

ITEM NO.301

COURT NO.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. No.15 in I.A. No.16 in I.A. No.12 in I.A. No.10 in
Civil Appeal No.2456/2007

WITH

I.A. Nos.2, 4, 7-9, 11, 13, 14 & 17

STATE OF TAMIL NADU

Appellant(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

(With appln. (s) for directions and intervention and modification of Court's order and permission to file additional documents and office report)

WITH Conmt. Pet.(C) No.225/2013 in C.A. No.2456/2007

Date : 30/09/2016 This appeal was called on for hearing today.

CORAM :

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

For Appellant(s) Mr. Fali S. Nariman, Sr. Adv.
Mr. Anil B. Divan, Sr. Adv.
Mr. S.S. Javali, Sr. Adv.
Mr. M.R. Naik, Adv. Gen.
Mr. Mohan V. Katarki, Adv.
Mr. S.C. Sharma, Adv.
Mr. V. N. Raghupathy, AOR'
Mr. R.S. Ravi, Adv.
Mr. J.M. Gangadhar, Adv.
Mr. Ranvir Singh, Adv.

For Respondent(s) Mr. Shekhar Naphade, Sr. Adv.
Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Subramonium Prasad, Sr. Adv.
Mr. G. Umapathi, Adv.
Mr. C. Paranasivam, Adv.
Mr. B. Balaji, AOR

Mr. Mukul Rohatgi, A.G.
Ms. Pinky Anand, ASG

Mr. Wasim A. Qadri, Adv.
Ms. Madhavi Divan, Adv.
Mr. Balendu Shekhar, Adv.
Mr. Karan Seth, Adv.
Mr. Zaid Ali, Adv.
Ms. Snidha Mehra, Adv.
Ms. Saudamini Sharma, Adv.
Mr. Ajay Sharma, Adv.
Mr. Ansh Singh Luthra, Adv.
Ms. Somya Rathore, Adv.
Ms. Kritika Sachdeva, Adv.

Mr. A.S. Nambiar, Sr. Adv.
Mr. V. G. Pragasam, AOR
Mr. P.K. Manohar, Adv.
Ms. Shania Vasudevan, Adv.
Mr. Prabu Ramasubramanian, Adv.

Mr. G. Prakash, AOR
Mr. Jishnu M.L., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Beena Prakash, Adv.
Mr. Manu Srinath, Adv.

Mr. Ramesh Babu M. R., AOR

Ms. Supreeta Sharangouda, AOR

Ms. Aparna Bhat, Adv.
Ms. Joshita Pai, Adv.
Ms. Nabila Hasan, Adv.

Mr. Ajit S. Bhasme, AOR

Mr. Rajesh Mahale, AOR

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

I.A. Nos.10, 12, 15 and 16 of 2016 in C.A. No.2456 of 2007

When these interlocutory applications were taken up on 27th September, 2016, the Court sought assistance of Mr. Mukul Rohatgi, learned Attorney General for India to facilitate so that the impasse between the two States can

appositely melt and a solution can be arrived at. It was agreed by the State of Karnataka as well as by the State of Tamil Nadu that their competent authorities from the Executive would be available for discussion with the authority to be nominated by the Union of India. Mr. Rohatgi had asked for some time to have the discussion and facilitation of the process and, accordingly, the matter was adjourned to today.

On the previous occasion, a direction was issued to the State of Karnataka to release 6000 cusecs of water commencing 28th September, 2016. At that juncture, this Court had stated "we are sure that the State of Karnataka shall obey the order without any kind of impediment, obstruction or any other attitude till we take up the matter on 30th September, 2016".

When the matter was taken up today, Mr. Rohatgi, learned Attorney General for India filed the Minutes of the Meeting of Chief Ministers of Karnataka and Tamil Nadu on Cauvery Water Disputes held under the Chairmanship of Union Minister of Water Resources, River Development and Ganga Rejuvenation, on 29th September, 2016 in New Delhi. We think it appropriate to reproduce the said Minutes:-

"The Hon'ble Supreme Court Order dated 27th September, 2016, inter alia mentions "the learned Attorney General of India has submitted that the Union of India is prepared to facilitate so that the impasses between the two States can

appositely melt. The learned Senior Counsel appearing for the State of Karnataka, has submitted that the Executive head of the State of Karnataka, as suggested by the Attorney General of India, shall be available for discussion with the competent authority of Union of India to be suggested by the Attorney General for India. The learned Senior Counsel for the State of Tamil Nadu also expressed his consent."

The Attorney General of India has stated vide letter dated 27.09.2016: "it would be appropriate that the Union Minister for Water Resources call for a meeting of both the States. The States could be represented by their Chief Ministers, Minister for Water Resources, State Principal Secretary for Water Resources and others".

Accordingly, a Meeting was convened by Hon'ble Union Minister of Water Resources, River Development & Ganga Rejuvenation on 29th September, 2016 in New Delhi. The meeting was attended by Hon'ble Chief Minister of Karnataka and Hon'ble PWD Minister of Tamil Nadu (representative of Hon'ble Chief Minister of Tamil Nadu) and other Ministers and officers of both the States and Union Government.

Hon'ble Minister (WR,RD&GR) while welcoming the Hon'ble Chief Minister of Karnataka, Hon'ble PWD Minister of Tamil Nadu and Ministers, Officials from both the States and Officers of MoWR, RD&GR for this meeting, stated that the Hon'ble Supreme Court had given an opportunity to the Union Government and both the States to discuss, facilitate and resolve the current Cauvery water impasse in a cordial atmosphere. On that premise, she hoped that both the States would show empathy to each others' need for arriving at a mutually acceptable solution.

Thereafter, the Minister (WR,RD&GR) requested both the States to present their views in the matter.

The Chief Minister of Karnataka read out his speech, which is attached as Annex-I. He concluded his speech by stating that the ground reality at present stare at the face that no further release from Karnataka can be possible without destroying the standing crops of farmers and causing shortages in the drinking water

supplies in Karnataka. He also requested the Union Government to depute a team of expert to the Cauvery basin in Karnataka and Tamil Nadu to verify the ground realities, storage positions, inflows and outflows for taking informed decision.

In absence of Chief Minister of Tamil Nadu, her speech was read out by Shri P. Ram Mohan Rao, the Chief Secretary of Tamil Nadu. A copy of the speech is attached as Annex-II. He stated that Tamil Nadu is in dire need of water. In the spirit of Orders of the Hon'ble Supreme Court, the Government of India was urged to ensure that Karnataka complies with the Hon'ble Supreme Court Orders dated 5/6th, 12th, 20th and 27th September 2016 and releases water to Tamil Nadu. Further, Karnataka should release the stipulated quantity of water as per the Final Order of the Cauvery Water Disputes Tribunal including the backlog of 76.042 TMC ft. as on 26.9.2016, which is absolutely vital for the survival of at least a single Samba crop in the Cauvery Delta. The representative of Tamil Nadu did not agree to the suggestions of deputing a team of experts to Cauvery basin on the ground that it was outside purview of this meeting.

Hon'ble Union Minister (WR,RD&GR) while making best efforts to make both the States converge to a consensus on release of Cauvery water, finally concluded the meeting by stating that the views of both the States on the current impasse on release of Cauvery water would be communicated to Hon'ble Supreme Court of India, through learned Attorney General of India, in its sitting scheduled for 30th September, 2016.

Mr. Fali S. Nariman, learned senior counsel appearing for the State of Karnataka has submitted that he has circulated two letters and he intends to bring the same on record. We have thought it appropriate to take the two letters on record. The letter dated 29th September, 2016, has been written by the Chief Minister of Karnataka to Mr. Fali S. Nariman. The letter in entirety reads as follows:

"September 29, 2016

Dear Mr. Nariman,

Since there are various versions as to what transpired after the Hon'ble Supreme Court's last Order passed on 27th September, 2016, I hasten to write to you the correct position.

Immediately after the order dated 27th September, 2016, in the late evening I convened an all-party meeting at Vidhan Soudha at Bangalore for the morning of 28th September, 2016, since the order passed by the Hon'ble Supreme Court was imperative.

At the meeting at which to the knowledge of all an audio recording was made - it was the unanimous view of all Party Members who attended including three Union Ministers of the Central Government, and Ministers from the State of Karnataka all of whom exhorted me, as the Head of Government, that the will of the people of Karnataka as reflected in the unanimous Resolution passed on 23rd September, 2016, by both Houses of Legislatures in the State must be honoured. As such although the direction of their Lordships to release water for three days "despite the Resolution passed", my government is not in a position at this juncture to release water.

At the inter-state meeting called by the Union Minister for Water Resources on 29th September, 2016, at 11.30 a.m., I attended and so did the representative of the Chief Minister of Tamil Nadu where we both explained our positions in writing. I pleaded that the Hon'ble Union Minister appoint an expert team to forthwith visit all the relevant areas in the basin and verify the ground realities including the acute shortage of drinking water and make recommendations. The team representing the Chief Minister of Tamil Nadu vigorously opposed this.

In view of the impasse, the Union Minister preferred not to take any unilateral decision.

My earnest request to you is to bring all these facts to the knowledge of the Hon'ble Supreme Court.

Yours sincerely,

Sd/-
(Siddaramaiah)"

The second letter dated 30th September, 2016, is the communication made by Mr. Fali S. Nariman to the Chief Minister. The said letter reads as follows:-

"I am in receipt of your letter of 29th September, 2016.

Representing the State of Karnataka I will certainly read out (if permitted) your letter to the Hon'ble Court. But you must realize that all of us appearing for the State are officers of the Court and since the Court has issued a direction for release of water "despite the Resolution passed", we must honour the order of the Court, I must therefore inform you that apart from reading your letter and my reply we will not be able to make any submission on behalf of the State to the Hon'ble Court.

Yours sincerely,

(Fali S. Nariman)"

We must appreciate the stand taken by Mr. Nariman. We must unhesitatingly state that this behoves the officer of the Court in the highest tradition of the "Bar".

Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu, in his turn, has submitted that he does not intend to argue further, for any order that is passed by this Court is possibly not going to be obeyed by the State of Karnataka.

Mr. Rohatgi, learned Attorney General for India, on being asked with regard to the constitution of the "Cauvery Management Board" in respect of which directions were issued on 20th September, 2016, has responded that the Board can be constituted on or before 4th October, 2016. Submission of Mr. Rohatgi is that three States, namely, Karnataka, Tamil Nadu, and Kerala and the Union Territory of Puducherry, have to nominate their respective representatives as per the final order passed by the Cauvery Water Disputes Tribunal.

Regard being had to the aforesaid submission, we direct the aforementioned States and the Union Territory to nominate their members as per the final order of the Tribunal on or before 4.00 p.m. tomorrow (1st October, 2016). The necessary communication shall be sent by the concerned Union Ministry to the competent authority of the States and the concerned Union Territory in course of today.

Mr. Rohatgi has submitted that after the Cauvery Management Board is constituted, it can proceed to the site forthwith to take a *prima facie* view of the ground reality.

At this juncture, we may refer to Article 144 of the Constitution of India. It reads as follows:-

"144. Civil and judicial authorities to act in aid of the Supreme Court.- All authorities, civil and judicial, in the territory of India,

shall act in aid of the Supreme Court."

On a plain reading of the said Article, it is clear as crystal that all authorities in the territory of India are bound to act in aid of the Supreme Court. Needless to say, they are bound to obey the orders of the Supreme Court and also, if required, render assistance and aid for implementation of the order/s of this Court, but, unfortunately, the State of Karnataka is flouting the order and, in fact, creating a situation where the majesty of law is dented. We would have proceeded to have taken steps for strict compliance of our order, but as we are directing the Cauvery Management Board to study the ground reality and give us a report forthwith, we reiterate our earlier direction that the State of Karnataka shall release 6000 cusecs of water from 1st October, 2016 till 6th October, 2016. We are granting this opportunity as the last chance and we repeat at the cost of repetition that we are passing this order despite the resolution passed by the Joint Houses of State Legislature of the State of Karnataka. We had clearly mentioned so in our earlier order, while we stated Annexure IV to I.A. No.16 of 2016. We are sure that the State of Karnataka being a part of the federal structure of this country will rise to the occasion and not show any kind of deviancy and follow the direction till the report on the ground reality is made available to this Court.

The State of Karnataka should not bent upon maintaining an obstinate stand of defiance, for one knows not when the wrath of law shall fall on one.

Call on 6th October, 2016 at 2.00 p.m.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master