

Towards Conciliation

This exposition of irrigation developments and disputes in the one hundred years, which have, quite literally, elapsed since the 1892 understanding on the Cauvery waters, has reached its delta and will have to branch out to its conclusion. What lessons does it offer? How can we move beyond the present stage of conflict — even confrontation — to a durable settlement based on conciliation and co-operation? In this final chapter, we shall set out our thoughts on this broad question in the form of a series of propositions that can constitute an agenda.

At the outset, there must be the recognition that, since rivers do not respect political boundaries, river water disputes are not uncommon. Throughout history, they have arisen between and within countries; many such disputes, in India and elsewhere, have been avoided, resolved, or at least contained; solutions arrived at have also been sustained over time. The Cauvery dispute need not be an exception. It can also be solved, and indeed must be solved, in a conciliatory framework.

If this is to happen, what is required, first of all, is the will among all parties to find a durable settlement. In fact, the stage is now ready for seeking a long-term settlement: Karnataka is nearing the limit of possible water utilisation in the Cauvery basin in terms of project conception, while Tamil Nadu already reached this position at the end of the 1970s. To use a phrase introduced in the 1924 negotiations, 'all the cards are on the table'.

Having said this, the specificities and complexities of the Cauvery dispute should be

squarely faced. Essentially, the dispute relates to the sharing of waters in a river that is already being almost fully utilised. The dispute, as we have documented, has also had a very long history during which expectations, grievances, and antagonistic positions have cumulated. These two principal characteristics of the dispute, taken together, have implications for both the manner and content of its satisfactory settlement.

Firstly, any sharing arrangement, if it is to be sustainable over time, will entail *continued* goodwill and co-operation among the parties. In disputes relating to the allocation of hitherto unused waters, or the specifications of an individual dam, or to cost-sharing or benefit apportionment, a *once-for-all* solution is possible. In such cases, any residue of resentment among the contesting parties can be expected to heal over time. In contrast, a settlement of the Cauvery dispute will need to address the *continuous* sharing of waters — year after year and season after season — subject to the fluctuations of water availability and need. Obviously, any such settlement, to be durable, has to be grounded on the willing, active consensus of the parties involved. Only on this basis can long-term harmony be established.

The second set of implications relate to the Tribunal. The Tribunal can be expected to arrive at an allocation of available waters among the basin States taking into account the scope for economy and efficiency in water use, and legal, factual, equitable, hydrological, agronomic, and all other relevant factors. The crux of the problem before the Tribunal will be to determine the inflows

at Mettur that Tamil Nadu and Pondicherry can expect (as downstream-of-Mettur States) and, linked to this, the yield which Karnataka and Kerala can benefit from.

In its interim order, the Tribunal has directed Karnataka to ensure a specified *quantity* (205 TMC ft) to Tamil Nadu by way of annual inflows at Mettur. It has also stipulated a monthly pattern of releases consistent with the annual quantum. We have discussed in Chapter 5 the controversies that this approach has led to. From this experience, it appears that a more appropriate approach would be to arrive at the allocation for Tamil Nadu (including Pondicherry) on the basis of a *share* (i.e., a percentage or ratio) in the yield above Mettur and to formulate rules of regulation to effectuate the realisation, taking one year with another, of the specified share. Corresponding to this, an appropriate monthly pattern of releases could be determined. To illustrate the point: if the Tribunal decides to allocate 'X' TMC ft of water to Tamil Nadu in the form of annual inflows into Mettur and 'Y' TMC ft is the assessed annual yield above Mettur, our suggestion is that instead of specifying the entitlement to Tamil Nadu as 'X' TMC ft, in terms of a *quantum*, the Tribunal might specify it as a 'X/Y' *share* in the yield above Mettur for Tamil Nadu. Correspondingly, the monthly pattern of releases could be worked out in terms of shares. In this way, both States will benefit in good years, or lose out in bad years, as per their relative *shares* in the allocation; there will be no room for controversies relating to prior or overriding claims; and reciprocity will be built into the arrangements.

What our suggestion implies essentially is a transition from the 'limit flow' concept of the 1924 Agreement to an 'equitable sharing' concept for the future. This seems to be the only way to steer between Tamil Nadu's claims, on the one hand, for priority in allocation and regulation based on prior prescriptive use and Karnataka's claims, on the

other, deriving from a later start in irrigation development coupled with positional advantage.

The allocation of shares to the basin States will necessarily have to be derived from averages, or probabilistic dependability figures, relating to data for a number of years. For purposes of practical implementation, however, the allocation will have to be translated into rules of regulation which take account of annual and seasonal variations in rainfall and river flows. The implementation of such rules of regulation will entail the integrated operation of basin reservoirs above Mettur and appropriate monitoring arrangements. It may also be necessary to review the rules themselves on the basis of their working during a number of seasons and years. The Tribunal's award will be complete only if the rules of regulation to implement its allocations are simultaneously made available. It would be best if the rules are formulated in full consultation with engineer-representatives from the basin States.

Thirdly, it bears emphasis that both Tamil Nadu and Karnataka have become the prisoners of history. Tamil Nadu has steadfastly stuck to legal claims based on the 1892 and 1924 Agreements and has relied, *de facto*, on concepts of 'natural flow', 'prescriptive rights' and 'prior appropriation'. In Karnataka's perception, the earlier Agreements were unequal arrangements to which it was obliged to submit, through compulsion or circumstance. Moreover, its claims to the Cauvery waters had gone by default because, historically, the State had lagged far behind Tamil Nadu in irrigation development. And, as the upper riparian, an aggrieved Karnataka could turn aggressive. In effect, the Harmon doctrine of territorial sovereignty has not only influenced official stances but has also spilled over into popular perceptions. The idea that 'Cauvery waters are *our* waters and we will part with only that much of them we can spare after

meeting all our needs, present and prospective' has become a populist political slogan in Karnataka.¹

The only way out of this impasse is for both States to draw back from their irreconcilable positions and seek a reasonable *modus vivendi* based on considerations of fairness and equity related to historical entitlements as well as current realities. Fortunately, the Helsinki Rules offer a constructive framework; by jointly subscribing to them, both States can facilitate the Tribunal adopting the middle path suggested above.

The fourth implication is that the problem of sharing should be viewed in a dynamic instead of a static, zero-sum perspective. The projected requirements of all the basin States (1139 TMC ft) is far in excess of the long-term availability of waters in the basin (740 TMC ft per annum on the average). It is, therefore, necessary to take all possible steps to

- (a) augment availability by reducing waste and harnessing supplemental sources for irrigation;
- (b) conserve availability in the catchment; and
- (c) institute programmes for the economic and efficient use of available waters.

Such measures will require common action on the part of the States, in addition to efforts taken within their own territories. Jointly, the basin States will have to undertake catchment treatment activities; these include afforestation and soil conservation in the drainage areas of the Cauvery and its tributaries so as to improve and conserve moisture yield and to control siltation in reservoirs. A second area of common interest is the control of pollution, eco-degradation and environmental health hazards in the basin as a whole.² Thirdly, there is need for joint exploration of possible additional storage and/or regulatory structures above and/or below Mettur to reduce water runoff in periods of excess supply. The fourth

area requiring joint action is the investigation of hydro-electric projects at Mekadatu and/or Hogenekal for power development.

As the lower riparian, Tamil Nadu has necessarily to face a reduction in the upstream availabilities to which it has been traditionally accustomed. Such reductions have already occurred in good measure in the 1980s and will become a normal feature even under the best of all possible awards from Tamil Nadu's point of view. The inevitable adjustment to the changed circumstances need not be postponed any longer. Tamil Nadu will need to seriously explore a number of specific measures, including:

- (a) modernisation of the irrigation system in the old delta to effect economies and efficiency in water use;
- (b) on farm water management practices for the same purpose;
- (c) greater exploitation of groundwater and its conjunctive use with surface water;
- (d) conservation of rain waters going to waste;
- (e) drainage improvements in the tail-end of the delta; and
- (f) suitable changes in the cropping pattern.

Ideas are available on all these matters.³ What is required is to study in depth their feasibility and costs and benefits at the techno-economic level, and to translate them into concrete projects and programmes.

Conclusion: a proposal

The most unfortunate aspect of the Cauvery dispute is that it has not been possible to find a solution through negotiations — by far the best means of dispute settlement. Nor have other voluntary processes, such as conciliation, mediation and arbitration been pursued prior to adjudication, the stage of last resort. Prolonged and inconclusive negotiations over two decades have

exacerbated differences, while adjudication based on adversarial proceedings has enhanced divisiveness.

The faint silver lining to the cloud is that good seasonal conditions in 1991 and 1992 have provided a period of reprieve and have allayed the heat of controversies which reached high temperatures in December 1991 and April 1992 in the aftermath of the Tribunal's Interim and clarificatory Orders. This period of calm will not, obviously, last for ever and one can expect the controversy to erupt again prior to the irrigation season of 1993. It is therefore essential to initiate a process of conciliation and co-operation without delay. Such a process can serve two valuable purposes. In the short-term, it can facilitate and expedite the Tribunal's task. In the longer term, by narrowing differences, it can render the final settlement sustainable. The process of conciliation and co-operation can be initiated by the basin States coming together to submit a joint declaration to the Tribunal on the following lines.⁴

- (1) The basin States agree to fully cooperate with the Tribunal so as to expedite its final award.
- (2) The basin States request the Tribunal to be guided by the Helsinki Rules in its adjudication and pay due regard to:
 - (i) Karnataka's aspirations for the development of its ayacut

- ii) The interests of Tamil Nadu and Pondicherry in the protection of their established irrigation
 - (iii) The interests of Kerala in the development of its irrigation and multi-purpose projects
 - (iv) The interests of all States in securing the equitable and timely availability of water from year to year and season to season.
- (3) The basin States affirm their commitment to undertake, jointly or separately as appropriate, measures for the augmentation and conservation of supplies, the economic and efficient use of waters, the protection of the environment, and the development of projects of common benefit.
 - (4) The basin States pledge to safeguard their traditional good neighbourly relations through public education and political consensus.

With such a declaration, the first step can be taken to move away from the past century of conflict in the Cauvery waters between Karnataka and Tamil Nadu to an era of sustained co-operation. Technical experts from the basin States, if allowed and encouraged to do so, can play a major role in formulating sustainable solutions. It is for the leaders of both States and at the Centre to rise to the occasion — and for people of goodwill to urge them to do so.

Notes

1. See in this connection, Ramaswamy R. Iyer (1992).
2. Environmental problems in the Cauvery basin are documented and discussed in C.R. Krishna Murthi (ed) (1985).
3. See International Bank for Reconstruction and Development (1970), S.Y. Krishnaswamy (1984) and (1986), V.C. Kulandaiswamy and R. Sakthivadivel (1988), A. Mohanakrishnan (1990), S.P. Namasivayam (1987), and United Nations Development Programme (1973).
4. As B.R. Chauhan (1992) points out (p. 317), 'The Inter-State Water Disputes tribunals in India have rec-

ognized the efficacy and the value of "agreements" for settlement of such disputes. The Narmada Water Disputes tribunal not only recognized the authenticity of the Agreement of July 12, 1974 among the States of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan but rather incorporated it in its own award. The Godavari Water Disputes tribunal encouraged the conclusion of agreements by the party-States even during its pendency and as such did not only highlight but also practically demonstrated the efficacy of settling inter-State water disputes through agreements, which were later made part of its award'.