foot	=	12 inches
	=	304.8 millimetres
1 mile	=	5280 feet
	=	1609.34 metres
	=	1.61 km

AREA

1 hectare	=	2.47 acres (100 metres x 100 metres)
1 acre	=	4840 sq. yds.
	=	0.40 hectares
1 sq. mile	=	640 acres
	=	259 hectares
1 sq. km.	=	100 hectares

VOLUME

1 cub. metre (cum)	=	35.32 cu.ft (cft)
	=	219.97 gallons
1million cub. metre (m.cum)	=	35.32 million cub. ft (mcft)
	=	810.71 acre ft.
1 cubic ft (cft)	=	0.0283 cum
	=	6.23 gallons
1 million cub ft. (mcft.)	=	11.574 cusec days
1000 million cub.ft (one TMC)	=	28.32 million cubic metres (m.cum)
	=	22957.0 acre ft.
1 million acre ft.	=	43.56 TMC
	=	1234.56 m.cum

RATE OF FLOW

1 cub. meter/second (cumecs) a day	=	35.31 cusecs a day
	=	70.05 acre ft./day
	=	8.646 ha. m/day
1 litre/second	=	0.04 cusecs
1 cub. ft. per sec.	=	1.98 acre ft./day
	=	28.32 litres per second
	=	6.23 gallons per second
1 acre ft. day	=	0.50 cusecs
	=	14.16 litres second
1 million gallon day	=	1.86 cusecs
	=	3.69 acre ft. day
1 imperial gallon	=	1.20 US gallons
1 milliard	=	1000 millions

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Chapter 1

Dispute regarding sharing of the waters of inter-State river Cauvery among the different riparian States and the Constitution of the Tribunal

The Central Government in exercise of its power conferred by section 4 of the Inter-State Water Disputes Act, 1956 (33 of 1956) constituted 'Cauvery Water Disputes Tribunal' by a notification dated 2nd June 1990.

‘MINISTRY OF WATER RESOURCES

NOTIFICATION

New Delhi, the 2nd June, 1990

S.O. 437(E) – Whereas a request has been received under section 3 of the Inter-State Water Disputes Act, 1956 (33 of 1956) from the Government of Tamil Nadu to refer the water dispute regarding inter-State river Cauvery and the river valley thereof, to a tribunal for adjudication;

And whereas the Central Government is of the opinion that the water dispute regarding the inter-State river Cauvery, and the river valley thereof, cannot be settled by negotiations;

Now, therefore, in exercise of powers conferred by section 4 of the said Act, the Central Government hereby constitutes a Water Disputes Tribunal called “The Cauvery Water Disputes Tribunal”, with headquarters at New Delhi, consisting of the following members nominated in this behalf by the Chief Justice of India, for the adjudication of the water dispute regarding the inter-State river Cauvery, namely:-

- (i) Shri Justice Chittatosh Mookerjee - Chairman
Chief Justice of the Bombay High Court

(ii) Shri Justice S.D. Agarwala - Member
Judge of the Allahabad High Court

(iii) Shri Justice N.S. Rao - Member
Judge of the Patna High Court

By order and in the name of the President of India

{No.21/1/90-WD}
M.A. CHITALE, Secy. (Water Resources) “

2. The Government of India by its notification No.21/1/90-WD dated 2nd June 1990 referred the dispute for adjudication to the Tribunal saying:

"In exercise of the powers conferred by sub-Section (i) of Section 5, of the Inter-State Water Disputes Act, 1956 (Act 33 of 1956), the Central Government hereby refers to the Cauvery Water Disputes Tribunal for adjudication, the water disputes regarding the Inter-State river Cauvery, and the river valley thereof, emerging from letter No.17527/K.2/82-110 dated the 6th July, 1986 from the Government of Tamil Nadu (copy enclosed)."

The letter No.17527/K.2/82-110 dated 6th July, 1986 from the Government of Tamil Nadu:-

"From

Thiru H.B.N. Shetty, I.A.S.,
Commissioner and Secretary to
the Government of Tamil Nadu.

To

The Secretary to the Government of India,
Ministry of Water Resources,
Shram Shakti Bhavan,
NEW DELHI

Sir,

Sub:- River Cauvery - Dispute among the States on the use of its waters - Breach of Madras - Mysore Agreements of 1892 and 1924 - Request for adjudication.

Ref:-1. This Government's Letter No.79558/ D /69 dated 05.09.69 to the Secretary, Government of India, Ministry of Irrigation and Power.

2.This Government letter No.79558/D/69/36 dated 17,02,70 to the Secretary, Government of India, Ministry of Irrigation and Power.

3.This Government letter No.53724/1.Spl./75-06 dated 29,05,75 to the Secretary, Government of India, Ministry of Agriculture and Irrigation.

The Prayer:

I am to state that a water dispute with the Government of Karnataka has arisen by reason of the fact that the interests of the State of Tamil Nadu and the inhabitants thereof in the waters of Cauvery which is an inter-State river, have been affected prejudicially by -

(a) the executive action taken by the Karnataka State in constructing Kabini, Hemavathi, Harangi, Swarnavathi and other projects and expanding the ayacut --

(i) which executive action has resulted in materially diminishing the supply of waters to Tamil Nadu,

(ii) which executive action has materially affected the prescriptive rights of the ayacutdars already acquired and existing; and

(iii) which executive action is also in violation of the 1892 and 1924 agreements;

and

(b) the failure of the Karnataka Government to implement the terms of the 1892 and the 1924 Agreements relating to the use, distribution and control of the Cauvery waters.

The bilateral negotiations hitherto held between the States of Karnataka and Tamil Nadu have totally failed.

Also all sincere attempts so far made by the Government of India to settle this long pending water dispute by negotiations since 1970 have totally failed.

Therefore this request is made by the Government of Tamil Nadu to the Government of India under Section 3 of the Interstate Water Disputes Act, 1956 to refer this water dispute to a Tribunal.

The matters connected with the dispute and the efforts made for settling the dispute by negotiations are enumerated below:-

The River Cauvery

The river Cauvery rises in the Brahmagiri range of the western ghats in the Coorg district of Karnataka at an elevation of about 1340 m. Harangi, Hemavathi, Shimsha, Arkavathi, Lakshmanathirtha and Swarnavathi are the major tributaries joining the river Cauvery in the Karnataka territory. Kabini which drains the eastern slopes of the western ghats in the north Malabar district of Kerala State flows through Karnataka and joins the river Cauvery. At the place where Cauvery enters the Tamil Nadu State limits the Mettur Reservoir has been formed. Bhavani, Amaravathi and Noyil are the tributaries to the river in the Tamil Nadu State. Cauvery is thus an interstate river with an unique characteristic geographical layout in that its upper hilly catchment lying in the Karnataka and Kerala States is influenced by the dependable south-west monsoon during

the months June to September, while its lower part lies in the plains of the Tamil Nadu State served by the not so dependable north-east monsoon during the months October to December. The two parts of the catchment may be taken as meeting at the Hogenekal falls just above the Mettur Reservoir, where the river narrows down to form a single defined neck.

Development of Irrigation in the Cauvery Basin:

Irrigation in the basin started centuries ago all along the river course wherever the soil, land and the contours were favourable for raising irrigated crops, and as one proceeded downstream, the irrigated area increased culminating in the large delta that fans out below the Grand Anicut. The Grand Anicut structure itself is considered to be nearly 2000 years old and the irrigated agriculture in the delta must have been practiced much earlier. The Upper Anicut is considered to be the head of the delta as the river Cauvery carries essentially the irrigation waters from this point leaving the floods to be carried away by the Coleroon branch.

Prior to 1928 when the first storage in the basin viz. Krishnarajasagara of Karnataka came into operation, the total area irrigated in the basin was 19.80 lakh acres both major and minor, utilising about 510 TMC of water. This was all only through the diversion systems created over a period of time by several rulers and the people and the major part of this was in the delta area.

The Interstate Agreements of 1892 and 1924:

Copies of these two interstate agreements are enclosed for ready reference (Enclosure -1).

While the 1892 Agreement relates to all the main rivers listed in Schedule 'A' and the minor streams listed in Schedule 'B' of the agreement, the 1924 Agreement was framed and agreed to by both Mysore and Madras Governments in order to define the terms under which the Mysore Government were to construct the Krishnarajasagar dam across the River Cauvery and to provide for extension of irrigation in both the States utilising the flows in the River Cauvery. While the 1892 Agreement is a general agreement relating to a number of interstate rivers, the 1924 Agreement relates to the irrigation development in the basin of the interstate river Cauvery alone. Both the 1892 and 1924 Agreements are permanent.

The basic tenet enshrined in both these interstate agreements is that no injury could be caused to the existing irrigation lower down by the construction of new works upstream. And when such works are planned, the prior consent of the State Government of the lower down area is to be obtained and the rules of regulation so framed as not to make any material diminution in supplies to the established irrigation downstream. This is to ensure that nothing shall be done in Mysore which will have the effect of curtailing the customary supply of waters for the ancient ayacut in the lower riparian State.

The makers of the 1924 Agreement have in their mature wisdom, on due consideration and study of the unique characteristics of the basin and the irrigation developments that had already taken place, provided for a fair and equitable utilisation of the available waters and for parallel development of the new ayacut in both the States and rules of regulation meant to achieve the basic objective defined above, were also agreed upon.

Thus, Mysore Government was permitted to complete the Krishnarajasagar of capacity 44,827 M.cft. with an ayacut of 1,25,000 acres and also have other reservoirs of an effective capacity of 45,000 M.cft. with an ayacut of 1,10,000 acres under them. As against this, the Madras Government was permitted to construct the Mettur dam to form a reservoir of 93,500 M.cft. effective capacity and have new irrigation for 3,01,000 acres. Besides this, clause 10(xiv) entitled the Mysore Government to construct new reservoirs, on the tributaries of Cauvery, of capacities not exceeding 60% of the capacities of the reservoirs the Madras Government may choose to form on the tributaries Bhavani, Amaravathi or Noyyil.

Clause 10(xii) gave freedom to either of the States to extend irrigation if effected solely by improvement of duty, without any increase of the quantity of water used.

Clause 10(xi) of the 1924 Agreement provided for the reconsideration of certain clauses of the Agreement relating to extensions of irrigation in Mysore and Tamil Nadu on the expiry of 50 years i.e. in 1974. Only certain clauses of the Agreement viz. clauses 10(iv) to (viii) which deal with the utilisation of surplus waters for further extension in both Mysore and Tamil Nadu beyond what was contemplated in the 1924 Agreement are subject to revision on a mutually acceptable basis and in the light of the experience gained in the working of the Agreement.

Violation of the Interstate Agreements of 1892 and 1924 by Karnataka:

Four new reservoirs have been formed by the Government of Karnataka by constructing dams across the tributaries of Cauvery. Though the Government of India and the Central Water Commission have not so far cleared

these projects and the Planning Commission has also not approved these projects for plan assistance, the Government of Karnataka are proceeding with these projects in stages from their own funds under Non-Plan.

Name of the Reservoir	Capacity (TMC)	Year of start of work	Year of completion	Ultimate area to be irrigated (Lakh Acres)
Harangi	8.0	1968	1979	1.64
Kabini	16.0	1958	1975	4.54
Hemavathi	34.0	1968	1978	7.00
Suvarnavathy	1.1	1967	1973	0.07
	-----			-----
TOTAL	59.1			13.25

The extent of new ayacut proposed to be developed ultimately under these reservoirs totaling to about 13.25 lakh acres is far in excess of what was intended and permitted under the 1924 Agreement.

For none of these, they have obtained the prior consent of the Tamil Nadu Government. By this, they have violated the stipulation made in Clauses II and III of the 1892 Interstate Agreement. The rules for the working of these reservoirs which are to be framed as contemplated under Clause 10 (vii) and Clause 10 (xiv) of 1924 Agreement, so as to ensure that no material diminution occurs in the supplies due for Tamil Nadu and to keep such reduction within 5% during any impounding period have not been settled.

But the Karnataka Government started impounding the flows in all the above four new reservoirs from 1974 onwards acting unilaterally without any concern for the needs and rights of the Tamil Nadu Government and thereby have violated the terms and conditions stipulated in Clauses 10(vi), (vii), (viii) & (xiv) of the 1924 Agreement.

Tamil Nadu's concern:

In view of the grave threat which this unilateral action of the Mysore Government posed to the vast pre-existing irrigation in Tamil Nadu under the Cauvery, this Government in their letter dated as early as 16.4.1969 (Encl.II) appealed to the then Prime Minister of India to use her good offices in persuading the Mysore Government to conform to the Agreements between the two States and to desist from proceeding further with the execution of their schemes till interstate aspects were settled with this Government.

The then Prime Minister in her reply (Encl.III) dated 23.8.69 agreed that interstate aspects should be settled satisfactorily before these projects could be sanctioned and asked the Minister for Irrigation and Power to give a hand in amicably resolving the differences that had arisen. She even offered to intervene personally at a later stage if such intervention became necessary.

Tamil Nadu's first call for adjudication - September, 1969:

Seeing that the Government of Mysore were clearly not willing to honour their obligations under the interstate agreements and were bent upon proceeding with their major schemes, this Government in their letter dated 5th

September, 1969 (Enclosure-IV) addressed to the Government of India, requested the Government of India to make it clear to the Government of Mysore that any construction which will later on be found to be in contravention of the interstate agreements and to the prejudice of this State's interests will be at their own risk. In the same letter, we make the plea that if the Government of India are not able to ensure that the Government of Mysore honour their obligations as per the interstate agreements, we would like the matter to be referred for arbitration as we considered that it is better to do this earlier to avoid our Government being faced with a fait accompli by Mysore by unilaterally proceeding with the execution of their projects.

Unfortunately, our suggestion was not acted upon by the Government of India in time.

Tamil Nadu's formal request for adjudication - February 1970

Mysore Minister for Labour and Law who attended the special conference convened by the Union Minister for Irrigation & Power Dr.K.L.Rao on 09.02.70 declined to give an assurance that the two Interstate Agreements will be honoured by Mysore (Enclosure-V)

This confirmed that Mysore's violation of the two agreements was pre-planned, deliberate and intentional.

This Government lost no time in making a formal request to the Government of India under Section 3 of the Interstate Water Disputes Act of 1956. The request to refer the dispute to adjudication under Section 4 of the Interstate Water Disputes Act of 1956 was made in letter No.79558/D/69 -36 dated 17-02-70 (Enclosure VI).

Tamil Nadu's continued participation in the discussions and negotiations:

Despite the fact that it had become clear that the Mysore Government is intent on violating the interstate agreements, Tamil Nadu Government have been continuously participating the discussions and negotiations arranged through meetings convened by the Union Minister for Irrigation and Power in order to give a hand to the Union Minister in settling the issue that had arisen due to the violation by Mysore Government. Five such meetings were held in the year 1970 alone and in all these, Tamil Nadu have been pleading for the continued observance of the provisions of the interstate agreements. Kerala has also been participating in these interstate meetings as it acquired the status of a basin State with certain parts of the Cauvery catchment lying in the north Malabar area being included in Kerala through the States Reorganisation of 1956.

When the discussions held in the Chief Minister's meeting convened by the Union Minister on the 17th April and 16th May, 1970 and the discussions between the Chief Ministers of the States held in July'70 under the Chairmanship of the Chairman, Central Water Commission proved that there was no meeting point and the Mysore Government were not willing to abide by the two interstate agreements, the then Chief Minister of Tamil Nadu wrote to the then Prime Minister of India in letter No.65638/D/70 - 9 dated 4.8.1970 (Enclosure VII) referring to the formal request already made on 17.2.70 for adjudication through Tribunal and requesting her to pass orders for the reference of the dispute to the Tribunal under the Interstate Water Disputes Act of 1956.

At this stage, the then Union Minister for Irrigation and Power, Dr.K.L.Rao in his letter Confl. D.O.No. 14(1)/70-

WD dated 19.8.70 (Enclosure VIII) addressed to the then Chief Minister of Tamil Nadu categorically stated that the rules and regulations for the new Mysore projects should be worked out in accordance with the 1924 Agreement and requested him to permit his Engineers to attend a meeting on the 31st August, 1970. While gratefully acknowledging the letter and thanking him for the categorical assurance given therein, the then Chief Minister of Tamil Nadu in his letter D.O.No. 65638/D/70-II dated 25.08-1970 addressed to the Union Minister agreed to permit Tamil Nadu Engineers to attend the meeting, proposed for the 31st August, 1970. However this meeting ended fruitlessly.

At the conclusion of the series of talks ending with the last round on 27.10.1970, Dr. K.L. Rao, the then Union Minister for Irrigation and Power, announced that in his opinion, in view of the totally divergent stands taken by Mysore and Tamil Nadu, no settlement appeared possible and he would therefore report to the cabinet on the failure of the negotiations.

Following this, the then Chief Minister of Tamil Nadu in his D.O. letter No.65638/D/70-36 dated 8th November, 1970 (Enclosure IX) addressed to the then Prime Minister of India explained that he had been attending these meetings with a view to explore the possibilities of a negotiated settlement and since these hopes were belied, he insisted on urgent and immediate action being taken in the matter of referring the dispute to a Tribunal.

Filing of Suit by Tamil Nadu in the Supreme Court:

The Prime Minister of India was reminded through D.O. letter No. 65638/D/70-39 dated 06.12.70, letter No. 65638/D/70-45 dated 23.12.70, letter No. 65638/D/70 dated

01.04.71 and letter No. 65638/D/70-56 dated 05.06.71 (Enclosures X to XIII) from the Chief Minister of Tamil Nadu on the reference of the dispute to a Tribunal giving adequate and convincing reasons for this move, as the only alternative available.

As a last resort, the Chief Minister of Tamil Nadu approached the Prime Minister with the resolution passed by the Tamil Nadu Legislative Assembly and Legislative Council on 8th July 1971, and conveyed to the then Prime Minister in his letter No.65638/D/70, dated 11.07.71 (Enclosure XIII-A) the depth of feeling mounting in the State on the continued indifference to the plea for constitution of a Tribunal. This was also followed by another letter No. 65638/D/70-72 dated 19.07.71. (Enclosure XIII-B).

The Prime Minister however in her reply in letter No. 178-PMH/71 dated 19.07.71 (Enclosure XIII-C) referred to the Mysore State being then under the President's Rule and felt that it would not be proper to take steps committing the Mysore State when there was no popular Government.

Disappointed at the failure of all these efforts, the Tamil Nadu Government was driven to the situation of approaching the Supreme Court of India through Suit O.S.1/71 with a prayer to direct the Government of India to constitute a Tribunal as per the provisions of the Interstate Waters Disputes Act of 1956 and pending disposal of the Suit and till the disposal of the reference by the Tribunal, restrain the State of Karnataka by an injunction from proceeding in any manner with or executing their projects.

Prime Minister's Advice:

On the personal advice and assurance given by the then Prime Minister of India to the Chief Minister of Tamil Nadu that the Government of India would use their good

offices and strive for a negotiated settlement, the Suit filed in the Supreme Court was withdrawn without prejudice to the right for filing a Suit again if it became necessary.

The Cauvery Fact Finding Committee (CFFC):

In the meeting of the Chief Ministers of Tamil Nadu, Mysore and Kerala convened by the Union Minister for Irrigation and Power from 29.05.72 to 31.05.72, it was decided that a Committee would be constituted to collect factual details on the yield and utilisation of waters in the Cauvery basin. The Chief Ministers also agreed that pending settlement of the problem, no State would take any steps to make the solution of the problem difficult either by impounding or by utilising the waters of the Cauvery beyond what it was on 31.05.72 (Encl.XIV). However this understanding was flouted by Karnataka by continuing the work on their new projects and from 1974 onwards, they also started obstructing the flows due to Tamil Nadu.

The Government of India constituted the Cauvery Fact Finding Committee with experts in the field. This Government gave necessary co-operation and willingly submitted all the necessary data to the Cauvery Fact Finding Committee for compilation of its report which it submitted in December, 1972.

This report was considered by the Chief Ministers of the three States on 19th April, 1973 at a meeting held at New Delhi. As desired by the Chief Ministers, the Government of India revived the Cauvery Fact Finding Committee for a further period of three months with a mandate that "the Committee shall review the data supplied to it earlier by the State Governments in respect of area

cropped, net area irrigated, irrigated cropped area and other data relevant to water utilisation at different points of time and undertake such verification as is necessary, from other data available with the State Government especially those published".

Accordingly, the Cauvery Fact Finding Committee submitted its additional report on 14th August, 1973. The data compiled by this Committee were accepted by the Chief Ministers in the meetings convened on 29.04.73 and 09.10.73. Salient details of the findings of the Cauvery Fact Finding Committee are given in Enclosure- XV.

From the data compiled and given by the committee, it can be seen that as on 1971 - 72, the combined utilisation of waters in the Cauvery river in all the basin States was even more than the total annual yield and there was no surplus. This should have led to the logical conclusion that the review intended under Clause 10(xi) of the 1924 Agreement at the end of the 50 year period has been done and since there was no surplus, there is no need for reconsideration of the limitations and arrangements embodied in the Clauses 10(iv) to 10(viii) of the agreement and it should have been held that with the review prescribed after 50 years having been done, the agreement continues as a permanent instrument. However, the Government of India came up with a suggestion that further extension of ayacut in the basin may be possible if savings in the present uses are affected.

Interstate discussions continued on this basis all these long years with no fruitful results.

Consideration of the proposals put forth by the Union Government:

Though Tamil Nadu Government was convinced and firm in view that no modifications are necessary to the existing inter-State agreements, this Government without prejudice to its legal entitlement examined all suggestions made by the Union Government at various points of time since 1973 which are all known to the Government of India.

From 1973, the Union Government have convened as many as 13 meetings at the Chief Ministers' level to settle the dispute by negotiations. The Union Territory of Pondicherry was inducted as a party in this dispute from 1978 and participated in the discussions.

Draft proposals for negotiated settlement were put forth by the Union Government in 1974 for consideration by the State Governments (Enclosure XVI). Since the allocation contemplated was totally inadequate for meeting the requirements of the existing irrigation in Tamil Nadu and no protection to the existing irrigation was envisaged, the draft understanding was not agreed to by Tamil Nadu.

Finding that no settlement could be reached on the basis of negotiations even with the good offices of the Government of India and any further delay will further prejudice the interests of Tamil Nadu, the Secretary to Government of Tamil Nadu addressed the Secretary to the Government of India in the Ministry of Agriculture and Irrigation in letter No.53724/I.Spl./75-06, dated 29.05.75 requesting the Government of India as per provisions under Section 3 of the Interstate Water Disputes Act of 1956 to refer the Cauvery Water Dispute to a Tribunal for adjudication. (Enclosure - XVII).

However, the Government of India without acting on this request again convened another meeting of the basin

States and put up a similar draft understanding in August, 1976 for consideration by the States, when Tamil Nadu was under President's Rule (Encl. XVIII). This draft understanding of 1976 was the same as the one presented in 1974; but of course contained a Clause regarding protection to the existing areas under irrigation in a normal year, and provided for the constitution of a Technical Committee of representatives of the Central and State Governments to work out the manner of sharing of available waters in the lean years. Though a clause relating to protection of existing irrigation was included, the subsequent clauses which envisaged large savings in the existing uses and allocation of a meagre quantity of 393 TMC for use for Tamil Nadu made this clause ineffective.

Thus, both the draft proposals brought out by the Centre were duly considered but could not be accepted by this Government as they cut at the very root of the basic principle of priority of appropriation enshrined in the subsisting inter-State agreements and failed to give protection even to the existing age old ayacut, leave alone concede extension of irrigation in this State. However, our Engineers were persuaded to attend all the six Technical Committee meetings convened by the Member, Central Water Commission and they put forth in clear terms the minimum flows required at Mettur to safeguard the existing irrigation adopting the guidelines for scientific assessment of crop water requirements acceptable to the Commission. The Technical Committee could not come to any conclusion. The Chief Minister of Tamil Nadu wrote to the Union Minister for Irrigation explaining the circumstances under which he was unable to accept the draft understanding of August 1976 and offered to participate in

further discussions if a meeting was convened by the Union Minister (Enclosure-XIX).

The Chief Minister of Tamil Nadu in his D.O. Lr. No.103315/1.Spl./76 dated 29th August, 1978 (Enclosure XX) addressed to Government of India insisted on the need for an early solution to this long procrastinated dispute.

When the Union Minister for Agriculture and Irrigation decided in the meeting held at Madras on 27.12.1980 that each State shall furnish a draft proposal for the negotiated settlement, this Government explained its stand in unequivocal terms (Enclosure - XXI).

We were asked to explore the possibility of narrowing down the differences by holding bilateral talks with the Government of Karnataka, which also we did in all earnestness on the 14th and 15th of October, 1981. We found that Karnataka took a stand ignoring all the provisions of the two inter-State agreements and went to the extent of disowning their earlier concurrence to the findings of the Cauvery Fact Finding Committee and the draft understanding put up by the Government of India in August, 1976. The Chief Minister of Tamil Nadu wrote to the Government of India and to the then Chief Minister of Karnataka saying that there is no possibility of arriving at an amicable settlement through bilateral discussions and requested the Union Minister to convene a full meeting of the basin Chief Ministers (Enclosures - XXII & XXIII) to settle the dispute without any more delay.

At the interstate meeting convened by the Union Minister on 05.04.83, the Chief Minister of Karnataka, Thiru Ramakrishna Hegde suggested one more attempt at bilateral talks with the Chief Minister of Tamil Nadu which

was accepted vide summary record of the discussions (Enclosure - XXIV).

When data on the utilisation and area irrigated for the period from 1972 - 73 (i.e. beyond the period up to which the data was compiled by CFFC) were exchanged between the Governments of Tamil Nadu and Karnataka preparatory to the bilateral talks, it was seen that Karnataka had steeply increased their utilisation from their original 177 TMC agreed to by the Chief Ministers and that Karnataka does not feel that it has got obligations to limit their own new use of Cauvery waters in order to protect the existing interests in the lower riparian State. Our earlier fears that grave injury would be caused to Tamil Nadu irrigation were coming true very fast in real terms.

The Chief Minister of Tamil Nadu wrote to the Chief Minister of Karnataka and Government of India in January, 1984 proposing that further work on the projects may be deferred until final settlement of the Cauvery dispute (Enclosure - XXV & XXVI).

The Chief Minister of Karnataka sent a reply in his letter (Enclosure - XXVII) refusing to defer the works on these unauthorised projects.

Last bilateral discussions with Karnataka :

In the bilateral discussions held on 23.11.85 at Madras, the Chief Minister of Karnataka indicated that they need at least 360 TMC for utilisation in their State and at the most he may only defer further projects on hand aiming at an utilisation of another 60 TMC. Curiously this means that they are scheming to appropriate the entire Cauvery water obtained in their territory in a normal year without any concern about the grave injury they are causing to the existing rights of ayacutdars in Tamil Nadu and that they

are not prepared to honour their obligations under the inter-State agreements. Since the demands of Karnataka are very unreasonable and their continued obstruction and extraction of waters upstream is already inflicting grave injury to the existing irrigation in this State, the Chief Minister of Karnataka was informed in the meeting that the bilateral negotiations hitherto held to settle the dispute have totally failed and that no purpose will be served by continuing the bilateral discussions any more and that this Government will request the Government of India to constitute a Tribunal as per the Inter-State Water Disputes Act of 1956.

Chief Ministers' Meeting held at Bangalore on 16.06.86:

In the meeting convened by the Union Minister for Water Resources on 16.06.86 at Bangalore to settle the dispute by negotiations it was explained on behalf of Tamil Nadu that all serious efforts hitherto made to resolve the dispute by the Government of India for the past sixteen years have failed to bear any fruit and there is no scope at all for finding a solution by mutual discussions and the Union Minister was requested to take expeditious action to constitute a Tribunal.

This formal request for the constitution of a Tribunal is in pursuance of our decision conveyed to the Union Minister for Water Resources at that meeting.

Request for expeditious action in referring the dispute to a Tribunal:

From 1974 - 75 onwards, the Government of Karnataka has been impounding all the flows in their reservoirs. Only after their reservoirs are filled up, the surplus flows are let down. The injury inflicted on this State

in the past decade due to the unilateral action of Karnataka and the suffering we had in running around for a few TMC of water every time the crops reached the withering stage has been briefly stated in a note (Enclosure - XXVIII). It is patent that the Government of Karnataka have badly violated the inter-State agreements and caused irreparable harm to the age old irrigation in this State. Year after year, the realisation at Mettur is falling fast and thousands of acres in our ayacut in the basin are forced to remain fallow. The bulk of the existing ayacut in Tamil Nadu concentrated mainly in Thanjavur and Tiruchirapalli districts is already gravely affected in that the cultivation operations are getting long delayed, traditional double crop lands are getting reduced to single crop lands and crops even in the single crop lands are withering and failing for want of adequate wettings at crucial time. We are convinced that the inordinate delay in solving the dispute is taken advantage of by the Government of Karnataka in extending their canal systems and their ayacut in the new projects and every day of delay is adding to the injury caused to our existing irrigation.

The Government of Tamil Nadu are of the firm view that the water dispute with the Government of Karnataka has arisen by reason of the fact that the interests of the State of Tamil Nadu and the inhabitants thereof in the

waters of Cauvery, which is an interstate river have been affected prejudicially by -

(a) the executive action taken by the Karnataka State in constructing Kabini, Hemavathi, Harangi, Suvarnavathy and other projects and expanding the ayacuts -

(i) which executive action has resulted in materially diminishing the supply of waters to Tamil Nadu,

(ii) which executive action has materially affected the prescriptive rights of the ayacutdars already acquired and existing, and

(iii) which executive action is also in violation of the 1892 and 1924 Agreements

and

(b) the failure of the Karnataka Government to implement the terms of the 1892 and 1924 Agreements relating to the use, distribution and control of the Cauvery waters.

The bilateral negotiations hitherto held between the States of Karnataka and Tamil Nadu have totally failed.

Also all sincere attempts so far made by the Government of India to settle this long pending water dispute by negotiations since 1970 have totally failed.

I am therefore to request the Central Government to refer the Cauvery Water Dispute to a Tribunal for adjudication under the provisions of Section 4 of the Inter-State Water Disputes Act, 1956 without any delay.

Yours faithfully,

Sd/-

(H.B.N. SHETTY)

Commissioner & Secretary to Government,
Public Works Department "

3. Shri Justice Chittatosh Mookerjee, who was the Chairman of the Tribunal resigned in June 1996. An amendment was made in the Government of India, Ministry of Water Resources No. S.O. 437 (E) dated 2nd June 1990, in exercise of power conferred by section 4, read with section 5A of the Inter-State Water Disputes Act, 1956 (33 of 1956). The Central Government reconstituted the Tribunal on 11 December 1996:

“In the said notification, for item (i), the following item shall be substituted, namely:-

‘(i) Shri Justice N. P. Singh,

Judge of the Supreme Court Chairman.’”

4. When the evidence on behalf of the riparian States i.e., Tamil Nadu, Karnataka and Kerala and the Union Territory of Pondicherry had already been adduced and arguments of the party States had been heard so far Group I and Group II issues are concerned, unfortunately Hon'ble Shri Justice S.D. Agarwala expired on 26.11.2002. Because of the sad demise of Justice S.D. Agarwala, in exercise of power conferred by section 4, read with section 5A of the Inter-State Water Disputes Act, 1956 (33 of 1956) the Central Government again reconstituted the Tribunal vide notification dated 7th January 2003 as follows:-

“in the said notification for item (ii), the following item shall be substituted, namely,

‘Shri Justice Sudhir Narayan Agarwal

Judge of the Allahabad High Court..... Member”.

5. When the hearing of the reference case had commenced, the Tribunal directed the party States to file their Statements of case and affidavits and to furnish information in the Common Format by separate orders. The State of Tamil Nadu, the State of Karnataka, the State of Kerala and the Union Territory of Pondicherry filed their respective Statements of case, in support of their respective claims. The rejoinders and counter to the rejoinders were filed by the different States. Thereafter the affidavits of the witnesses which were to be examined on behalf of the different States were filed. From time to time on the basis of information sought by the Assessors, the States have supplied the information in Common Format.

6. On behalf of the State of Tamil Nadu, total 9 witnesses, viz, Shri A. Mohankrishnan (witness No.1), Dr B.B. Sundaresan, (witness No.2), Shri R. Rangachari, (witness No.3), Dr. M. S. Swaminathan, (witness No.4), Dr S. Krishnamurthy, (witness No.5), Shri T. R. Ramasamy, (witness No.6), Dr A.A. Ramasastry, (witness No.7), Shri V. Chandrasekaran, (witness No.8) and Dr. T. N. Balasubramanian, (witness No.9) were examined.

7. On behalf of the State of Karnataka, total 6 witnesses, viz, Shri K.R. Karanth, (witness No.1), Dr I.C. Mahapatra, (witness No.2), Dr J.S. Kanwar, (witness No.3), Dr D.M. Nanjundappa, (witness No.4), Prof. Rama Prasad (witness No.5) and Shri D.N. Desai, (witness No.6) were examined.

8. On behalf of the State of Kerala, total 4 witnesses, viz. Dr R. Gopalakrishnan, (witness No.1) Shri R. Balakrishnan Nair, (witness No.2), Shri K.E. Damodaran Nayanar, (witness No.3), and Dr E.J. James, (witness No.4) were examined.

9. On behalf of the Union Territory of Pondicherry Mr. Laurant Saint Andre, the only witness was examined.

10. The witnesses examined on behalf of one State were cross-examined by counsel appearing for other States and Union Territory of Pondicherry. The total pages of depositions on behalf of different States and Union Territory of Pondicherry come to about 10,000 pages. So far the documents and publication brought on record by the different party States in support of their respective claims run into more than 50,000 pages.

11. In view of the resignation of Hon'ble Mr Justice Chittaatosh Mookerjee, the then Chairman, and the sad demise of Hon'ble Mr Justice S.D. Agarwala, the party States had to open their case thrice and explained the issues involved. The arguments in respect of Group I and II issues by different riparian States had virtually been concluded before the sad demise of Mr Justice S.D. Agarwala. Because of the reconstitution of the Tribunal, the arguments in respect of Group I and II issues were again heard with Hon'ble Mr Justice Sudhir Narain, as a new Member.

12. The arguments and replies on behalf of the States of Kerala, Karnataka and Tamil Nadu and the Union Territory of Pondicherry concluded on 21.04.2006. Thereafter, matters as referred in orders of various dates (5.5.2006, 10.5.2006, 10.7.2006 and 11.7.2006) were considered and finally on 27.7.2006, the order in respect of report/decision under section 5(2) of Inter-State Water Disputes Act, 1956 was reserved.

Chapter 2

Background of the Cauvery Water Dispute

The river Cauvery the largest in Southern India rises near Mercara in the Coorg at an elevation of 1,341m. (4400 ft.) above the sea-level towards the western Ghat and takes an easterly course passing through States of Mysore/Karnataka and Madras/Tamil Nadu before joining the Bay of Bengal. The first important tributary to join the Cauvery, practically on the border of Coorg and Karnataka Districts, is Harangi. Other smaller tributaries like Kakkabe, Kadamur and Kummanhole join and continue to flow eastwards. Two important tributaries i.e. Hemavathy and Laxmanthirtha join Cauvery later. After it flows further eastwards below Krishnarajasagar it is joined by another important tributary i.e. Kabini. Thereafter, two tributaries i.e. Suvarnavathy from right and Shimsha from the left join the river Cauvery. After Sivasamudram it passes through the ghats and its width narrows down considerably. At places it has to pass through a gorge. After flowing through the gorge, the Cauvery continues its journey towards East and in that process it forms the boundary between Karnataka and Tamil Nadu for a distance of about 64 km. (40 miles). Yet another tributary i.e. Arkavathi joins the river just before it enters Tamil Nadu State.

2. At Hoganekal falls along the common border, the river takes its course towards South and enters the well-known Mettur reservoir in the State of Tamil Nadu. Thereafter its further journey continues. The Bhavani river joins it on the right bank about 45 km. (28 miles) below the

Mettur reservoir and it enters the plains of Tamil Nadu where more tributaries, the Noyil and the Amaravathy join. Immediately below the Upper Anicut, the river splits into two branches. The northern branch is called 'Coleroon' and the southern branch retains its original name. The Upper Anicut was constructed in the year 1886 to facilitate diversion of the low supplies of the river into Cauvery delta. The two branches join again forming Srirangam Island. It is said that Chola King constructed the Grand Anicut at the junction point below the island aforesaid which formed a great irrigation system in the Thanjavur district in the first century A.D. There is further split of the Cauvery; into two branches- one being called Cauvery and the other Vennar. The channels are used as canals for irrigating the fields in the Cauvery delta. Regulators have been provided to regulate the supply of water for distributing the Cauvery waters in the delta. The branches divide and sub-divide into innumerable smaller branches. The branch which retains the name of the Cauvery throughout its course enters the Bay of Bengal. The northern branch known as Coleroon after the bifurcation at the Upper Anicut as mentioned above continues to flow in the north-easterly direction also to enter the Bay of Bengal.

3. State-wise distribution of the total length of the river from the head to its outfall into the sea is, about 320 km. (198 miles) in the State of Karnataka (the then State of Mysore), 416 km. (258 miles) in Tamil Nadu and the remaining length of 64 km. (40 miles) forms the common boundary between the States of Karnataka and Tamil Nadu. The total

length of the river of Cauvery from the head to its outfall into the sea is 800 km. (496 miles). The total catchment of the Cauvery is 81,155 sq.km. of which the catchment of the river in Karnataka is about 34,273 sq. km., that in Kerala is about 2,866 sq. km. and the remaining area of 44,016 sq. km. in Tamil Nadu.

4. The river Cauvery which is a gift of nature to different States, through which it passes before reaching the Bay of Bengal, unfortunately has become a source of dispute and conflict between the State of Madras/Tamil Nadu and the State of Mysore/Karnataka for sharing its water for more than 150 years. In the middle of the nineteenth century, the Mysore Government while restoring their old irrigation works also wanted to build a number of new irrigation projects. This caused considerable anxiety to the then State of Madras, who were dependent on river Cauvery for their irrigation purposes. The Government of Madras took up the case with Mysore Government and the Government of India. Incidentally, it may be mentioned that the dispute also involved other rivers emanating from or flowing through Mysore into Madras Presidency. After great deal of discussions and correspondence an agreement was finally reached on 18th February 1892 covering inter-State rivers and it was framed in the form of Rules.

THE MADRAS-MYSORE AGREEMENT OF 1892

RULES DEFINING THE LIMITS WITHIN WHICH NO NEW IRRIGATION WORKS ARE TO BE CONSTRUCTED BY THE MYSORE STATE WITHOUT PREVIOUS REFERENCE TO THE MADRAS GOVERNMENT.

I. In these rules -

- (1) "New Irrigation Reservoirs" shall mean and include such irrigation reservoirs or tanks as have not before existed, or, having once existed, have been abandoned and been in disuse for more than 30 years past.
- (2) A "New Irrigation Reservoir" fed by an anicut across a stream shall be regarded as a "New Reservoir across" that stream.
- (3) "Repair of Irrigation Reservoirs" shall include (a) increase of the level of waste weirs and other improvement of existing irrigation reservoirs or tanks, provided that either the quantity of water to be impounded, or the area previously irrigated, is not more than the quantity previously impounded, or the area previously irrigated by them; and (b) the substitution of a new irrigation reservoir for and in supersession of an existing irrigation reservoir, but in a different situation or for and in supersession of a group of existing irrigation reservoirs provided that the new work either impounds not more than the total quantity of water previously impounded by the superseded works, or irrigates not more than the total area previously impounded by the superseded works, or irrigates not more than the total area previously irrigated by the superseded works.
- (4) Any increase of capacity other than what falls under "Repair of Irrigation Reservoirs" as defined above shall be regarded as a "New Irrigation Reservoir".

II. The Mysore Government shall not, without the previous consent of the Madras Government or before a decision

under rule IV below build (a) any "New Irrigation Reservoirs" across any part of the fifteen main rivers named in the appended Schedule A, or across any stream named in Schedule B below the point specified in column (5) of the said Schedule B, or in any Schedule A, Nos.4 to 9 and 14 and 15, or across any of the streams of Schedule B, or across the following streams of Schedule A, lower than the points specified hereunder:

Across 1 Tungabhadra- lower than the road crossing at Honhalli

" 10. Cauvery - lower than the Ramaswami anicut, and

" 13. Kabini - lower than the Rampur anicut.

- III When the Mysore Government desires to construct any "New Irrigation Reservoir" or any new anicut requiring the previous consent of the Madras Government under the last preceding rule, then full information regarding the proposed work shall be forwarded to the Madras Government and the consent of the Government shall be obtained previous to the actual commencement of work. The Madras Government shall be bound not to refuse such consent except for the protection of prescriptive right already acquired and actually existing, the existence, extent and nature of such right and the mode of exercising it being in every case determined in accordance with the law on the subject of prescriptive right to use of water and in accordance with what is fair and reasonable under all the circumstances of each individual case.
- IV Should there arise a difference of opinion between the Madras and Mysore Government in any case in which the consent of the former is applied for under the last

preceding rule, the same shall be referred to the final decision either of arbitrators appointed by both Governments, or of the Government of India.

- V The consent of the Madras Government is given to new irrigation reservoirs specified in the appended Schedule C, with the exception of the Srinivasasagara new reservoir, across the Pennar, the Ramasamudram new reservoir across the Chitravati, and the Venkatesasagara new reservoir across the Papaghni. Should, owing to omission of the Mysore Government to make or maintain these works in reasonably adequate standard of safety, irrigation works in Madras themselves in a condition of reasonably adequate safety, be damaged, the Mysore Government shall pay to the Madras Government reasonable compensation for such damage.

As regards the three new reservoirs excepted above the admissibility of any compensation from Mysore to Madras on account of loss accruing to Madras irrigation works from diminution of supply of water caused by the construction of the said works, will be referred to the Government of India whose decision will be accepted as final, and should such compensation be decided to be admissible, the decision of the Government of India as to the amount thereof will be accepted, after submission to them of the claims of Madras which would be preferred in full detail within a period of five years after the completion of said works.

- VI The foregoing rules shall apply as far as may be to the Madras Government as regards streams flowing through British territory into Mysore.

Schedule A

<u>Main rivers</u>			<u>Remarks.</u>
1. Thungabhadra	...	.....	.....
2. Tunga	...	.....	Tributary of Thungabhadra.
3. Bhadra	...	....	Do
4. Hagari or Vedavati	....	.....	Do
5. Pennar or Northern Pinakini	.....	.....	.....
6. Chitravati	.....	.....	Tributary of Pennar or Northern Pinakini
7. Papaghni	....	....	Do
8. Palar	...	.....	Do
9. Pennar* or Southern Pinakini	.....	.....	.....
10. Cauvery	...	....	.....
11. Hemavathi	...	....	Tributary of the Cauvery.
12. Laxmanthirtha	.....	....	Do
13. Kabini	....	....	Do
14. Honhole (or Suvernavathy)....	.....	.....	Do
15. Yagachi, up to the Belur Bridge	...	.....	Tributary of the Hemavathi.

*Known as the 'Ponniaar' in Madras (Statement of Case of Govt. of Tamil Nadu Vol; II 14-15)

5. It appears that some time in the year 1910 the Government of Mysore formulated its proposal for a reservoir on the Cauvery at Kannambadi and sought the consent of Madras Government in terms of the aforesaid agreement of the year 1892. As difference and conflict arose in respect of this project between the two States, the dispute was referred to Arbitration in accordance with the Agreement of the year 1892. Sir H.D. Griffin, a Judge of the High Court of Allahabad was

appointed Arbitrator. The proceedings began on 16.7.1913 and concluded on 12.5.1914. The award which was given was not acceptable to the State of Madras. Then objection was filed before the Government of India. The Government of India, however, did not consider desirable to interfere with the said award. Thereafter, the Madras Government preferred an appeal to the Secretary of State in July, 1916 requesting for an intervention in the matter in view of the serious injury which was likely to be caused to the existing irrigated areas in the State of Madras. The then Government of Mysore objected to the appeal preferred by the Government of Madras before the Secretary of State. But the Secretary of State in November 1919 came to the conclusion that there was a prima facie case for interfering the award on the ground of error and different options were given to the Mysore Government in respect of the dispute regarding sharing of the waters. Ultimately after negotiations another agreement was signed on 18th February 1924 between the Governments of Madras and Mysore which is as follows:

Agreement between the Mysore and Madras Governments In regard to the construction of a dam and reservoir at Krishnarajasagar - 18th February 1924.

AGREEMENT

1. WHEREAS by an agreement, dated 18th February 1892, commonly known and cited as the 1892 agreement, entered into between the Government of His Highness the Maharaja of Mysore hereinafter referred to as the Mysore Government and the Government of Madras, hereinafter referred to as the

Madras Government, certain rules and schedules, defining the limits within which the new irrigation works are to be constructed by the Mysore Government without previous reference to the Madras Government were framed and agreed to; and

2. WHEREAS under clause III of the said agreement the Mysore Government asked for the consent of the Madras Government to the construction of a dam and a reservoir across and on the river Cauvery at Kannambadi now known as the Krishnarajasagar dam and reservoir; and

3. WHEREAS dispute arose as to the terms under which the Mysore Government were to construct the dam in the manner and form proposed by them; and

4. WHEREAS such dispute was referred to the arbitration of Sir H.D. Griffin who gave an award in the year 1914 as to the terms and conditions under which the Madras Government should consent to the construction of the said dam and reservoir; and

5. WHEREAS the Madras Government, after the said award of the said arbitration was ratified by the Government of India, appealed to the Secretary of State for India who re-opened the question; and

6. WHEREAS hereupon the Mysore Government and the Madras Government with a view to an amicable settlement of the dispute entered into negotiations with each other; and

7. WHEREAS the result of such negotiations, certain Rules of Regulation of the Krishnarajasagara reservoir were framed and agreed to by the Chief Engineers of the Mysore and

Madras Governments on the 26th day of July of the year 1921, such Rules of Regulations forming Annexure I to this agreement; and

8. WHEREAS thereafter the technical officers of two Governments have met in conference and examined the question of irrigation in their respective territories with a view to reaching an amicable arrangement; and

9. WHEREAS the result of such examination and conference by the technical officers of the two Governments, certain points with respect to such extension were agreed to respectively by the Chief Engineer for Irrigation, Madras, and the Special Officer, Krishnarajasagara Works at Bangalore, on the 14th day of September 1923, such points forming Annexure III to this agreement.

10. NOW THESE PRESENTS witness that the Mysore Government and the Madras Government do hereby agree and bind themselves, their successors and representatives as follows:-

- (i) The Mysore Government shall be entitled to construct and the Madras Government do hereby assent under clause III of the 1892 agreement to the Mysore Government constructing a dam and a reservoir across and, on the river Cauvery at Kannambadi, now known as the Krishnarajasagara, such dam and reservoir to be of a storage capacity of not higher than 112 feet above the sill of the under-slucies now in existence corresponding to 124 feet above bed of the river before construction of the dam and to be of the effective capacity of 44,827 million cubic feet, measured from the sill of the irrigation

sluices constructed at 60 feet level above the bed of the river up to the maximum height of the 124 feet above the bed of the river; the level of the bed of the river before the construction of the reservoir being taken as 12 feet below the sill level of the existing under-sluices; and such dam and reservoir to be in all respects as described in schedule forming Annexure II to this agreement.

(ii) The Mysore Government in their part hereby agree to regulate the discharge through and from the said reservoir strictly in accordance with the Rules of Regulation set forth in the Annexure I, which Rules of Regulation shall be and form part of this agreement.

(iii) The Mysore Government hereby agree to furnish to the Madras Government within two years from the date of the present agreement dimensioned plans of anicuts and sluices or open heads at the off-takes of all existing irrigation channels having their source in the rivers Cauvery, Lakhmanathirtha and Hemavathi, showing thereon in a distinctive colour all alterations that have been made subsequent to the year 1910, and further to furnish maps similarly showing the location of the areas irrigated by the said channels prior to or in the year 1910.

(iv) The Mysore Government on their part shall be at liberty to carry out future extensions of irrigation in Mysore under the Cauvery and its tributaries to an extent now fixed at 110,000 acres. This extent of new irrigation of 110,000 acres shall be in addition to and irrespective of the extent of irrigation permissible under

the Rules of Regulation forming Annexure I to this agreement, viz. 125,000 acres plus the extension permissible under each of the existing channels to the extent of one-third of the area actually irrigated under such channel prior to 1910.

(v) The Madras Government on their part agree to limit the new area of irrigation under their Cauvery Mettur Project to 301,000 acres, and the capacity of the new reservoir at Mettur above the lowest irrigation sluice, to ninety-three thousand five hundred million cubic feet:

Provided that, should scouring sluices be constructed in the dam at a lower level than the irrigation sluice, the dates on which such scouring sluices are opened shall be communicated to the Mysore Government.

(vi) The Mysore Government and the Madras Government agree with reference to the provisions of clauses (iv) and (v) preceding, that each Government shall arrange to supply the other as soon after the close of each official or calendar year, as may be convenient, with returns of the areas newly brought under irrigation, and with the average monthly discharges at the main canal heads, as soon after the close of each month as may be convenient.

(vii) The Mysore Government on their part agree that extension of irrigation in Mysore as specified in clause (iv) above shall be carried out only by means of reservoirs constructed on the Cauvery and its

tributaries mentioned in Schedule A of the 1892 agreement. Such reservoirs may be of an effective capacity of 45,000 million cubic feet in the aggregate and the impounding therein shall be so regulated as not to make any material diminution in supplies connoted by the gauges accepted in the Rules of Regulation for the Krishnarajasagara forming Annexure I to this agreement, it being understood that the rules for working such reservoirs shall be so framed as to reduce to within 5 per cent any loss during any impounding period by the adoption of suitable proportion factors, impounding formula or such other means as may be settled at the time.

(viii) The Mysore Government further agree that full particulars and details of such reservoir schemes and of the impounding therein shall be furnished to the Madras Government to enable them to satisfy themselves that the conditions in clause (vii) above will be fulfilled. Should there arise any difference of opinion between the Madras and Mysore Governments as to whether the said conditions are fulfilled in regard to any such scheme or schemes, both the Madras and Mysore Governments agree that such difference shall be settled in the manner provided in clause (xv) below.

(ix) The Mysore Government and the Madras Government agree that the reserve storage for power generation purposes now provided in the Krishnarajasagara may be utilized by the Mysore Government according to their convenience from any other reservoir hereafter to be constructed, and the storage thus released from the Krishnarajasagara may

be utilized for new irrigation within the extent of 110,000 acres provided for in clause (iv) above.

(x) Should the Mysore Government so decide to release the reserve storage for power generation purposes from the Krishnarajasagara, the working tables for the news reservoir from which the power water will then be utilized shall be framed after taking into consideration the conditions specified in clause (vii) above and the altered conditions of irrigation under the Krishnarajasagara.

(xi) The Mysore Government and the Madras Government further agree that the limitations and arrangements embodied in clauses (iv) to (viii) supra shall, at the expiry of fifty years from the date of the execution of these presents, be open to reconsideration in the light of the experience gained and of an examination of the possibilities of the further extension of irrigation within the territories of the respective Governments and to such modifications and additions as may be mutually agreed upon as the result of such reconsideration.

(xii) The Madras Government and the Mysore Government further agree that the limits of extension of irrigation specified in clauses (iv) and (v) above shall not preclude extensions of irrigation effected solely by improvement of duty, without any increase of the quantity of water used.

(xiii) Nothing herein agreed to or contained shall be deemed to qualify or limit in any manner the operation

of the 1892 agreement in regard to matters other than those to which this agreement relates or to affect the rights of the Mysore Government to construct new irrigation works on the tributaries of the Cauvery in Mysore not included in Schedule A of the 1892 agreement.

(xiv) The Madras Government shall be at liberty to construct new irrigation works on the tributaries of the Cauvery in Madras and, should the Madras Government construct, on the Bhavani, Amaravathy or Noyyil rivers in Madras, any new storage reservoir, the Mysore Government shall be at liberty to construct as an off-set, a storage reservoir, in addition to those referred to in clause (vii) of this agreement on one of the tributaries of the Cauvery in Mysore, of a capacity not exceeding 60 per cent of the new reservoir in Madras.

Provided that the impounding in such reservoirs shall not diminish or affect in any way the supplies to which the Madras Government and the Mysore Government respectively are entitled under this agreement, or the division of surplus water which, it is anticipated will be available for division on the termination of this agreement as provided in clause (xi).

(xv) The Madras Government and the Mysore Government hereby agree that, if at any time there should arise any dispute between the Madras Government and the Mysore Government touching the interpretation or operation or carrying out of this agreement, such dispute shall be referred for

settlement to arbitration, or if the parties so agree shall be submitted to the Government of India.

18th February, 1924
Madras

P. HAWKINS,
Secretary to the Government,
Public Works Department,

18th February 1924

A.R. BANERJI
Dewan of Mysore

The relevant part of Annexure I referred to in clause 10(ii) is as follows:

"Limit Gauges and Discharges at the Upper Anicut

7. The minimum flow of the Cauvery that must be ensured at the upper anicut before any impounding is made in the Krishnarajasagara, as connoted by the readings of the Cauvery dam north gauge, shall be as follows:-

<i>Month</i>		<i>Readings of the Cauvery Dam North gauge.</i>
June	..	Six and a half feet.
July and August	..	Seven and a half feet
September	..	Seven feet.
October	..	Six and a half feet.
November	..	Six feet.
December	..	Three and a half feet.
January	..	Three feet.

8. The discharges connoted by the gauge readings set forth in rule 7 shall, in the case of regulation during the irrigation season (vide rule 9) of 1921, be deducted from the average discharge curve derived from the joint gaugings of the Cauvery at the Cauvery dam made in the four years ending 1920. The said discharges shall be revised, if necessary, after completion of the joint gaugings of 1921 and shall be used for the purpose of regulation for the five years ending 1926. The said discharges shall be finally revised and adopted for all subsequent regulation, at the conclusion of the joint gauging of the year 1926, on the basis of the joint gaugings of the ten years ending 1926.

9. The south-west monsoon shall, for the purpose of these rules be considered to extend from the 1st June to the 30th September, both days inclusive, and the north-east monsoon from the 1st October to the 31st January, both days inclusive. The irrigation season shall be taken to extend from the 1st June to the 31st January, both days inclusive. All dates in this rule shall have reference to the Upper Anicut.”

6. Annexure III to the agreement of 1924 is in respect of extent of future extensions of irrigation in Mysore and Madras. The relevant part thereof is as follows:

“2. The extent of future extension of irrigation in Mysore under the Cauvery and its tributaries mentioned in Schedule A of the 1892 agreement shall be fixed at 110,000 acres, and Madras shall have their Cauvery-Mettur project as revised in 1921 with their

new area of irrigation fixed at 301,000 acres, as specified in paragraph 11, page 4 of the Project Report (1921) Volume V.”

7. Yet another agreement was entered into between the Government of Mysore and the State of Madras in the year 1929 to clarify rules 7 and 8 of the Rules of Regulation of the Krishnarajasagara reservoir which is as follows:

"AGREEMENT

WHEREAS on the 18th February 1924 an agreement between the Governments of Mysore and Madras was signed and whereas by clause 10(2) of the said agreement the Mysore Government agreed to regulate the discharge through and from the Krishnarajasagara reservoir strictly in accordance with the Rules of Regulation being Annexure I to the said agreement;

and

WHEREAS disputes had arisen between the two Governments in regard to the interpretation, operation and carrying out of rules 7 and 8 of the said Rules and Regulation;

and

WHEREAS both the Governments have submitted the matters in dispute to the Arbitration of the Honourable Mr. Justice Page with Messrs. Howley and Forbes as assessors.

Now the two Governments have agreed in lieu of an award in that behalf to adopt finally for all Regulation subsequent to 1st July 1929, the following discharges for the respective months in place of the averages referred to in clause 8 of Annexure I:-

June for 6 ¹ / ₂ feet gauge ...	29,800 cusecs.
July and August for 7 ¹ / ₂ ft. gauge ..	40,100 "
September for 7 feet gauge .	35,000 "
October for 6 ¹ / ₂ feet gauge	29,800 "

November for 6 feet gauge	..	25,033	"
December for 3 ¹ / ₂ feet gauge	..	8,913	
January for 3 feet gauge	..	6,170	"

and in rule 10, defining the impounding formula, C will denote the said above mentioned discharges.

THIS agreement is without prejudice to the other questions outstanding between the parties in regard to the clauses of the agreement other than clauses 7 and 8 of the Rules of Regulation.

17th June 1929.

(Signed) R. RANGA RAO
Officiating Chief Secretary
to the Govt. of Mysore

(Signed) A.G. LEACH,
Secretary to the Government
Public Works and Labor
Department, Madras."

8. Clause 10(xi) of the agreement provided for reconsideration of the limitations and arrangements mentioned in clause 10(iv) to (viii) dealing with the construction of the new reservoirs, on the expiry of 50 years, i.e. in the year 1974.

9. After the re-organisation of States in November 1956 part of the Cauvery catchment in erstwhile North Malabar district (present Wynad district) came under the Kerala State, along with part of Bhavani sub-basin of then Madras and portion of Amravathy (Pambar) sub-basin, which was in Travancore State became part of Kerala because of which Kerala has now become a Cauvery basin State. Similarly, since part of the Cauvery delta command lies in the Karaikal region of the Union

Territory of Pondicherry, Pondicherry has also been included in the group of Cauvery basin States.

10. Fresh disputes arose between States of Tamil Nadu and Mysore/Karnataka when according to the State of Tamil Nadu, the State of Karnataka unilaterally started construction of the following irrigation projects on the tributaries of the Cauvery:

The Kabini Reservoir Project
The Hemavathy Reservoir Project,
The Harangi Reservoir Project, and
The Suvarnavathy Reservoir Project.

11. The construction of the aforesaid projects by the State of Karnataka was objected by Tamil Nadu, on an apprehension that this will cause a danger to the existing irrigation system in Tamil Nadu. The objection was also raised on the ground that such action on the part of the State of Karnataka was against the terms and spirit of aforesaid agreements of the years 1892 and 1924. No consent or concurrence of Tamil Nadu had been obtained in terms of those agreements. It was also pointed out that the projects had not been cleared by the Government of India and were being executed unilaterally in contravention of the agreements. It appears that Government of India held several meetings and conferences to sort out the dispute between two States. When no solution came forward, the Tamil Nadu Government on 17.2.1970 made a formal request to the Government of India under Section 3 of the Inter-State Water Disputes Act of 1956 to refer the Cauvery Water Dispute to a

Tribunal for adjudication. Even thereafter further meetings of the Chief Ministers and Union Minister for Irrigation and Power were held to sort out the differences. In August 1971 the State of Tamil Nadu filed a Suit (O.S.1 OF 71) before the Supreme Court of India with a prayer to direct the Government of India to constitute a Tribunal as per the provisions of the Inter-State Water Disputes Act of 1956 and pending disposal of the Suit to restrain the State of Karnataka by an injunction from proceeding with their projects which were under construction. It is reported that on assurance having been given by the then Prime Minister of the Government of India to negotiate settlement between the two States the Suit aforesaid was withdrawn in July 1972.

12. In the meeting of the Chief Ministers of the States of Tamil Nadu, Karnataka and Kerala which had been called by the Union Minister for Irrigation and Power in May 1972, it was decided that a Committee should be constituted to collect factual details in respect of the yield and utilisation of water in the Cauvery basin. The terms of the reference was as follows:

- (i) To collect all the connected data pertaining to Cauvery waters; its utilisation at different points of time; irrigation practices; as well as projects both existing, under construction, and proposed in the Cauvery basin.
- (ii) To examine adequacy of the present supplies or excessive use of water for irrigation purposes.
- (iii) To collect data relevant to the use of water in different States like the physical and other features; cultivated areas; existing and

proposed uses for domestic and industrial water supply; hydro-electric power generation, navigation, salinity control and other non-irrigational purposes.

(iv) Any other connected matters.

13. An agreement to that effect was put in the form of "Note on discussion regarding Cauvery held at New Delhi on 29th May 1972". On basis of the report of the Cauvery Fact Finding Committee several discussions were held to arrive at a settlement. Draft proposals brought out by the Government of India were considered by the States of Karnataka and Tamil Nadu but no agreement could be arrived at.

14. According to the State of Tamil Nadu while negotiations and discussions were going on at different levels, the State of Karnataka went ahead with its projects under construction. It appears that in an inter-State meeting held in Bangalore in June 1986 a stand was taken by the Tamil Nadu Government that all efforts to resolve the dispute having failed during the past 16 years the dispute be referred to a Tribunal in accordance with the provisions of the Inter-State Water Disputes Act, 1956. It may be mentioned that prior to that, Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam had filed a Writ Petition No.13347 of 1983 under Article 32 of the Constitution of India for a writ of mandamus directing the Union of India to refer the dispute relating to the utilisation of the Cauvery river water for adjudication by the Tribunal to be constituted under the Inter-State Water Disputes Act 1956. By an order dated 4th May 1990 passed

on the said Writ Petition the Supreme Court after giving brief background of the dispute directed '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 the said order and judgment. [The order dated 4th May 1990 is reported in AIR 1990 SC 1316.]

Chapter 3

The claim of the Riparian States for share of waters of Cauvery

Statements of case on behalf of the State of Karnataka, State of Tamil Nadu, State of Kerala and Union Territory of Pondicherry were filed along with documents supporting their respective claims. The claims of different riparian States and Union Territory of Pondicherry in respect of sharing of the waters are being put in brief in this Chapter because all these claims have been considered in detail with reference to documents, evidence, opinion of experts and other circumstances in later part of this Report in other chapters.

2. Before independence, the then Chief Commissioner's Province of Coorg, the Princely State of Mysore and the Province of Madras were the Co-riparian States. The Cauvery basin also comprised parts of the then Princely States of Travancore and Pudukottai, now part of State of Kerala and the State of Tamil Nadu respectively. After the changes brought about subsequent to re-organisation of States in 1956, the river now covers four States. It flows through Co-riparian States of Karnataka and Tamil Nadu whereas portions of basin area lie within the territories of State of Kerala and Union Territory of Pondicherry. Coorg which was once a Princely State and had become the centrally administered Chief Commissioner's Province prior to independence, after re-organisation of States in 1956 became part of the new State of Mysore (now Karnataka) known as district of Coorg (now called Kodagu). The Princely State of

Travancore merged into the Indian Union after independence and a combined State of Travancore and Cochin along with parts of districts of South Kanara, Cannanore, Kozhikode and Palghat which were part of the erstwhile State of Madras formed the new State of Kerala. So far Princely State of Pudukottai with an area of about 381 sq. km. in the Cauvery basin became part of State of Madras and now forms part of State of Tamil Nadu.

3. The erstwhile Princely State of Mysore was re-organised under the States Re-organisation Act of 1956 comprises the following territories:

1. The pre-1956 Part-B State of Mysore (including Bellary District) ;
2. Belgaum district (except Chandgad taluk) and Bijapur, Dharward and Uttara Kannada districts from the former Bombay State;
3. Gulbarga district (except Kodangal and Tandur taluks),Raichur district (except Alampur and Gadwal taluks) and Bidar district (except Ahmadpur, Nilanga and Udgir taluks) from the former State of Hyderabad;
4. Dakshina Kannada district (except Kasargod taluk and Amindivi islands) and Kollegal taluk of Coimbatore district from the former Madras State; and
5. The Part-C State of Coorg.

4. The re-organisation of States has also affected the area of Cauvery basin in different States and territories referred to above. The State of Tamil Nadu has now an area of about 43,868 sq. km. of the

Cauvery basin reducing the basin area from about 49,136 sq. km. which was in the former State of Madras. The area of the Cauvery basin in the erstwhile State of Mysore (now Karnataka) which was about 28,887 sq. km. has been enhanced by 5386 sq. km. The total area of the Cauvery basin in Karnataka is about 34,273 sq. km. So far area of Cauvery basin in the State of Kerala is about 2866 sq. km. inclusive of about 384 sq. km. of the erstwhile State of Travancore which has become part of the State of Kerala. So far the French territory of Pondicherry is concerned, it became Union Territory under the Constitution of India and its Karaikal region is about 148 sq. km. containing Cauvery delta.

THE CLAIM OF THE STATE OF KERALA

5. According to the State of Kerala river Cauvery originates on the eastern slopes of the western ghats and has its huge catchment spread over the States of Kerala, Karnataka and Tamil Nadu. Three tributaries of the river, namely, Kabini, Bhavani and Pambar have portions of their catchments in the State of Kerala. It has been asserted that Kerala's contribution to the total run-off amounts to 20%, but the said State lags behind the others so far utilisation of the waters of the Cauvery are concerned. There are some historical reasons as well for this situation. Before the re-organisation of the States in the year 1956, neither Travancore nor Travancore-Cochin State was recognised as an interested party in the dispute of sharing the water of Cauvery. After the re-organisation of the State, determined efforts have been made for improvement of the basin and diversion of the water in Cauvery basin for

utilisation by the State, but their several claims had been objected to by other riparian States. Several claims have been prepared which have been found to be technically feasible and economically viable, but they could not be executed because of the attitude of other lower riparian States and ultimately the State of Kerala had to be dependent on single crop of paddy. There is much scope for raising second or even third crop with availability of irrigation facilities from the water available in Cauvery basin. The terrain is undulating and the ground water potential is negligible in the State. Because of the special topographical feature of the Cauvery basin in the State of Kerala, the diversion of the water from Cauvery basin offers the scope for development of the cheap hydro-electric power in addition to meeting the need for consumption of water for irrigation purposes. In spite of several negotiations with the neighbouring States with the help of the Government of India the projects prepared for development of the State in respect of the water in the Cauvery basin within the State of Kerala could not materialise. According to the State of Kerala along with re-organisation the question of re-allocation of Cauvery water among the basin States should have been settled or at least an interim allocation should have been made so that each State could plan its schemes while Kerala was barred from taking up any scheme in the basin, Tamil Nadu proceeded with new constructions utilising Cauvery water for extending irrigation. The Mettur canal project, Kattalai high level canal and the Pullambadi Canal Scheme were taken up and the Government of India cleared these projects.

Karnataka also embarked upon new irrigation projects utilising Cauvery water even without clearance from the Government of India.

STATE OF KARNATAKA

6. The stand of the Karnataka is that until the end of the 19th century, utilisation of waters of the Cauvery in the States of Coorg and Mysore was primarily from channels drawn from the river bed and from tanks in small quantities not exceeding 2067 Mm³ (73 TMC) in aggregate. There was no facility of storage, agricultural operations depended on the rainfall. The efforts made by the State of Mysore to utilise the waters of Cauvery for purposes of irrigation were frustrated by the continued protests of the British Government of Madras. The State of Mysore being the upper riparian which contributed highest flow to the river was not allowed to exercise its powers so far utilisation of waters for irrigation was concerned, because of the protests made by the lower riparian Province of Madras. After lot of correspondence in the late part of 19th century and the early 20th century and the subsequent arbitration proceedings the scheme for storage of the water of Cauvery could be achieved only in 1931, after construction of the Krishnaraja Sagara Dam for the storage of 1269 Mm³ (44.8 TMC) of water. It has also been pointed out that by 1934, Madras had completed the work of Mettur Dam for storage of 2648 Mm³ (93.5 TMC) of water of Cauvery enabling the cultivation of over 1,21,457 ha (3,00,000 acres) of new area. It is said that after re-organisation of States and formation of the State of Karnataka covering

the areas of the new State of Mysore and others 42.2% of the drainage area of the Cauvery basin is in Karnataka.

7. The principal tributaries of Cauvery in Karnataka are Harangi, the Hemavathy, the Lakshmanathirtha, the Kabini, the Shimsha and the Arkavathi. All these rivers except Kabini rise and flow fully in Karnataka. Another tributary, Suvarnavathy rises in Tamil Nadu and flows for a short length, in that State and then flows for the major length before joining the Cauvery above Sivasamudram in Karnataka. The Cauvery river valley receives varying degrees of rainfall. Western and Central parts of the basin receive rainfall in South-West monsoon starting from last week of May and ending in September. The eastern part is largely helped by North-East monsoon starting in September and ending in December. It has been pleaded that from the rainfall studies it shall appear that Karnataka suffers most, having large cultivable areas with inadequate rainfall. It has been pointed out that although in the hilly regions forming part of the Western Ghat system in Karnataka receive very heavy rainfall, yet other parts of the districts of Mysore, Mandya, Hassan, Tumkur, Bangalore and Kolar are severely plagued by successive droughts. Same is not the position of the basin falling in Tamil Nadu. The eastern part of the basin in Tamil Nadu receives heavy rainfall of North-East monsoon beginning from the end of September and ending in December. The Central part of the basin in Tamil Nadu receives both South-West monsoon and North-East monsoon. On basis of report of Irrigation Commission, 1972 Vol. I, page 166 it has been alleged that Karnataka

has the largest extent of drought prone area in the Cauvery basin, although it has very large areas of cultivable and cultivated lands in the Cauvery basin. There is an imperative need to give relief to such areas by providing proper irrigation facilities. The State has to depend on surface water allocation in the Cauvery basin because of uncertain ground water resources due to reduced recharge, general deep water table and low storage in the aquifer. In respect of the crop pattern in Karnataka, it has been stated that Ragi, Jowar, Sessamum, Groundnut, redgram and short duration pulses are the common kharif crops under rainfed conditions. In some areas, where there were pockets of retentive soils or where late rains occur, some Rabi crops like Jowar, Bengalgram and cotton are cultivated. Precarious drought conditions can be met with irrigation facilities to ensure crops during the entire period from June to February. For this, the water from Cauvery is necessary.

STATE OF TAMIL NADU

8. As already mentioned above because of the letter of complaint dated 6th July 1986 addressed by the State of Tamil Nadu to the Government of India and direction given by the Supreme Court on a Writ Petition filed by Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Podhugappu Sangam, the reference of the dispute in respect of the apportionment of the water of river was made to the Tribunal constituted under the provisions of Inter-State Water Disputes Act, 1956. According to Tamil Nadu, the State of Karnataka has constructed Kabini Reservoir, Hemavathy Reservoir, Harangi

Reservoir, Suvarnavathy Reservoir and other projects for storing water of river Cauvery much more beyond the limit stipulated in the agreement of the year 1924 which has resulted materially in diminishing the supply of waters of Cauvery to Tamil Nadu. This has adversely affected the Ayacutdars in Tamil Nadu, who had been dependent on the water of river Cauvery for centuries. The Cauvery which is an east flowing river is the only major river flowing through the State of Tamil Nadu and the economy of the State and production of the crops are fully dependent on its water. Tamil Nadu and the Union Territory of Pondicherry are lower riparians on the said river. Because of the interference in the flow of the river Cauvery, disputes arose more than a century ago leading to the agreements of 1892 and 1924 between the erstwhile Governments of Madras and Mysore, whose successors in interest are the present State of Tamil Nadu and Karnataka. It has been pointed out that the agreements of the years 1892 and 1924 factually recognise and protect the prescriptive rights of Tamil Nadu over the water of Cauvery. The State of Karnataka is at liberty to utilise the water of Cauvery, but not to the prejudice to the interest of the people of Tamil Nadu. Any claim for apportionment of the water of an inter-State river has to be judged on principle of equitable apportionment as well as by the common law of prescriptive rights. Wherever there is an agreement between the parties viz. between two or more States regarding the use, development and control of the waters of an inter-State river and the river valley thereof, they shall govern the claim of the parties. It has been alleged that

construction of Kabini, Hemavathy, Harangi and Suvarnavathy projects by Karnataka without the consent of Tamil Nadu amounts to violation of the agreement of the year 1924 and amounts to taking advantage of Tamil Nadu being the lower riparian State. The Karnataka Government proceeded with the construction of Kabini Reservoir from 1958 onwards and completed in 1975. The reservoir as executed has a live capacity of 16 TMC; the ultimate Ayacut and utilisation under the reservoir are reported to be 4.54 lakhs acres and 57.7 TMC respectively. The irrigation from the reservoir has commenced from 1975-76 onwards. Because of the construction of the reservoirs, the inflows into the Mettur Reservoir have been substantially and materially diminished to the great prejudice of the State of Tamil Nadu. Reference has been made to clause 10(iv) of 1924 agreement under which the Karnataka Government is at liberty to carry out future extension of irrigation from the Cauvery and its tributaries limited to 1,10,000 acres, by means of reservoirs of an effective capacity of 45 TMC in aggregate. But as stipulated in clause 10(vii) of the same agreement the impounding therein shall be so regulated as not to make any substantial diminution in supplies from what has been detailed in clause 10(ii) by adoption of suitable impounding formula or such other means as may be settled from time to time. The State of Karnataka started its reservoir project on Hemavathy, a tributary of Cauvery in 1960 without consent or intimation to the Government of Tamil Nadu. The Government of India on protest being lodged by the State of Tamil Nadu informed the State of Karnataka that there was no

question of clearance of the project unless the inter-State aspects were settled in accordance with the agreement between the two States. Still the execution of the project commenced and was completed in 1978. It has been asserted that well established and settled principle is that the upper riparian State does not have an absolute right to impound or to utilise the water of an inter-State river. The pre-existing right of the lower riparian State has to be cleared and preserved. The river Cauvery being the only major river in Tamil Nadu which has been contributing nearly 50% of the State's surface water use. The upper part of the Cauvery basin which is above Mettur is influenced by south-west monsoon, while the lower part is influenced by North-east monsoon. The flow of the river during the south west monsoon is, to a very great extent, dependent on the run-off from the hilly catchment above the Sivasamudram falls. The South West monsoon is more intensive, unfailing and dependable, spread over a long period. During this period, most of the catchment lying below the Mettur reservoir, gets practically no benefit excepting a small portion of the high ranges of the Bhavani and Amaravathi tributaries, as the catchment lies on the rain-shadow area of Western Ghats. This part which in the State of Tamil Nadu gets some benefit later during the North-East monsoon. But this is more often erratic and undependable, the coastal areas and the Delta occasionally receive heavy intense rains of very short duration, most of which can be neither conserved nor utilised in the delta. It has been pointed out that because of the unique geographical creation of Cauvery basin and also because

of the hydrological characteristics, with the upper part in Karnataka steeply sloping, with lower part in Tamil Nadu having very vast, mildly sloping alluvial plains, Tamil Nadu is not in a position to avail the benefit of South-West monsoon fully and has to suffer the damage by the North-East monsoon. Tamil Nadu had to depend on the flows of river Cauvery since June onwards, during the South West monsoon and on local rainfall during the North-East monsoon. After the commissioning of Mettur Reservoir in 1934 it has been possible to impound the excess flows and send down regulated discharges to meet the needs of the river channels enroute and the delta. A number of regulatory controls have been built in the delta to regulate the canal supply. This, however, is dependent on the availability of supplies. In the delta a short-term crop called Kuruvai is raised between the months of June and September followed by a medium crop Thaladi between October and February. In single crop lands which are large in extent, a long-term crop Samba is raised between July and January. Rice is the dominant crop in the delta especially in the Thanjavur District. The whole State largely depends on this District for rice which is the staple food of the people. The alluvial soil of the delta is ideal for growing rice subject to availability of water. In isolated pockets, sugarcane, banana and other crops are grown.

UNION TERRITORY OF PONDICHERRY

9. The Karaikal region of the Union Territory of Pondicherry is situated on the South Coromandel Coast. The three sides of Karaikal region are bounded by Thanjavur district of Tamil Nadu and on the East

there is Bay of Bengal. The total area of Karaikal region is 14,920 hectares of which 10,990 hectares are under cultivation. The sub-soil water is unsuitable for cultivation. The water supplied to Karaikal region from river Cauvery is made from the branches of the river below Grand Anicut. When the river Cauvery divides and sub-divides itself and serve both the irrigation and drainage channels in the Karaikal area. The water requirements for Karaikal region are as follows:

<u>Sl. No.</u>	<u>Crop</u>	<u>Area (hectares)</u>	<u>Water Requirement Mc.ft.</u>
1.	Samba (single crop)	4760	3006
2.	Kuruvai (Kharif Double crop)	6230	2868
3.	Thaladi (Rabi Double crop)	<u>6230</u>	<u>3366</u>
	TOTAL:	<u>17220</u> ha	<u>9240</u> Mc.ft.

10. According to the Union Territory of Pondicherry, even under the French Administration, it had riparian rights in Cauvery waters. The interest of this territory was taken note of when the aforesaid agreements of 1892 and 1924 were entered into between the then Government of Madras and Government of Mysore in connection with the construction of Krishnarajasagar Dam. Even at the time of construction of Mettur Dam, French Administration passed its claim to the then Government of Madras for regulation of the supply of Cauvery water to Karaikal region. It has been alleged that after 1972 there has been short-fall in the actual release of water from various rivers. The short-fall has been varying from about 2 TMC to 6 TMC.

Chapter 4

**Petitions for interim directions before the Tribunal
and orders passed on 25th June 1991**

After the constitution of the Cauvery Water Disputes Tribunal the Civil Miscellaneous Petition (No.4 of 1990) was filed on behalf of the State of Tamil Nadu praying that the State of Karnataka be directed not to impound or utilise water of Cauvery river beyond the extent impounded by them as on 31st May 1972 which had been agreed upon in the meeting of the Chief Ministers of Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry in the presence of the Union Minister for Irrigation and Power. A prayer was also made to restrain the State of Karnataka from undertaking any new projects, dams, reservoirs etc.

2. This Tribunal on 25.6.1991 after hearing all the party-States and Union Territory of Pondicherry passed the following order:-

“On 5th January, 1991, we had dismissed the CMP Nos.4 & 9 of 1990 filed by the State of Tamil Nadu and CMP No.5 of 1990, filed by the Union Territory of Pondicherry, inter alia upon the view that the Central Government had as yet made no reference to the Tribunal for adjudication of the interim reliefs prayed in the said CMPs filed by the State of Tamil Nadu and the Union Territory of Pondicherry, respectively and hence the said petitions for interim reliefs were not maintainable.

Being aggrieved by our said order, the State of Tamil Nadu and Union Territory of Pondicherry had respectively filed Civil Appeal Nos.303-304 of 1991 and Civil Appeal No.2036 of 1991, before the Supreme Court of India. On 26th April, 1991, the Bench

consisting of Kasliwal, Punchhi & Sahai, JJ. allowed the said appeals, set aside our order dated 5th January, 1991, and directed that the said CMP Nos.4,5 and 9/90, be decided on merits. Kasliwal,J. with whom Punchhi, J. agreed, inter alia held that the requests for expeditious action contained in a passage of the letter dated 6.7.1986 of the Government of Tamil Nadu and which was quoted by the learned judge showed that the State of Tamil Nadu “was claiming for immediate relief as year after year realization at Mettur was falling etc.” Therefore, the Tribunal was clearly wrong in holding that the Central Government had not made any reference for any interim relief. The reliefs prayed by the appellants in CMP Nos. 4, 5 & 9/90, clearly came within the purview of the disputes referred by the Central Government under section 5 of the Act (Inter State Water Disputes Act, 1956). Kasliwal, J. had further observed that in view of the above circumstances, he did not consider it necessary to decide the larger question whether a Tribunal constituted under the ‘Act’ has any power to grant any interim relief. The appellants become entitled to succeed on the basis of the finding recorded by the Supreme Court that the reliefs prayed by them in their CMP Nos.4, 5 & 9/90 were covered in the reference made by the Central Government. In his judgment, Kasliwal, J. also noted that at the fag end of the arguments it was submitted on behalf of the State of Karnataka that they were agreeable to proceed with the CMPs on merits before the Tribunal on the terms that all party States agreed that all questions arising out of or connected with or relevant to the water dispute be determined by the Tribunal on merits. Kasliwal, J. observed that the above terms were not agreed to by the State of Tamil Nadu as such he was deciding the appeals on merits. As already mentioned Punchhi, J. agreed with Kasliwal, J. In his separate judgment, Sahai, J., while concurring that the appeals should be allowed, observed, inter alia that he had reservations

about certain issues including the construction of the letter dated 6th July, 1986. He did not prefer to express any opinion on them since according to Sahai, J. the States of Karnataka and Kerala were agreeable to the determination of the applications for interim relief on merits.

After the Supreme Court rendered the above decision, these C.M.Ps were again placed before us. Both the State of Tamil Nadu and Union Territory of Pondicherry, filed applications for amendment of their respective C.M.Ps Nos. 4 & 9/90 and 5/90 inter alia to incorporate additional prayers therein. In its amendment application the State of Tamil Nadu also placed on record certain additional facts. After hearing the parties, we allowed the said prayers for amendment of CMP Nos.4, 5 & 9/90. Thereupon, the State of Karnataka filed supplementary objections, supported by affidavit. The State of Tamil Nadu also filed rejoinder to the said supplementary objections dated 27th May, 1991.

We are not prepared to give any countenance to the objections as to the maintainability of these CMPs raised by Mr. F.S. Nariman, Senior Counsel appearing on behalf of the State of Karnataka. The Supreme Court has directed the Tribunal to decide these CMPs on merits. Accordingly, it is no longer open to the State of Karnataka to urge this point of maintainability. The said direction of the Supreme Court is binding upon the parties and the Tribunal. It is accordingly, unnecessary for us to notice the various authorities cited by both sides on the question as to whether this Tribunal possesses inherent powers and as to whether it can grant interim reliefs. We have already mentioned that Kasliwal, J., with whom Punchhi, J. agreed, categorically held that Tamil Nadu's prayer for grant of interim relief was covered by the reference dated 2nd June, 1990, made to this Tribunal.

We proceed to consider the merits of the petitions for

emergent reliefs respectively made by the State of Tamil Nadu and the Union Territory of Pondicherry.

In its CMP No.4 of 1990, the State of Tamil Nadu had initially prayed for directing the State of Karnataka not to impound or utilise waters of the Cauvery River beyond "what it was on 31st May, 1972" agreed by the Chief Ministers of basin States and the Union Minister for Irrigation and Power. The State of Tamil Nadu also had prayed for restraining the State of Karnataka from undertaking or proceeding with any new projects, dams, reservoirs, canals, etc. without the consent of the State of Tamil Nadu. The State of Tamil Nadu has now made an additional prayer for directing the State of Karnataka to make timely and adequate releases of waters from its storages and reservoirs in such a manner as to ensure availability of inflow into the Mettur reservoir of Tamil Nadu on week to week basis as reflected in the Statement (Annexure I to the Amendment Petition).

Pleadings are not complete, parties have not yet placed on record all their documents and papers etc. Therefore, we propose not to make any pronouncement about the Agreement of 1892 between the then princely State of Mysore and then State of Madras regarding irrigation reservoirs over thirteen major rivers flowing through the then State of Mysore, including the Cauvery and its five tributaries viz. Hemavathi, Laxman Thirtha, Kabini, Suvaranavathi and Yagachi. For the identical reasons, we refrain from examining the submission of the two sets of contending parties about the Agreement between the then Mysore and the then Madras Governments dated 18th February, 1924 under which Mysore Government became entitled to construct a dam and a reservoir across and over the river Cauvery at Kannambadi, now known as Krishnarajasagar, according to the stipulated specifications. The discharge through and from the said reservoir was to be strictly in accordance with the Rules and Regulations

set forth in Annexure I to the said Agreement. One of the clauses of the Agreement of 1924 was that Mysore Government would be at liberty to carry out future extensions of irrigation in Mysore under the Cauvery and its tributaries to an extent fixed at 1,10,000 acres in addition to the area of irrigation fixed under the Rules and Regulations. The Madras Government under clause (xiv) of the Agreement was at liberty to construct on the Bhavani, Amaravathi or Noyil rivers in Madras any new storage reservoir and Mysore Government would be at liberty to construct as an offset storage reservoir in addition to the reservoirs mentioned in clause (vii) of the said Agreement not exceeding 60% of the new reservoir in Madras. Clause (xi) of the Agreement of 1924 provided that the limitations and arrangements in Clauses (iv) to (viii) shall be open to reconsideration at the expiry of fifty years from the execution of the Agreement. The parties before us were at variance about the scope of this clause (xi). Shortly before the expiry of fifty years from the date of the signing of the Agreement of 1924, discussions were held on 29th May, 1972, at New Delhi between the Chief Ministers of Mysore, Tamil Nadu and Kerala. The Union Minister of Irrigation and Power was also present. "The discussions amongst Chief Ministers revealed general consensus on the three points as in para 2". Under the paragraph 2.2, the Central Government was to appoint a Fact Finding Committee to collect all the connected data pertaining to the Cauvery waters. Paragraph 2.3 provided that by making use of the data, discussions will be held between the Chief Ministers of the three States to arrive at an agreed allocation of waters for the respective States. The paragraph 3 recorded "the Union Government will assist in arriving at such a settlement in six months, and in the meanwhile no State will take any steps to make the solution of the problem difficult either by impounding or by utilising water of Cauvery beyond what it is at present". The Fact Finding Committee was constituted, and

it had submitted its reports. But no final agreement was arrived at between the States regarding the allocation of waters for the respective States.

When we are deliberating whether any emergent order ought to be passed, our prime consideration ought to preserve, as far as possible, pending final adjudication the rights of the parties and also to ensure that by unilateral action of one party other party is not prejudiced from getting appropriate relief at the time of the passing of the final orders. We ought to also endeavour to prevent the commission of any act by the parties which might impede the Tribunal from making final orders in conformity with the principles of fair and equitable distribution of the waters of this inter-state river.

Undisputedly, the Cauvery river is an inter-State river. Therefore, the three States and the Union Territory of Pondicherry being riparian to the said river are entitled to the release of waters of the said river in a reasonable and beneficial manner. In the "Law of International Drainage Basins" edited by A.H. Garretson, R.D. Hayton & C.J. Olmstead, at page 63 it has been pointed out that equality of right does not give a co-riparian the right to an equal division of the waters. Rather, equality of right is the equal right of each co-riparian State to a division of the waters on the basis of its economic and social needs, consistent with the corresponding rights of its co-riparian States, and excluding from consideration factors unrelated to such needs. At this stage it would be neither feasible nor reasonable to determine how to satisfy the needs of each State to the greatest extent possible with a minimum of detriment to others. We do not also propose at this stage to enter into the question whether the present use of water of the river Cauvery either by the State of Tamil Nadu or the State of Karnataka is the most beneficial use to which the water could be put to. At an appropriate stage and in the appropriate manner,

it may be necessary to consider legitimate economic and social needs of each State for the purpose of making equitable utilisation of the waters. The learned editors of the "Law of International Drainage Basins" at page 64 have pointed out that the multitude of factors should be examined. "While many factors are relevant, all are not of equal weight. Existing uses are particularly significant and are generally entitled to great weight". We are not unmindful of the further observations made by the learned editors to the fact that the matter of existing use is most controversial. These points may arise for our consideration at the time we finally dispose of the 'Reference'. At this interlocutory stage it would be more in consonance with the needs of justice to examine the prayers made by the State of Tamil Nadu and Union Territory of Pondicherry in the light of the considerations which are germane for granting or refusing interim reliefs in a list of this kind. We have already mentioned herein before that pending final adjudication by materially altering the present position, no party should be allowed to cause prejudice to the other party or to obstruct and impede this Tribunal from making its final order in accordance with the law.

The substance of the allegations made on behalf of the State of Tamil Nadu in CMP No.4/90 is that by reason of impounding greater and greater volume of water in the reservoirs constructed in different tributaries of Cauvery flowing through Karnataka, the inflow of water into Mettur Dam of Tamil Nadu from year to year is being reduced. At this stage, we however make it clear that it will not be appropriate to fix the inflow of water into Mettur Dam on the basis of their figures at the time of recording of consensus arrived at the meeting of the Chief Ministers of the States of the then Mysore, Tamil Nadu and Kerala in the presence of Union Minister of Irrigation and Power, held on 29th May, 1972. More than eighteen years have elapsed since the recording of

said consensus of 29th May 1972 and various subsequent events also, including construction of additional dams and reservoirs and other irrigation facilities, have taken place. We do not propose to examine at this stage the legality or justifiability of erection of these reservoirs, dams, canals, etc. The said matters may be gone into if found necessary at the appropriate stage. In this case it would be in accordance with justice to fix the annual releases into Mettur Dam by making average of the same for a number of normal years in the immediate past.

It is pertinent to point out that after the minutes of the meeting of the Chief Ministers of the States of Mysore, Tamil Nadu and Kerala were recorded on 29th May, 1972, more than one attempt were made to estimate the total flow of the water in the river Cauvery and also to specify the share of utilisation, particularly by the States of Karnataka and the State of Tamil Nadu. Since the correctness of the reports made by the Fact Finding Committee and thereafter by the Study Team under the Chairmanship of Sri C.C. Patel will hereinafter come up for our consideration, we propose not to deal with these reports at this stage. Our attention has also been drawn to the draft Agreements which were prepared in 1974 and 1976, but were not formally signed by the contesting States. We may only indicate that the attempts made in the past to determine the shares of waters to be allocated to the States and Union Territory of Pondicherry had been abortive, and the same still remain for adjudication by the Tribunal. We have already mentioned that at the present stage we would be guided by consideration of balance of convenience and maintenance of the existing utilisation so that rights of the parties may be preserved till the final adjudication. For this purpose the average of the annual flow of the waters of the river Cauvery into the reservoir of the Mettur Dam in Tamil Nadu could serve as a reasonable basis. We are also not unmindful of the

fact that besides releases made from Krishnarajasagar and Kabini Dams of Karnataka, some water from the intermediate catchment area also flows down into the Mettur Dam. The said fact cannot be the ground for totally rejecting the prayer of the Tamil Nadu because the contribution of the said catchment area into the Mettur Dam is not large enough. We are of the views that there ought to be the release of waters by Karnataka which is to be fixed by having regard to the realisation made over a span of years in the proximate past after excluding abnormally good and abnormally bad years.

Tamil Nadu has furnished before us the following figures for the period of ten years, i.e. 1980-81 to 1989-90 of inflow of water into Mettur Dam.

	<u>TMC</u>
1980-81	394.01
1981-82	403.20
1982-83	173.09
1983-84	230.37
1984-85	284.36
1985-86	158.28
1986-87	187.36
1987-88	103.90
1988-89	181.37
1989-90	175.64

In considering these figures we have decided to exclude the figures for the years, 1980-81 and 1981-82, which were described by parties as abnormally good years. We have also excluded from consideration the figures for the years 1985-86, 1987-88 which were classified to be bad years. The average flow of the remaining six years work out at 205.03 TMC, which may be rounded of to 205 TMC.

Karaikal region of Union Territory of Pondicherry is at the tail-end of Cauvery delta. Before us submissions were made about the plight suffered by this area because of utter dearth of water. The Union Territory of Pondicherry has claimed before us 9.355 TMC of water towards irrigation and water supply etc. In our view, while making order upon these emergent petitions we ought to take into consideration the prayer of the Union Territory of Pondicherry for release of some additional volume of water. We propose to direct for the ends of justice, release of 6 TMC of water by Tamil Nadu for Union Territory of Pondicherry.

The grievance of Tamil Nadu broadly was that not only the total volume of water from Karnataka for flowing down to Mettur Dam was becoming less and less, but also the said releases were not being made timely to meet the need of cultivation of crops, particularly in the Cauvery delta of Tamil Nadu. It would be fair to direct that annual releases be made in a regulated manner from week to week basis from June to May.

The State of Kerala has not applied for any interim order, therefore, this order is without prejudice to the claims and contentions of the State of Kerala about the equitable distribution and release of the waters of river Cauvery and its tributaries. We again make it clear that the interim orders passed today do not amount to final adjudication of the rights and contentions of the parties in regard to the dispute referred to this Tribunal.

In view of the above, we direct the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC of water is available in Tamil Nadu's Mettur Reservoir in

a year from June to May. This year, the order will be effective from 1st of July, 1991. We further direct that the State of Karnataka shall regulate the release of water in the following manner:-

June	10.16 TMC	December	10.37 TMC
July	42.76 “	January	2.51 “
August	54.72 “	February	2.17 “
September	29.36 “	March	2.40 “
October	30.17 “	April	2.32 “
November	16.05 “	May	2.01 “

In respect of a particular month the releases are to be made in four weeks in four equal instalments. If in a particular week, it is not possible to release the required quantum of water, the said deficit shall be made good in the subsequent week. 6 TMC water for Karaikal region of the Union Territory of Pondicherry will be delivered by the State of Tamil Nadu in a regulated manner.

We further direct that the State of Karnataka shall not increase its area under irrigation by the waters of the river Cauvery beyond existing 11.2 lac acres, as mentioned in their Annexure K-V, Column 13, at page 103 to the Supplementary Statement of Objections dated 22nd May, 1991 to the amended CMP No.4/90.

The above order will remain operative till the final adjudication of the dispute, referred to the Tribunal.

CMP Nos. 4 and 5/90 are hereby disposed of in the above terms.

CMP No.9/90 for granting relief pending disposal of CMP No.4/90 no longer survives, and stands disposed of accordingly.”

Chapter 5

**The Karnataka Cauvery Basin Irrigation Protection
Ordinance and Reference by President under
Article 143 of the Constitution for opinion of the
Supreme Court and the opinion of the Supreme Court**

On 25th July 1991 the Governor of Karnataka promulgated an Ordinance 'The Karnataka Cauvery Basin Irrigation Protection Ordinance 1991' to protect the interest of the State of Karnataka and to negate the effect of the Interim Order aforesaid dated 25-6-1991 passed by the Tribunal. This led to further controversy. Ultimately on July 27, 1991 the President under Article 143 of the Constitution referred three questions for the opinion to the Supreme Court. A 5-Judges Bench of the Supreme Court answered the reference on 22nd November 1991 [1993 Supp.(1) SCC 96]. The order of reference says:

"WHEREAS, in exercise of the powers conferred by Section 4 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as 'the Act'), the Central Government constituted a Water Disputes Tribunal called "the Cauvery Water Disputes Tribunal" (hereinafter called "the Tribunal") by a notification dated June 2, 1990, a copy whereof is annexed hereto, for the adjudication of the Water Dispute regarding the Inter-State River Cauvery;

WHEREAS on June 25, 1991, the Tribunal passed an interim order (hereinafter referred to as "the Order"), a copy whereof is annexed hereto;

WHEREAS, differences have arisen with regard to certain aspects of the Order;

WHEREAS, on July 25, 1991, the Governor of Karnataka promulgated the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 (hereinafter referred to as "the Ordinance"), a copy whereof is annexed hereto;

WHEREAS, doubts have been expressed with regard to the constitutional validity of the Ordinance and its provisions;

WHEREAS, there is likelihood of the constitutional validity of the provisions of the Ordinance, and any action taken thereunder, being challenged in courts of law involving protracted and avoidable litigation;

WHEREAS, the said differences and doubts have given rise to a public controversy which may lead to undesirable consequences;

AND WHEREAS, in view of what is hereinbefore stated, it appears to me that the following questions of law have arisen and are of such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India thereon;

NOW, THEREFORE, in exercise of the powers conferred upon me by clause (1) of Article 143 of the Constitution of India, I, Ramaswamy Venkataraman, President of India, hereby refer the following questions to the Supreme Court of India for consideration and report thereon, namely:

- (1) Whether the Ordinance and the provisions thereof are in accordance with the provisions of the Constitution;
- (2) (i) Whether the Order of the Tribunal constitutes a report and a decision within the meaning of Section 5(2) of the Act; and
(ii) Whether the Order of the Tribunal is required to be published by the Central Government in order to make it effective;

- (3) Whether a Water Disputes Tribunal constituted under the Act is competent to grant any interim relief to the parties to the dispute."

2. The Karnataka Cauvery Basin Irrigation Protection Ordinance 1991

"1. Short title, extent and commencement -

- (1) This Ordinance may be called the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991.
 (2) It extends to the whole of the State of Karnataka.
 (3) It shall come into force at once.

2. Definition - Unless the context otherwise requires:

- (a) Cauvery basin' means the basin area of the Cauvery river and its tributaries lying within the territory of the State of Karnataka
 (b) 'Irrigable area' means the areas specified in the Schedule.
 (c) 'Schedule, means the Schedule annexed to this Ordinance.
 (d) 'Water year' means the year commencing with the first of June of a calendar year and ending with the thirty-first of May of the next calendar year.

3. Protection of irrigation in irrigable area:-

- (1) It shall be the duty of the State Government to protect, preserve and maintain irrigation from the waters of the Cauvery river and its tributaries in the irrigable area under the various projects specified in the Schedule.
 (2) For the purpose of giving effect to sub-section `(1) the State Government may abstract or cause to be abstracted, during every water year, such quantity of water as it may deem requisite, from the flows of the Cauvery river and its tributaries, in

such manner and during such intervals as the State Government or any officer, not below the rank of an Engineer-in-Chief designated by it, may deem fit and proper.'

4. Overriding effect of the Ordinance - The provisions of this Ordinance, (and of any Rules and Orders made thereunder), shall have effect notwithstanding anything contained in any order, report or decision of any Court or Tribunal (whether made before or after the commencement of this Ordinance), save and except a final decision under the provisions of sub-section (2) of Section 5 read with Section 6 of the Inter-State Water Disputes Act, 1956.

5. Power to remove difficulties - If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, by order, as occasion requires, do anything (not inconsistent with the provisions of this Ordinance) which appears to be necessary for the purpose of removing the difficulty.

6. Power to make rules - (1) The State Government may, by notification in the official Gazette make rules to carry out the purpose of this Ordinance.

(2) Every rule made under this Ordinance shall be laid as soon as be after it is made, before each House of the State legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more sessions and if before the expiry of the said period, either House of the State Legislature makes any modification in any rule or order or directs that any rule or order shall not have effect, and if the modification or direction is agreed to by the other House, such rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be."

The Ordinance was replaced by an Act (Act 27 of 1991).

OPINION OF THE SUPREME COURT OF INDIA

3. In connection with the question as to whether the provisions of the Ordinance were constitutional, the relevant portion of the opinion of the Supreme Court dated 22.11.1991 {1993 Supp(1) SCC 96 at 138-143} is reproduced :

"70. The above analysis of the relevant legal provisions dealing with the inter-State rivers and river valleys and their waters shows that the Act, viz., the Inter-State Water Disputes Act, 1956 can be enacted and has been enacted only under Article 262 of the Constitution. It has not been enacted under Entry 56 as it relates to the adjudication of the disputes and with no other aspect either of the inter-State river as a whole or of the waters in it.

71. It will be pertinent at this stage also to note the true legal position about the inter-State river water and the rights of the riparian States to the same. In *State of Kansas v. State of Colorado* 51-52 L Ed 956, 975: (206) US 46 the Supreme Court of the United States has in this connection observed as follows:

“One cardinal rule, underlying all the relations of the States to each other, is that of equality of right. Each State stands on the same level with all the rest. It can impose its own legislation on no one of the others, and is bound to yield its own views to none.. the action of one State reaches, through the agency of natural laws, into the territory of another State, the question of the extent and the limitations of the rights of the two States becomes a matter of justiciable dispute between them and this Court is called upon to settle that dispute in such a way as will recognise the equal rights of both and at the same time establish justice between them.

The dispute is of a justiciable nature to be adjudicated by the Tribunal and is not a matter of legislative jurisdiction of one State.....

‘The right to flowing water is now well settled to be a right incident to property in the land; it is right *publici juris*, of such character that, whilst it is common and equal to all through whose land it runs, and no one can obstruct or divert it, yet, as one of the beneficial gifts of Providence, each proprietor has a right to a just and reasonable use of it, as it passes through his land, and so long as it is not wholly obstructed or diverted, or no larger appropriation of the water running through it is made than a just and reasonable use, it cannot be said to be wrongful or injurious to a proprietor lower down.....’

The right to the use of the flowing water is *publici juris*, and common to all the riparian proprietors; it is not an absolute and exclusive right to all the water flowing past their land, so that any obstruction would give a cause of action; but it is a right to the flow and enjoyment of the water, subject to a similar right in all the proprietors, to the reasonable enjoyment of the same gift of Providence. It is, therefore, only for an abstraction and deprivation of this common benefit, or for an unreasonable and unauthorised use of it that an action will lie.”

72. Though the waters of an inter-State river pass through the territories of the riparian States such waters cannot be said to be located in any one State. They are in a state of flow and no State can claim exclusive ownership of such waters so as to deprive the other States of their equitable share. Hence in respect of such waters, no state can effectively legislate for the use of such waters since its legislative power does not extend beyond its territories. It is further an acknowledged principle of distribution and allocation of waters between the riparian

States that the same has to be done on the basis of the equitable share of each State. What the equitable share will be will depend upon the facts of each case. It is against the background of these principles and provisions of law we have already discussed that we have to examine the respective contentions of the parties.

73. The Ordinance is unconstitutional because it affects the jurisdiction of the Tribunal appointed under the Central Act, viz., the Inter-State Water Disputes Act which legislation has been made under Article 262 of the Constitution. As has been pointed out above, while analysing the provisions of the Ordinance, its obvious purpose is to nullify the effect of the interim order passed by the Tribunal on June 25, 1991. The Ordinance makes no secret of the said fact and the written statement filed and the submissions made on behalf of the State of Karnataka show that since according to the State of Karnataka the Tribunal has no power to pass any interim order or grant any interim relief, as it has done by the order of June 25, 1991, the order is without jurisdiction and, therefore, void ab initio. This being so, it is not a decision, according to Karnataka within the meaning of Section 6 and not binding on it and in order to protect itself against the possible effects of the said order, the Ordinance has been issued. The State of Karnataka has thus arrogated to itself the power to decide unilaterally whether the Tribunal has jurisdiction to pass the interim order or not and whether the order is binding on it or not. Secondly, the State has also presumed that till a final order is passed by the Tribunal, the State has the power to appropriate the waters of the river Cauvery to itself unmindful of and unconcerned with the consequences of such action on the lower riparian States. Karnataka has presumed that it has

superior rights over the said waters and it can deal with them in any manner. In the process, the State of Karnataka has also presumed that the lower riparian States have no equitable rights and it is the sole judge as to the share of the other riparian States in the said waters. What is further, the State of Karnataka has assumed the role of a judge in its own cause. Thus, apart from the fact that the Ordinance directly nullifies the decision of the Tribunal dated June 25, 1991, it also challenges the decision dated April 26, 1991 of this Court which has ruled that the Tribunal had power to consider the question of granting interim relief since it was specifically referred to it. The Ordinance further has an extra-territorial operation inasmuch as it interferes with the equitable rights of Tamil Nadu and Pondicherry to the waters of the Cauvery river. To the extent that the Ordinance interferes with the decision of this Court and of the Tribunal appointed under the Central legislation, it is clearly unconstitutional being not only in direct conflict with the provisions of Article 262 of the Constitution under which the said enactment is made but being also in conflict with the judicial power of the State.

74. In this connection, we may refer to a decision of this Court in *Municipal Corporation of Ahmedabad v. New Shrock Spg. & Wvg. Co. Ltd.* (1970) 2 SCC 280; (1971) 1 SCR 288. The facts in this case were that the High Court as well as this Court had held that property tax collected for certain years by the Ahmedabad Municipal Corporation was illegal. In order to nullify the effect of the decision, the State Government introduced Section 152-A by amendment to the Bombay Provincial Municipal Corporation Act, the effect of which was to command the Municipal Corporation, to refuse to refund the amount illegally collected despite the orders of this Court and

the High Court. This Court held that the said provision makes a direct inroad into the judicial powers of the State. The legislatures under the Constitution have, within the prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of a decision rendered by a competent court thereby rendering the decision ineffective. But no legislature in the country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by the courts. Consequently, the provisions of sub-section (3) of Section 152-A were held repugnant to the Constitution and were struck down. To the same effect is another decision of this Court in *Madan Mohan Pathak v. Union of India*, (1978) 2 SCC 50: 1978 SCC (L & S) 103: (1978) 3 SCR 334. In this case a settlement arrived at between the Life Insurance Corporation and its employees had become the basis of a decision of the High Court of Calcutta. This settlement was sought to be scuttled by the Corporation on the ground that they had received instructions from the Central Government that no payment of bonus should be made by the Corporation to its employees without getting the same cleared by the Government. The employees, therefore, moved the High Court, and the High Court allowed the petition. Against that, a letters patent appeal was filed and while it was pending, the Parliament passed the Life Insurance Corporation (Modification of Settlement) Act, 1976 the effect of which was to deprive the employees of bonus payable to them in accordance with the terms of the settlement and the decision of the Single Judge of the High Court. On this amendment of the Act, the Corporation withdrew its appeal and refused to pay the bonus. The employees having approached this Court challenging the constitutional validity of the said legislation, the Court held that

it would be unfair to adopt legislative procedure to undo a settlement which had become the basis of a decision of the High Court. Even if legislation can remove the basis of a decision, it has to do it by alteration of general rights of a class but not by simply excluding the specific settlement which had been held to be valid and enforceable by a High Court. The object of the Act was in effect to take away the force of the judgment of the High Court. The rights under the judgment would be said to arise independently of Article 19 of the Constitution.

75. Yet another decision of this Court on the point is *P. Sambamurthy v. State of A.P.* (1987) 1 SCC 362: (1987) 2 ATC 502: (1987) 1 SCR 879. In this case what was called in question was the insertion of Article 371-D of the Constitution. Clause (5) of the article provided that the order of the Administrative Tribunal finally disposing of the case would become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order was made, whichever was earlier. The proviso to the clause provided that the State Government may by special order made in writing for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it became effective and in such a case the order of the Tribunal shall have effect only in such modified form or be of no effect. This Court held that it is a basic principle of the rule of law that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but must also be in accordance with law, and the power of judicial review is conferred by the Constitution with a view to ensuring that the law is observed and there is compliance with the requirement of the law on the

part of the executive and other authorities. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of the State is kept within the limits of the law. If the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death knell of the rule of law. The rule of law would be meaningless, as it would be open to the State Government to defy the law and get away with it. The proviso to clause (5) of Article 371-D was, therefore, violative of the basic structure doctrine.

76. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It can not, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal.

77. The effect of the provisions of Section 11 of the present Act, viz., the Inter-State Water Disputes Act read with Article 262 of the Constitution is that the entire judicial power of the State and, therefore, of the Courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control of the water of, or in any inter-State river or river valleys has been vested in the Tribunal appointed under Section 4 of the said Act. It is, therefore, not possible to accept the submission that the question of grant of interim relief falls outside the purview of the said provisions and can be agitated under Article 131 of the Constitution. Hence any executive order

or a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such tribunal is an interference with the judicial power of the State. In view of the fact that the ordinance in question seeks directly to nullify the order of the Tribunal passed on June 25, 1991 it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution.

78. Further, admittedly, the effect of the Ordinance is to affect the flow of the waters of the river Cauvery into the territory of Tamil Nadu and Pondicherry which are the lower riparian States. The Ordinance has, therefore, an extra-territorial operation. Hence the Ordinance is on that account beyond the legislative competence of the State and is ultra vires the Provisions of Article 245 (1) of the Constitution.

79. The Ordinance is also against the basic tenets of the Rule of Law inasmuch as the State of Karnataka by issuing the Ordinance has sought to take law in its own hand and to be above the law. Such an Act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other States, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. If the power of a State to issue such an Ordinance is upheld it will lead to the breakdown of the constitutional mechanism and affect the unity and integrity of the nation.”

4. On the aforesaid findings, the Ordinance was held to be invalid and unconstitutional and beyond the legislative competence of the State. In respect of the third question as to whether the Water Disputes Tribunal

constituted under the Inter-State Water Disputes Act 1956 was competent to grant an interim relief to the parties to the dispute during the pendency of the reference by the Central Government, it was held that as the Supreme Court had already expressed its view in its aforesaid order dated 26th April 1991 [1991 Supp. (1) SCC 240] on appeal being filed on behalf of the State of Tamil Nadu and Union Territory of Pondicherry saying that the Tribunal had jurisdiction to consider the question of grant of interim relief; such question being a matter connected with or relevant to the water dispute within the meaning of Section 5(1) of the Act, the said order had become final. In that situation, it was not open in the Presidential Reference to sit in appeal to the said decision. It was said "It cannot be said that this Court had not noticed the relevant provisions of the Inter-State Water Disputes Act. The Court after perusing the relevant provisions of the Act which were undoubtedly brought to its notice has come to the conclusion that the Tribunal had jurisdiction to grant interim relief when the question of granting interim relief formed part of the Reference. There is further no violation of any of the principles of natural justice or of any provision of the Constitution. The decision also does not transgress the limits of the jurisdiction of this Court. We are, therefore, of the view that the decision being inter parties operates as *res judicata* on the said point and it cannot be reopened."

5. So far question No.2 referred to the Supreme Court as to whether the interim order of the Tribunal constitute a report and a decision within the meaning of Section 5(2) of the Act which was required to be

published by the Central Government in order to make it effective, it was said:

“The interim orders passed or reliefs granted by the Tribunal when they are not of purely procedural nature and have to be implemented by the parties to make them effective, are deemed to be a report and a decision within the meaning of Sections 5(2) and 6 of the Act. The present order of the Tribunal discusses the material on the basis of which it is made and gives a direction to the State of Karnataka to release water from its reservoirs in Karnataka so as to ensure that 205 TMC of water is available in Tamil Nadu’s Mettur reservoir in a year from June to May. It makes the order effective from July 1, 1991 and also lays down a timetable to regulate the release of water from month to month. It also provides for adjustment of the supply of water during the said period. It further directs the State of Tamil Nadu to deliver 6 TMC of water for the Karaikal region of the Union Territory of Pondicherry. In addition, it directs the State of Karnataka not to increase its area under irrigation by the waters of the river Cauvery beyond the existing 11.2 lakh acres. It further declares that it will remain operative till the final adjudication of the dispute. Thus the order is not meant to be merely declaratory in nature but is meant to be implemented and given effect to by the parties. Hence, the order in question constitutes a report and a decision within the meaning of Section 5(2) and is required to be published by the Central Government under Section 6 of the Act in order to be binding on the parties and to make it effective.” [1993 SCC (II) PARA 97]

The Government of India notified the order vide Government of India, Ministry of Water Resources Notification No. S.O. 840(E) dated 10 December, 1991.

Chapter 6

**Order of the Tribunal dated 3.4.1992 on the
Petition on behalf of Karnataka before Tribunal
for recall of order dated 25th June 1991**

On 25th November 1991 the State of Karnataka filed Civil Miscellaneous Petition No.15/91 with a prayer that the Tribunal may recall its aforesaid order dated 25th June 1991 or clarify the same. That petition was rejected on 3.4.1992 by an order as follows:

“On 25th November, 1991, the State of Karnataka, filed the present Civil Miscellaneous Petition No.15 of 1991, with the prayer, that “this Tribunal may call the records and its decision dated 25th June, 1991, and after examining the same the explanations/clarifications, mentioned in CMP 15/91, may be given and the order may be further considered for the said purpose”. In its cause title, CMP 15/91 is described as a Reference under section 5(3) of the Inter State Water Disputes Act, 1956 (hereinafter called the ‘Act’) and at the same time it is described as a petition “for further consideration of the matter and for modification of the order dated the 25th June, 1991”.

By the said order dated 25th June, 1991 we had disposed of CMP Nos. 4 & 9/90, filed by the State of Tamil Nadu and CMP No.5/90, filed by the Union Territory of Pondicherry. We had inter alia, directed the State of Karnataka to release water from its reservoirs so as to ensure 205 TMC of water to the State of Tamil Nadu at their Mettur reservoir in a year from June to May. We had further directed the State of Karnataka to regulate the releases in the manner set out in our said order. Out of the said 205 TMC of water, 6 TMC of water was to be delivered by the State of Tamil

Nadu for Karaikal region of the Union Territory of Pondicherry. We had also directed that the State of Karnataka shall not increase its area under irrigation by the waters of the river Cauvery beyond the existing 11.2 lakh acres as mentioned in their Annexure K-V, Column 13 at page 103 of the Supplementary Statement of Objections to CMP No. 4/90, filed on 22nd May, 1991.

The Tribunal had forwarded its order dated 25th June, 1991 to the Central Government. On 27th July, 1991, President of India made a Reference under Article 143 of the Constitution of India to the Supreme Court of India (Special Reference No.1 of 1991). On 22nd November, 1991, the Supreme Court of India disposed of the said Reference and rendered its opinion. On 25th November, 1991, the State of Karnataka filed the present CMP No.15 of 1991.

Our direction that the above order dated 25th June, 1991 would remain operative till the final adjudication of the dispute ought to be read in the context of the observations made by the Supreme Court both in their judgment dated 26.4.1991 in Civil Appeal Nos.303-304 of 1991 in C.A. No.2036 of 1991, and also the Supreme Court order in the Special Reference No.1/91 dated 22.11.1991. Therefore, it is now the undisputed position that our order dated 25.6.1991 was an award under section 5(2) of the Act, disposing of applications for interim reliefs made by the State of Tamil Nadu and the Union Territory of Pondicherry. The said decision in the opinion of the Supreme Court attracted provisions of both sub-section (3) of section 5 as well as those of section 6 of the Act.

The Central Government or the State Government under sub-section (3) of section 5 of the Act can apply to the Tribunal for further consideration of the Tribunal's decision, when anything in that decision rendered under sub-section (2) of section 5 of the Act, requires explanation or that guidance is needed upon any point not originally referred to the Tribunal. It is not the case of

Karnataka that the CMP 15/91 relates to any point which was not originally referred to the Tribunal. Therefore, the first point is whether anything in our decision dated 25.6.91 requires 'explanation' in terms of section 5(3) of the Act.

In the absence of any definition of the expression "explanation", in the Act itself, we may consider its ordinary meaning. According to the dictionary meaning 'explanation' is: to make plain, to make clear or evident, to make intelligible, to account for, etc. (vide New Webster's Dictionary of the English Language, 1981 Edn.(p.346) International Edition; Shorter Oxford English Dictionary, Volume I (p.706) Edn.1977). Thus, even if the expression 'explanation' is very liberally interpreted, it cannot mean review. The CMP 15/91 has not been made for rendering intelligible our order dated 25.6.91, but is really for modification and review of the same. We have already set out the cause title of prayers made in CMP No.15/91. We may also refer to paragraph 21 of CMP 15/91, which reads as follows:-

"Without prejudice to the foregoing it is submitted that, apart from provisions of section 5(3) of the Act, this Hon'ble Tribunal has in any case power to review and modify the order dated 25th June, 1991, especially as it is an interim order and the review jurisdiction of the Tribunal is also invoked."

The State of Karnataka in paragraph 10 of its CMP 15/91 has claimed that it was impracticable to give the releases ordered by us as the same allegedly having not been linked to the availability of the flows. In paragraph 11, it has prayed for lifting our restraint order imposed upon the acreage area irrigated by the Cauvery waters within the Karnataka State to 11.2 lakh acres. We need not set out the several other paragraphs in the CMP 15/91 which also clearly show that the present reference has been made by

Karnataka for modification and/or review of our order dated 25.6.91.

At the time of hearing also, the main thrust of the submission on behalf of the State of Karnataka has been that our order for maintaining the flow of 205 TMC of water at Mettur and for preparation of the roster for monthly releases were erroneous and the said orders ought to be recalled, altered, or modified.

In the above view, it is unnecessary for us to examine in detail the rival submissions on the question whether the period of three months prescribed for making a reference under section 5(3) of the Act, is one of limitation or it is merely a directory one. According to the learned counsel for the State of Karnataka the period has been mentioned in order to ensure diligence in making a reference under section 5(3) of the Act to the Tribunal which, delivered its order under section 5(2) of the Act. While the Senior Counsel, for the State of Karnataka, contended before us that having regard to the scheme of the Act and intention of the Legislation, it was not mandatory for the Central Government or the State Government concerned to make a reference under section 5(3) strictly within three months, the Senior Counsel, appearing on behalf of the State of Tamil Nadu, on the other hand, pleaded that section 5(3) prescribed a period of limitation and, therefore, the present reference/application which was filed beyond the period of three months from the date of passing of our order under section 5(2) of the Act was liable to be rejected, in limine, on the ground of limitation alone.

We are of the view that the Karnataka's petition is in substance for modification or review. Accordingly, it is not necessary for us to decide whether sections 5 and 14 of the Limitation Act, 1963 could be invoked for condonation of delay, and/or for enlargement of time in the event a reference under

section 5(3) of the Act, is made beyond the period of three months from the date of the order passed under section 5(2) of the Act.

The learned counsel for the State of Karnataka, submitted before us that the scheme of the Article 262 of the Constitution of India read with the provisions of the Act is that the tribunal to which a reference of river water dispute is made, is the exclusive original forum for adjudication, in accordance with law in exclusion of the jurisdiction of other courts, including the Supreme Court. His submission, therefore, is that this legal position is also indicated by absence of any provision in the Act for appeal against the award of the Tribunal. Relying upon some of the observations about the legal status of this Tribunal, made by the Supreme Court in answering the Special Reference No.1 of 1991, the learned Counsel for the Karnataka, wanted to submit before us that the entire judicial power of the State in relation to the inter-State water dispute having been vested in the Tribunal, it is endowed with all the powers of the Civil Court, including the power to alter or also to review its orders/awards. Contrary to the stand taken earlier at the time of the hearing of CMPs 4 and 9 of 1990 by the State of Karnataka, its learned counsel has now submitted that this Tribunal was endowed with all the powers of civil court including the power to act ex debito justitiae and to exercise inherent power to amend and modify its orders. For disposing of the present CMP 15/91, it is unnecessary for us to address ourselves to these wider questions relating to the legal position of this Tribunal and amplitude of its jurisdiction and particularly the extent of its power to act ex debito justitiae.

There are serious impediments in the way of treating CMP 15/91 as one for review of our order dated 25.6.1991. In the first place, sub-section (1) of section 9 of the Act provides that the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (to be hereinafter

referred to as 'Code') in respect of the matters specified in clauses (a) to (c) of the said sub-section and any other matter which may be prescribed under clause (d) of sub-section (1). The provisions of Order XLVII of the Code have been neither specified in the said clauses (a) to (c) nor they have been prescribed under section 9(1)(d) of the Act. Therefore, in terms, the provisions of Order XLVII of the code, are not attracted. The learned Counsel for Tamil Nadu has also relied upon several authorities in support of his submission that the law does not generally recognize the power of courts, tribunals and quasi-judicial bodies to review their decisions in exercise of their inherent powers. (See: Harabhajan Singh Vs. Karam Singh, AIR 1966 SC 641, P.N. Thakershi Vs. Crdyuman Singhiji, AIR 1970 SC 1273 at 1275 & Chandraban Singh Vs. Latafat Ullah, AIR 1978 SC 1814 at 1817).

Even if it is held that the CMP 15/91 does not come within the scope, either of section 5(3) or of the provisions for review, the same may not necessarily entail dismissal of the petition made by the State of Karnataka.

On a reading of the application moved on behalf of the State of Karnataka, we have already observed that by filing CMP 15 of 1991, State of Karnataka is not seeking any explanation or guidance in respect of the interim order dated 25th June, 1991, but it wants modification of the same.

Learned Counsel, appearing on behalf of the State of Karnataka, has urged that an interim or interlocutory order of a judicial authority can be modified if it is shown that it causes hardship, or is unworkable, or on account of change of circumstances or on account of some new material not available when the order was made. In this connection, he has relied upon the second Proviso to Order XXXIX Rule 4, of the Code, which was inserted by the 1976 Amendment and which gave recognition

to the well settled view of the nature of the interim orders. Order XXXIX, Rule 4, of the Code including the second proviso, is quoted below:

“Order for injunction may be discharged, varied or set aside:-

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice.

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances or unless the Court is satisfied that the order has caused undue hardship to that party.”

The second proviso, quoted above, clearly contemplates that where an order of injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside except where such discharge, variation or setting aside has been necessitated by a change in the circumstances or unless the Court is satisfied that the order has caused undue hardship to that party.

Learned Counsel, appearing on behalf of the State of Tamil Nadu, has, in his submission, not disputed that it would be competent for the Tribunal to alter or vary an interlocutory order made by it earlier, if such alteration or variation is necessitated by reason of new facts or new situations emerging subsequently. It has been further accepted that the Tribunal's power in this regard would be the same as that of the power of a Court which is competent to pass an interlocutory order of various kinds, like orders of stay, injunction or receiver etc. To ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take and, consequently, it has been urged that on proof of new facts or new situations emerging subsequent to the passing of the earlier interim order by the Tribunal, it would be open to the Tribunal to modify its earlier interim order.

From the above submissions made on behalf of the State of Karnataka as well as on behalf of the State of Tamil Nadu, it is clear that it is not disputed that it is open to the Tribunal to alter or vary an interim/interlocutory order passed by it on a change in the circumstances.

Under section 9 of the Act, which we have already referred the Tribunal shall have the same powers as are vested in a civil court under the Code in respect of matters enumerated in Clauses (a), (b) and (c) of sub-section (1) of Section 9 of the Act. Clause (d) to sub-section (1) of Section 9 provides that such other provisions of the Code would be applicable to the Tribunal which is prescribed. Order 39 Rule 4 of the Code is not one of the Orders which has been prescribed to be made applicable in the case of a Tribunal. But, in our opinion, even if technically Order 39 Rule 4 of the Code does not apply in the case of an interlocutory order passed by a Tribunal, nevertheless the principles enumerated in the Second Proviso to Order 39 Rule 4 of

the Code quoted above, would apply because the Tribunal is required to act in accord with justice and to adopt a procedure which achieves the said object. Consequently, in case any party is able to show that there is a change in the circumstances or if the Tribunal is satisfied that the interlocutory order has caused undue hardship to any party, it is open to the Tribunal to discharge, vary, or set aside the same on the application of any party to the dispute.

In support of the above proposition, the parties have relied upon three cases; one each of the Supreme Court, Madras and the Madhya Pradesh High Courts.

In Arjun Singh Vs. Mahindra Kumar and Ors., AIR 1964 SC 993, in paragraph 13, Ayyangar, J. has opined as under:-

“It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver, are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court usually take. They do not, in that sense decide in any manner the merits of the controversy in issue in the Suit and do not of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of Court.”

In Govinda Ramanuja Das Goswami Vs. Vijiaramuruju and another, AIR 1929 Madras, 803 it has been held on an interpretation of Order 39 Rule 4 of the Code that it would be open to a party against whom an injunction has been passed to seek its setting aside where owing to fresh circumstances, it has become unduly harsh or unnecessary or unworkable. In such circumstances, the injunction order can be discharged, varied or set aside. It has been further held that Order 39 Rule 4 of the Code, does not give a Court jurisdiction to interfere with an injunction already passed when each side had an opportunity of being heard and no grounds other than those available at the original hearing appeared or are urged. Where, therefore, a party has by his own fault neglected to put his case forward at the original hearing, he cannot come under Rule 4 later and plead that he has a legal right under that Rule to have the case reopened and reheard. Consequently, it has been held that Rule 4 is not intended to set at naught the ordinary cursus curiae that, once a Court has decided a matter after giving each side an opportunity of being heard, its order is final and binding on itself as much as on the parties, and cannot be reopened, except on the presentation of some new matter not available when the original order was passed.

Similarly, in Sitaram Madan Ahir Vs. Rajkunwar bai and Ors., AIR 1959 M.P. 275 the Madhya Pradesh High Court has accepted the principle laid down in the case of Govinda Ramanuja Das (supra), decided by the Madras High Court, and it has been held that the injunction order passed by a Court after hearing the parties cannot be reopened except on presentation of some new matter not available when the original order was passed.

In view of above, though technically the provisions of Order 39 Rule 4 of the Code are not applicable to a case of the Tribunal, principles embodied in the said provision in a proper case may be

invoked. In this respect the nature of the interim order passed by this Tribunal is not very different from an interim order passed by any Civil court. We have, therefore, to examine as to whether the State of Karnataka has been able to show that after passing of our order dated 25th June, 1991, there has been change in the circumstances or that undue hardship has been caused by our order to the State of Karnataka and therefore, our above order requires variation or modification.

In paragraph 4 of the CMP 15/91, Karnataka has averred "the interim order of the Tribunal proceeds on the basis of unknown availability of water to guarantee an annual release of 205 TMC of water at Mettur in Tamil Nadu". According to the State of Karnataka, having regard to the availability of yield of waters each year, it will be impossible to make the stipulated releases every month and week as directed. We need not set out the rest of the paragraph 4. In paragraph 5 of CMP- 15/91, the State of Karnataka has questioned the method of calculating the average flows for the purpose of arriving at the figures of 205 TMC. According to the State of Karnataka, our order did not provide for a situation when because of failure of rains sufficient flows in the river may not be available for releases ordered for. In paragraph 6 of CMP 15/91 another objection raised on behalf of the State of Karnataka is that no restriction has been imposed upon the utilisation of 28 TMC of water contributed from the catchment areas in Tamil Nadu and upstream of Mettur Dam beyond Karnataka's borders. A complaint has been made also about the alleged absence of technical data regarding the availability of water needs of the States. The contentions raised in paragraphs 14 and 15 of the CMP 15/91 are that the upper riparian State of Karnataka would be prejudicially affected in complying with the directions made by the Tribunal for ensuring the releases of fixed quantity of waters, particularly in a bad year.

Besides, material allegations made as mentioned above, we find that there is no averment or claim in the CMP 15/91 that after passing of our order dated 25th June, 1991 there has been a change in the material circumstances of the case which warrants a modification of our said order.

Admittedly, in the year 1991-92, there was surfeit of rainfall in the basin areas resulting in Karnataka releasing month to month and also far in excess of the volume of water ordered by the Tribunal. During the said year, the State of Tamil Nadu and Union Territory of Pondicherry had also no occasion to complain about the paucity in the supply of water. Thus, the State of Karnataka has failed to make out any case for modification of our order dated 25th June, 1991 on the ground that there has been change in the circumstances after passing our said order.

As already indicated above, we have to next consider as to whether the order dated 25th June, 1991 requires variation or modification on the ground of undue hardship to the State of Karnataka. This question has to be considered in the light of the various submissions made by the learned counsel for the State of Karnataka.

One of the submissions made by the learned counsel for the State of Karnataka is that from the Order dated 25th June, 1991, it has to be inferred that the Tribunal had accepted the claim of Karnataka State that 312 TMC of water would be required for the irrigation of 11.2 lakh acres of land in Karnataka State and, consequently, if the State of Karnataka has to maintain annual release of 205 TMC of water at Mettur the total flow of river Cauvery upto Mettur has to be in the region of 517 TMC. According to the State of Karnataka, since the total flow of water in the river Cauvery is less than 517 TMC, in case the State of Karnataka is required to fulfil its obligations to ensure 205 TMC

flow at Mettur Dam its effect would be that the aggregate flow available for irrigation within Karnataka would fall short of 312 TMC, consequently some of the lands which are now being irrigated in Karnataka by the water of the river Cauvery would have to remain fallow every year. This argument is based on the supposition that the Tribunal had passed the order dated 25th June, 1991 by accepting the case of Karnataka in regard to the 'existing utilisation' of water. If 'existing utilisation' has to be maintained then the State of Karnataka should at least have 312 TMC of water.

It is misconceived to urge that by order dated 25th June, 1991, the Tribunal had accepted the Karnataka's figure of 312 TMC as its requirement for irrigating 11.2 lakh acres. In Annexure K-V to the Supplementary Statement of Objections dated 22nd May, 1991, the Tribunal had referred only to the figure of 11.2 lakh acres given in Column 13, but it did not thereby accept the claim of Karnataka that 312 TMC of water would be required for irrigating 11.2 lakh acres, mentioned in column 12. This 11.2 lakh acres was mentioned in the order because it was Karnataka's own case about its area irrigated by the Cauvery waters. We may also point out that before us, Tamil Nadu had claimed 312 TMC of water at Mettur for irrigation within the said State. The use of 'existing utilisation' was referable only to the irrigated area and not to volume of water which Karnataka or Tamil Nadu claimed that they required for irrigation. At this stage, we did not determine the merits of the claims laid either by Karnataka or by Tamil Nadu about the volume of water needed by each of the two States.

As stated above, we had not accepted the figures given by Karnataka that 312 TMC of water would really be required for irrigating 11.2 lac acres of land mentioned in column 13 of Table K-V. It is not correct to say that we did not have in our mind the

aggregate annual flow of water of the river Cauvery while fixing 205 TMC as the annual minimum inflow upto the Mettur Dam. The contention in this behalf made on behalf of the State of Karnataka is devoid of merit. Since this point has now been raised by the learned counsel for the Karnataka it may be stated that in paragraph 12 of CMP 15/91, the State of Karnataka itself has given the annual gross yield at Mettur during the period of 1980-81 to 1989-90, as follows:-

Years	Gross Yield at Mettur in TMC
1980-81	623
1981-82	668
1982-83	404
1983-84	533
1984-85	599
1985-86	429
1986-87	487
1987-88	405
1988-89	484
1989-90	491

After excluding the two exceptionally good and two exceptionally bad years the average gross yield would come to about 500 TMC.

In course of hearing we had invited the attention of learned counsel for the State of Karnataka to the figures of releases recorded at Biligundlu at the Karnataka-Tamil Nadu border where Central Water Commission of Central Government maintains a gauging site. As already indicated the statement of said flows recorded by the CWC Gauging Site at Biligundlu were supplied by the State of Karnataka on 18th January, 1992, which are as follows:-

Year	Annual Flow	Rounded to TMC
1980-81	442950	443
1981-82	417083	417
1982-83	214313	214
1983-84	254672	255
1984-85	320494	320
1985-86	175725	176
1986-87	194595	195
1987-88	107418	107
1988-89	191342	191
1989-90	186751	187

For the period 1980-81 to 1989-90, after excluding two exceptionally good and two exceptionally bad years the annual average flow at Biligundlu would come to 227 TMC.

As mentioned above at Biligundlu 227 TMC would be the average annual flow, according to the recordings made at that place by CWC Gauging Site. To this figure, if we add another 25 TMC as a contribution from the catchment areas in Tamil Nadu above Mettur Reservoir, the aggregate would come to 252 TMC. If we subtract 252 TMC from the yield of 500 TMC as per the statement of Karnataka, the balance would be 248 TMC. Therefore, according to the figures supplied by the State of Karnataka itself the average annual appropriation by the State of Karnataka would be approximately in the range of 248, and not 312 TMC as claimed in table K-V. In fact we have made further allowances by reducing from 252 to 205 TMC tentatively as the shares of Tamil Nadu and Pondicherry without finally determining the rights of the parties.

Prima facie at least 248 TMC would be available for use in Karnataka. After reserving 18 TMC for water supply, out of 248 TMC, the overall delta for the 11.2 lakh acres would be about 4.72 feet.

Serious objection has also been taken by the learned counsel for the Karnataka in this connection to our order directing the State of Karnataka not to increase its area under irrigation by the waters of the river Cauvery beyond existing 11.2 lac acres as mentioned in Annexure K-V, Column 13. After maintaining flow of 205 TMC at Mettur Dam, Karnataka would be able to appropriate the residual water of the river. It was, therefore, thought proper at the interim stage in public interest to restrict the area irrigated by Cauvery waters in Karnataka to avoid future possible difficulties which might arise by fixation in the allocation of waters in the final award.

In view of the above we do not find that any undue hardship would be caused to the State of Karnataka by the order dated 25th June, 1991 for ensuring the flow of 205 TMC water at Mettur.

Another submission made by the State of Karnataka is that in order to estimate the river flow up to Mettur Dam it was erroneous on our part to make an average of ten years after excluding two exceptionally good and two exceptionally bad years. This argument also is devoid of merit. The method adopted by the Tribunal at this interim stage is consistent with the stand taken by Karnataka itself. In their supplementary Rejoinder filed on October 21, 1991, to the Counter Statement of the State of Tamil Nadu in the main matter, Karnataka asserted in paragraph 4.2.2 that the justice can be done if average flows are considered for equitable allocation. Again in paragraph 4.3.3 Karnataka State averred that dependability cannot be a rigid factor. It depends upon each individual case, mainly depending upon the availability and the needs. Cauvery being a water critical basin, only the average flows have to be considered for allocation of waters among the States. In paragraph 4.3.9, the State of Karnataka reiterated the same contention by claiming that for allocation, average flows will have to be considered and it was for the States

to plan their projects to whatever dependability they want depending upon their local conditions.

The Cauvery is an inter-State river. Therefore, undisputedly its waters have to be shared amongst the riparian States and the Union Territory including Karnataka, Tamil Nadu and Pondicherry. At this interim stage, it is not possible to apply the various tests for making equitable distribution in order to determine the shares of the parties to this reference. In fact, without giving up their claim for appropriate allocation at the final hearing, the State of Kerala has not yet staked its claim for apportionment of water at the interim stage. As already indicated in our order dated 25th June, 1991, our primary consideration was to preserve the rights of the parties and to prevent any one of the parties from stealing a march over the others by taking such measures which might nullify the effect of the final award. By passing the interim order on the basis of averages, therefore, it cannot be said that any undue hardship has been caused to the State of Karnataka.

We may also point out that the figure of 205 TMC which the State of Karnataka has been directed to maintain as annual flow to the Mettur Dam, prima facie was not disproportionate to the volume of water, which according to Karnataka even before passing of our order dated 25.6.1991, it was flowing down to Mettur Dam. In this connection, we may refer to the reply dated 4.1.1991 of the State of Karnataka to the Memorandum by the State of Tamil Nadu in CMP No.4/90 in paragraph 20. The State of Karnataka averred: "Having consistently received waters in the range of 200 TMC annually from Karnataka borders in addition to the contribution from its own catchment, it is not open to Tamil Nadu to accuse Karnataka of adhering to 'the Harmon doctrine' of appropriating all the waters within its territories....." Again in para 19(g) of the Supplementary Statement of Objections dated

22.5.91 to the CMP No.4/90, Karnataka has stated that the figures of flows confirmed that in normal and natural course substantial volume of water flowed to Mettur. Tamil Nadu has consistently received waters in the range of 200 TMC annually from Karnataka borders in addition to the considerable contribution from the substantial independent catchment below Mettur in Tamil Nadu. Similar averments have been made by the State of Karnataka in paragraph 47 (second sub-paragraph) and paragraph 58, which read as follows:-

Para 47 (second sub-paragraph) :

"It is uncharitable for Tamil Nadu to say that whatever releases have been made by Karnataka was only a pittance.....of the 397 TMC that the Tamil Nadu got 200 TMC was received by Tamil Nadu at the Karnataka State border....."

Para 58

".....It is submitted that the corresponding annual inflow as gauged by the Central Water Commission at Biligundlu gauge site upstream of Mettur Reservoir on the common State border is 199.5 TMC, say 200 TMC and inflows to Mettur should, therefore, be even more than 200 TMC....."

In view of the stand taken by Karnataka itself, the counsel for the State of Karnataka cannot plausibly object to making average of the annual flows of the waters of river Cauvery up to Mettur Dam for the purpose of passing interim orders.

It may be noted that while granting interim relief in favour of the State of Tamil Nadu and Union Territory of Pondicherry, we directed for maintaining the total flow of 205 TMC at Mettur including the contribution, which we have taken to be 25 TMC from the catchment areas below Biligundlu and above Mettur Dam, within Tamil Nadu. The State of Tamil Nadu claimed that only 1 TMC out of this flow from upstream of Mettur was being utilised. When there was no allegation that Tamil Nadu was

trying to divert any larger volume of water, it was not necessary at this stage to impose a ban on Tamil Nadu, from diverting any further water within its catchment areas, above Mettur Dam.

For the foregoing reasons the burden of Karnataka, by way of an interim measure to maintain the annual flow has been limited to 205 TMC which was inclusive of 25 TMC, contributed from the catchment areas of Tamil Nadu, below Biligundlu and upstream of Mettur Dam. This figure of 205 TMC is thus less than the average flows between the years 1980-81 to 1989-90, recorded at Biligundlu by CWC Gauging Site. In this view of the matter also no undue hardship is likely to be caused to the State of Karnataka by the order dated 25.6.1991.

On behalf of the State of Karnataka, exception has also been taken to our adopting two different sets of blocks of years for fixing as interim measure the annual flows into Mettur and for determining the monthly releases to be made to maintain the annual contribution to Mettur.

In their CMP 15/91, the State of Karnataka itself has taken the stand that the water must be available during the period in which it is required for growing the crops. If the water is available at a later stage it would be of no use. The Tribunal could give appropriate directions to ensure this. We may also point out that it is common knowledge that in various other river basins of India provisions have been made for seasonal/periodical releases and discharges from dams and barrages. There could be also no question of any mismatch as claimed by the learned counsel for the Karnataka in adopting two different set of years for fixing the monthly and annual flows. We had done this because in the years we had selected for fixing the monthly releases, there had been no intervention by way of construction of new storages and impounding of water within Karnataka during that period. It would not have been appropriate to fix the monthly flows

according to the regulation of release of waters imposed by the State of Karnataka after construction of new dams in the tributaries of the Cauvery within the said State. The order for regulated releases was made in public interest so that whatever water is available, it ought to be put to the optimum use. Therefore, on this score, also it cannot be urged that the order is undue hardship to the State of Karnataka.

Learned counsel for the State of Karnataka has laid great stress on the following part of our order dated 25th June, 1991:-

"The above order will remain operative till the final adjudication of the dispute, referred to the Tribunal."

His argument is that in view of this order the interim order passed by us would remain unalterable even if there is change in the circumstances. In our opinion this argument is not sustainable. Merely, because, we have observed that our order dated 25.6.91 will remain operative till the final adjudication of the reference does not mean that even in case of change of circumstances, or if hereinafter undue hardship result, aggrieved party cannot approach the Tribunal for modification or alteration of the said order dated 25th June, 1991. We have already mentioned that learned counsel for the State of Tamil Nadu, himself has not disputed the legal proposition that the order dated 25.6.91 being an interim award, in case of change of circumstances or undue hardship, the Tribunal would not lack jurisdiction to make orders for the ends of justice.

We also find no substance in the contention raised on behalf of the State of Karnataka that the roster for releases have been made on the basis of anticipated water availability before the commencement of the water year. It is an established practice for operating storage reservoirs all over the country to prepare in advance the monthly working tables before the commencement of the water year. We have also given directions

in our order dated 25.6.1991 for taking care of such shortfalls in releases by carrying forward the same.

Our order dated 25th June, 1991 cannot be faulted also on the ground that the said order makes no provision for taking notice of any possible shortfall or deficit in the flow of the river. In this connection, our attention has been drawn to the procedure prescribed by some of the other Inter-State Water Disputes Tribunals, in order to take care of such situations. While dealing with the reference under Section 5(3) of the Act in the further Report, Krishna Water Disputes Tribunal, had mentioned at page 54 that, if in any water year, water available for utilisation in the Tungabhadra Dam was less than the total quantity of water required for all the Projects as mentioned, the deficiency shall be shared by all the Projects proportionately. The proportions shall be worked out after excluding the evaporation losses. Similarly, contingency which might arise by reasons of deficit in water supply was considered in the Report under Section 5(3) of the Act by Narmada Water Disputes Tribunal. The Central Government and the three concerned States, having made reference u/s 5(3) of the Act to the said Tribunal for further report for giving explanations and guidance, in accordance with the majority opinion the Tribunal gave their modified decision under Section 5(3) read with Section 5(4) of the Act, which was published on 12th December, 1979. In clause (III) of their final order and decision the Tribunal made apportionment of the utilisable quantum of the Narmada waters and also the share of the States concerned. In Clause IV (2) of the final order directions were given on available utilisable water falling short, the shortage should be shared between the States in the ratio mentioned in the said order.

If in future a situation of distress is caused by diminution in the supply of the water for meeting the releases ordered, the

similar method of pro rata sharing of the distress can always be adopted.

For the foregoing reasons, no interference is called for at this stage with our order dated 25th June, 1991. We may, however, make it clear that in case hereinafter there is any change of circumstance or undue hardship is caused, in a particular year to any party, it will be open to such party to approach the Tribunal for appropriate orders.

CMP 15/1991 is, accordingly, disposed of with the above observations."

Chapter 7

Framing of Issues

After the parties to the dispute had filed their respective Statement of Cases and their respective Counters and Rejoinders to the each other's Statement of Case, the Tribunal framed 'issues' in its hearing held on 7th January, 1992.

- (1) Are both the Agreements of 1892 and 1924 or either of them, invalid?
- (2) Are both the Agreements of 1892 and 1924 or either of them invalid because of the alleged oppression or because the same were between the "unequal riparian States" as claimed by the State of Karnataka?
- (3) Are both the Agreements of 1892 and 1924 binding and enforceable upon all the parties to the present reference (dispute)?
- (4) Are both the Agreements of 1892 and 1924, in so far as the river Cauvery and its tributaries are concerned invalid, on the ground that the then Chief Commissioner's Province of Coorg, Podukottai State, Travancore State and the French settlement of Pondicherry and Karaikal, were not parties to the said Agreement?
- (5) Whether the circumstances, that, the Agreements of 1892 and 1924 were not executed also on behalf of the then Chief

Commissioner's Province of Coorg, Podukottai State, Travancore State and the French settlement of Pondicherry and Karaikal, made the said Agreements not binding and unenforceable against parties to the present reference.

(6) Is the State of Karnataka estopped from challenging both the Agreements of 1892 and 1924 or either of them, on the ground that it had said to have been acted upon?

(7) Is the State of Karnataka entitled to contend that in any view of the matter the State of Tamil Nadu had waived the rights claimed by it under the Agreements of 1892 and 1924?

(8) Has there been any breach of both the Agreements of 1892 and 1924 or either of them, by any of the States. If so, what is the effect of any such breach upon the rights of the parties to the present reference?

(9) Did both the Agreements of 1892 and 1924 or either of them provide for a fair and equitable distribution of waters of the river Cauvery and its tributaries to the parties of these Agreements?

(10). (i) Could there be prescriptive rights as claimed by the State of Tamil Nadu/Union Territory of Pondicherry, in their pleadings.

(ii) If the answer to (i) is in affirmative, what was the nature of such prescriptive rights, and

(iii) Whether the Agreements of 1892 and 1924 or either of them, were in recognition of the prescriptive rights as claimed by the State of Tamil Nadu?

(11) Have both the Agreements of 1892 and 1924 or either of them ceased to be operative and enforceable and binding because of subsequent events including enactment of various laws and happening of changed circumstances?

(12) What would be the true and proper construction of both the Agreements of 1892 and 1924, and their legal consequences?

(13) Were the Rules of Regulation in Annexure I to the Agreement of 1924 arbitrary, unconscionable and excessive to the requirements of the areas which then formed part of the Province of Madras?

(14) Whether the Rules and Regulation in Annexure I to the Agreement of 1924, are arbitrary and inequitable on the ground that the same were excessive to the requirements of the areas which now form the part of the State of Tamil Nadu?

(15) Does the entire Agreement of 1924 stand terminated at the expiry of 50 years from the date of its execution? Does not the said agreement continue to subsist even after the expiry of the period of 50 years, subject to the modifications to be made to it in accordance with clause 10(xi) of the same Agreement? What is the true scope and effect of clause 10(xi) of the Agreement?

(16) If the answer to the first part of issue 15 is in the affirmative, whether the 1892 Agreement ought to continue in force until a new Agreement is entered into or the respective rights of the basin States are determined in accordance with law?

(17) What is the present relevance and also the effect of the deliberations of the Cauvery Fact Finding Committee, and of the Study Team conducted by Shri CC Patel, Additional Secretary to the Government of India, and also of reports, measures and surveys conducted by other agencies?

(18) Upon a true and proper assessment made according to the reliable and scientific method, what would be the approximate available surface waters of the Cauvery basin including the delta region?

(19) Whether the Agreement of 1892 was operative and enforceable also in respect of those tributaries of the river Cauvery which were not specifically mentioned in the Schedule 'A' to the said Agreement?

(20) What is the extent of additional/alternative means of water resources available in the Cauvery basin by appropriate exploitation of ground water potentials and by trans-basin diversion?

(21) What is the approximate volume of ground water in each one of the States/Union Territory which are parties to the Reference and whether the said availability of ground water, if any, should be relevant in making fair and equitable distribution of the Cauvery river waters?

(22) What should be the basis on which the availability of waters be determined for apportionment, namely, dependability or on

percentage basis? If it is on percentage basis, what ought to be the said percentage?

(23) Whether there is wastage of waters in appreciable volume or quantity, either in the basin or in the delta areas of the Cauvery river? If so, what is its effect, if any, on the fair and equitable distribution of waters of the river Cauvery?

(24) Whether directions need be issued to the parties for ensuring that the cropping patterns are compatible with the rainfall and the river flows and other relevant factors and whether such directions, if any, would be feasible and germane for making equitable and fair distribution of the waters of the river Cauvery?

(25) What is the extent of the return flow of water used in irrigation by the different parties and what would be its effect on the apportionment of Cauvery waters among them?

(26) What is the extent of drought prone/affected areas in the Cauvery basin region in each of the party States, and what is its effect, if any, in making equitable apportionment of waters?

(27) Should trans-basin diversion of the water of rivers Kabini and Bhavani be permitted for generation of power and for irrigation and water supply by the State of Kerala? If so, to what extent and subject to what conditions and with what safeguards?

(28) Whether generation of power by trans-basin diversion of water by the parties would be legal and justified, particularly, if a

part of such power would be utilised by the people of the river basin itself?

(29) Are the States of Karnataka and Tamil Nadu resorting to trans-basin diversion of the waters of river Cauvery? If so, whether those States can be permitted to object to the proposed trans-basin diversion of the water by the State of Kerala?

(30) Should any preference or priority be given to utilization of water in a manner such that it can generate power as well as meet the needs of irrigation and water supply within the basin/outside the basin area?

(31) What is the extent of the contribution by the different States to the total flow in the Cauvery river and what would be its relevance for equitable apportionment of waters to the party States?

(32) Whether directions are required to be issued to ensure that the waters of the Cauvery and its tributaries maybe developed by each of the States, singly or jointly, to generate maximum hydro-electric power without detriment to irrigation uses?

(33) Is the State of Karnataka entitled to compensation for the loss suffered as averred in paragraphs 18.9 to 18.11 of the Statement of Case of Karnataka and as per averments in paragraphs 34 to 41 of the Counter of Karnataka to the Statement of Case of Tamil Nadu?

(34) Whether any order/direction should be issued upon any one or more of the States for regulated release of the Cauvery waters and whether in that event compensation is to be awarded in favour of the parties, prejudicially affected thereby?

(35) To what extent should Kerala be permitted to utilise the waters generated in Kerala when such utilisation in Kerala would secure either more or equal benefit for the country and its people than by its utilisation in any of the other States?

(36) Whether the State of Kerala requires a part of Cauvery water for generation of power, and, if so, to what extent?

(37) Whether shortage of food in any of the States would be a relevant factor to be taken into consideration in making the apportionment of the Cauvery water?

(38) Whether the backwardness, under-developed and allegedly neglected area of a particular State would be relevant matters in making a fair and equitable distribution of the water of the Cauvery river?

(39) Whether the construction works executed by the State of Tamil Nadu in the Upper Bhavani, Vargarpallam West and Vargarpallam East, have unreasonably deprived the rights of the State of Kerala in the natural flow of the waters of the river Cauvery and, if so, to what effect?

(40) Whether the executive action taken by Karnataka in constructing Kabini, Hemavathi, Harangi, Suvarnavathy and

other projects and expanding its ayacuts has prejudicially affected the interests of Tamil Nadu and Pondicherry, materially diminished the supply of waters to Tamil Nadu and Pondicherry and materially affected the prescriptive rights claimed by Tamil Nadu and Pondicherry on behalf of their ayacutdars?

(41) Whether the above said executive action taken by Karnataka is in violation of 1892 and 1924 Agreements?

(42) Whether the State of Tamil Nadu is entitled to compensation for the loss, damage and injury caused by the failure on the part of Karnataka to implement the terms of 1924 Agreement after 1974?

(43) If the answer to the above issue No.42 is in the affirmative, what is the amount of compensation to which Tamil Nadu is entitled?

(44) What is the equitable share of the Union Territory of Pondicherry in the waters of the inter-State river Cauvery?

(45) Is the understanding reached between the then Governor of French Settlement in India Pondicherry and the then Governor of Madras on 6th September, 1926 to maintain adequate supply of water to the French Territory still subsisting and as such enforceable against the State of Tamil Nadu?

(46) Whether the projects executed by the States of Karnataka and Tamil Nadu have unreasonably impaired the free flow of

water of the river Cauvery into the Union Territory of Pondicherry?

(47) On what basis should the available waters be determined?

(48) How and on what basis should the equitable apportionment be made?

(49) What directions, if any, should be given for the equitable apportionment and for the beneficial use of the waters of the river Cauvery and its tributaries?

(50) What directions, if any, are required to be given regarding the sharing of distress and surplus among the concerned parties to the reference in the event of the waters of the Cauvery falling short of the allocated quantum or being surplus to the same?

2. It may be mentioned that after the conclusion of the recording of evidence, counsel appearing for States of Karnataka, Tamil Nadu, Kerala and Union Territory of Pondicherry were heard on further regrouping of the issues for the purpose of arguments. On 14.12.2001 the following order was passed by the Tribunal:

“Heard Counsel appearing on behalf of the party States and the Union Territory of Pondicherry. It is agreed that the issues framed by this Tribunal earlier should be re-grouped subject wise. For the present, it is also agreed that the following three issues, for the major heads, should be heard first. As to whether the other issues should be re-grouped or not, shall be considered at a later stage:-

<u>Sl.No.</u>	<u>Subject</u>	<u>Issue No.</u>
1.	Agreements of 1892 and 1924	
	a) Constitutional and legal validity and enforceability	1 to 7,11 & 19
	b) Arbitrary and inequitable	9, 13 & 14
	c) Prescriptive rights and other claims	10 & 40
	d) Construction and review of agreements	12, 15 & 16
	e) Breach of agreements and Consequences	8, 33, 40 to 43
2.	Availability of water – surface flows, additional/ alternative resources	18, 20 to 22, 25, 27, 29, 31 & 47
3.	Equitable apportionment and related subjects:	26, 31, 34,37, 38, 47 to 50
	i) Cropping pattern	
	ii) Trans-basin diversion	
	iii) Relevant date of apportionment	
	iv) Relevance of projects completed or otherwise.”	

3. A further re-grouping was done on the basis of the Order passed on 22-3-2002. The relevant part of the Order is as follows:

“By our order dated 14th December, 2001, we had re-grouped the Issues. Issues framed against Sl.No.1 in respect of agreements of 1892 and 1924 were as follows:-

<u>Sl.No.</u>	<u>Subject</u>	<u>Issue No.</u>
1.	Agreements of 1892 and 1924:	
	a) Constitutional and legal validity and enforceability	1 to 7,11 & 19
	b) Arbitrary and inequitable	9, 13 & 14
	c) Prescriptive rights and other claims	10 & 40

- | | |
|--|----------------|
| d) Construction and review of agreements | 12, 15 & 16 |
| e) Breach of agreements and Consequences | 8,33, 40 to 43 |

4. It appears to us as well to the Learned counsel appearing on behalf of the party States & Union Territory of Pondicherry that it will be more convenient to put Issue No.1(a) "Constitutional and legal validity and enforceability" as last of the first Group. Accordingly they are re-grouped as follows:

<u>Subject</u>	<u>Issue No.</u>
Agreements of 1892 and 1924:	
a) Arbitrary and inequitable	- 9, 13 & 24
b) Prescriptive rights and other claims	- 10 & 40
c) Construction and review of agreements	- 12, 15 & 16
d) Breach of agreements and consequences	- 8, 33, 40 to 43
e) Constitutional and legal Validity and enforceability	- 1 to 7, 11 & 19

5. Sl. Nos. 2 & 3 shall remain as it was re-grouped on 14th December, 2001. They are as follows:-

- | | |
|--|-------------------------------------|
| 2. Availability of water-surface flows, Additional/alternative resources | 18, 20 to 22, 25
27, 29, 31 & 47 |
| 3. Equitable apportionment and related subjects | 26, 31, 34,
37, 38, 47 to 50 |
| i) Cropping pattern | |
| ii) Trans-basin diversion | |
| iii) Relevant date of apportionment | |
| iv) Relevance of projects completed or otherwise." | |

6. Later further orders dated 22.12.2002, 7.5.2003, 7.1.2003, 6.7.2004 and 11.5.2005 were passed in respect of regrouping of some of issues which are not very material.

Chapter 8

The Cauvery River Water (Implementation of the Order of 1991 and all Subsequent Related Orders of the Tribunal) Scheme 1998

On 11th August 1998 a Notification No.S.O.675(E) was issued by the Central Government to give effect to the interim order of the Tribunal dated June 25, 1991 and its related orders:-

"NOTIFICATION DATED 11TH AUGUST, 1998

S.O.675(E) - Whereas the Central Government, in exercise of the powers conferred by section 4 of the Inter-State Water Disputes Act, 1956 (33 of 1956) (hereinafter referred to as the said Act) had constituted, by the notification of the Government of India in the Ministry of Water Resources No. SO 437(E) dated the 2nd June, 1990, the Cauvery Water Disputes Tribunal (hereinafter referred to as the Tribunal) to adjudicate upon the water dispute regarding the inter-State river Cauvery;

And whereas the Tribunal has given an Order on the 25th June, 1991 in Civil Miscellaneous Petition Nos.4, 5 and 9 of 1990 (hereinafter referred to as "the interim Order") and forwarded the same to the Central Government for necessary action;

And whereas, the interim order of the Tribunal was published in the Gazette of India by the Central Government as required by Section 6 of the said Act vide notification of the Government of India in the Ministry of Water Resources, No. SO 840(E) dated the 10th December, 1991, whereupon the said Order became binding on the parties to the dispute;

And, whereas the Central Government has decided to frame a Scheme for giving effect to the interim Order of the Tribunal dated 25th June 1991 and all its related subsequent orders.

Now, therefore, in exercise of the powers conferred by sub-Section(1) of Section 6A of the said Act, the Central Government hereby frames the following Scheme to give effect to the implementation of the said Orders of the Tribunal, namely:

1. (1) This Scheme may be called “the Cauvery Water (Implementation of the Order of 1991 and all subsequent related orders of the Tribunal) Scheme, 1998.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. **CONSTITUTION OF THE CAUVERY RIVER AUTHORITY**

(1) There shall be an Authority under this scheme to be known as the Cauvery River Authority (hereinafter referred to as the Authority).

(2) The Authority shall consist of the following:-

- | | |
|-----------------------------------|-------------|
| (a) Prime Minister of India | Chairperson |
| (b) Chief Minister of Karnataka | Member |
| (c) Chief Minister of Kerala | Member |
| (d) Chief Minister of Tamil Nadu | Member |
| (e) Chief Minister of Pondicherry | Member |

(3) The Secretary in-charge of the Ministry of the Central Government dealing with water resources shall be the Secretary of the Authority.

3. **POWERS AND FUNCTIONS OF THE AUTHORITY:-**

(1) The role of the Authority shall be to give effect to the implementation of the interim order dated 25th June 1991 of the Tribunal and all its related subsequent orders.

(2) The Authority shall frame rules and regulations for the conduct of its business.

(3) The Authority may convene meetings as and when necessary.

4. MONITORING COMMITTEE:

Under the Authority, there shall be a Monitoring Committee with the following composition:

- | | |
|--|------------------|
| (a) Secretary-in-charge of the Ministry of Central Government dealing with water resources | Chairman |
| (b) The Chief Secretaries to the Governments of Karnataka, Kerala, Tamil Nadu and the Union Territory of Pondicherry | Members |
| (c) Chairman, Central Water Commission | Member |
| (d) One officer each, not below the rank of a Chief Engineer, to represent the State of Karnataka, Kerala and Tamil Nadu and the Union Territory of Pondicherry to be nominated by the respective State Governments or the Union Territory administration. | Members |
| (e) Chief Engineer,
Central Water Commission | Member Secretary |

5. ROLE AND FUNCTIONS OF THE MONITORING COMMITTEE:

- (1) The role of the Monitoring Committee will be to render assistance to the Authority to enable it to take decisions on issues under consideration.
- (2) The Monitoring Committee shall assist the Authority in collecting information and data.
- (3) The Monitoring Committee shall assist the Authority in monitoring the implementation of the decisions of the Authority. In case, any difficulty arises in implementation, the Monitoring Committee shall report the position to the Authority.

(4) The Monitoring Committee shall assist the Authority in setting up a well designed hydro meteorological network in Cauvery basin along with a modern communication system for transmission of data and a computer based control room for data processing to determine the hydrological conditions.

6. MEETING OF THE MONITORING COMMITTEE

The Monitoring Committee shall meet at least once in three months but it may meet as often as necessary.

7. HEADQUARTERS OF THE AUTHORITY:

The Headquarters of the Authority shall be at New Delhi.

8. FINANCIAL PROVISIONS

(1) All the capital and revenue expenditure required to be incurred by the Authority shall be borne by the Central Government initially till the issue of sharing of cost among the party States or the Union territory is either decided by them through mutual discussions or till the Tribunal takes a decision on the above matter.

(2) The accounts of the Authority shall be maintained and audited in such manner as may be provided in rules made by the Central Government, in consultation with the Comptroller and Auditor General of India, in this behalf.

By Order and in the name of the President of India."

2. Thereafter rules and regulations for the Conduct of Business of Cauvery River Authority have been framed, which are as follows:

THE CAUVERY RIVER AUTHORITY (CONDUCT OF BUSINESS) RULES, 1998

I. SHORT TITLE AND COMMENCEMENT:

i) These Rules may be called "the Cauvery River Authority (Conduct of Business) Rules, 1998".

ii) The Rules have come into force on 14th July, 2000, i.e. the date of their adoption by the Cauvery River Authority.

II. OBJECTIVES:

To regulate the Conduct of Business of the Cauvery River Authority as provided in clause 3(2) of the Cauvery Water (Implementation of the Order of 1991 and all subsequent related orders of the Tribunal) Scheme, 1998.

III. DEFINITIONS:

The terms Authority, Chairperson, Member and Secretary used in these rules shall have the same meaning as in the Scheme.

IV. MEETING OF THE CAUVERY RIVER AUTHORITY:

The meeting of the Cauvery River Authority shall be convened, as and when necessary, by the Secretary of the Authority with the approval of Chairperson.

V. PRESIDING OVER MEETING OF THE CAUVERY RIVER AUTHORITY:

Every meeting of the Cauvery River Authority shall be presided over by the Chairperson of the Authority.

VI. QUORUM:

The quorum for the meeting shall be three Members in addition to the Chairperson.

VII. AGENDA:

i) The Secretary shall send agenda for the meeting to the Members at least seven days in advance. In case of an emergent situation, this period may be relaxed by the Chairperson.

ii) Any item not included in the agenda may be transacted with the permission of the Chairperson.

VIII. MINUTES:

i) The minutes of every meeting of the Authority shall be recorded and issued after approval of the Chairperson.

ii) The Members may give their comments on the minutes of the meeting within thirty days of the receipt of the minutes and the same may be discussed in the next meeting.

iii) In the event of an important decision which needs immediate implementation, the decision shall be recorded in the meeting itself.

IX. DECISION:

Decision shall ordinarily be by consensus. In case no consensus is reached, the decision may be left to the Chairperson.”
