

KAVERI/CAUVERY WATER DISPUTE

The sharing of waters of the river Kaveri has been the source of a serious conflict between the Indian states of Karnataka and Tamil Nadu. The genesis of this conflict, rests in two controversial agreements—one signed in 1892 and another in 1924—between the erstwhile Madras Presidency and Princely State of Mysore. The 802 km Kaveri river has 32,000 sq km basin area in Karnataka and 44,000 sq km basin area in Tamil Nadu.

The state of Karnataka contends that it does not receive its due share of water from the river as does Tamil Nadu. Karnataka claims that these agreements were skewed heavily in favour of the Madras Presidency, and has demanded a renegotiated settlement based on "equitable sharing of the waters". Tamil Nadu, on the other hand, pleads that it has already developed almost 3,000,000 acres (12,000 km²) of land and as a result has come to depend very heavily on the existing pattern of usage. Any change in this pattern, it says, will adversely affect the livelihood of millions of farmers in the state.

Decades of negotiations between the parties bore no fruit. The Government of India then constituted a tribunal in 1990 to look into the matter. After hearing arguments of all the parties involved for the next 16 years, the tribunal delivered its final verdict on 5 February 2007. In its verdict, the tribunal allocated 419 billion ft³ (12 km³) of water annually to Tamil Nadu and 270 billion ft³ (7.6 km³) to Karnataka; 30 billion ft³ (0.8 km³) of Kaveri river water to Kerala and 7 billion ft³ (0.2 km³) to Pondicherry. The dispute however, appears not to have concluded, as all four states deciding to file review petitions seeking clarifications and possible renegotiation of the order.

History of the dispute

The British controlled both Mysore and Madras for a short period in the middle of the 19th century. During their regime, numerous plans were drawn up for the utilization of the Kaveri waters by both states. However, the drought and subsequent famine in the mid 1870s put a hold on the implementation of these plans. The plans were revived by Mysore in 1881, by which time Mysore was back in the hands of the Mysore kings, while present day Tamil Nadu continued to remain a part of the Madras Presidency.

Mysore's plans to revive the irrigation projects met with resistance from the Madras Presidency. Mysore state made a representation to the then British government; as a result of which, a conference was held in 1890 with the objective of agreeing "...on the principles of a modus vivendi, which would on the one hand allow to Mysore reasonable freedom in dealing with her irrigation works, and on the other, give to Madras practical security against injury to her interests" and eventually the Agreement of 1892 was signed. Karnataka deems this agreement as having been between unequal partners because, while Mysore state was a princely state, Madras formed a part of the British Raj. Karnataka also considers this agreement to have been severely inimical to its interests as it gave sweeping powers and prescriptive rights to Madras, the lower riparian state. As per this agreement, Mysore was required to obtain Madras' consent for any new irrigation reservoirs across any of the main rivers it wished to utilize and share information on any new irrigation scheme it wished to undertake to utilize the waters

Things came to a head in 1910 when Mysore, under Nalvadi Krishnaraja Wodeyar as the king and Sir. M.Visvesvaraya as Chief Engineer came up with a plan to construct a dam at Kannambadi village to hold up to 41.5 TMC of water. The dam was planned to be built in two stages. In the first stage a capacity of 11 TMC was envisioned, while in the second stage the full capacity was set to be realized. Madras however, refused to give its consent for this move as it had its own plans to build a storage dam at Mettur with a capacity of 80 TMC.

After a reference to the Government of India, permission was accorded to Mysore, but for a reduced storage of 11TMC. During construction, however, the foundation was laid to suit the earlier desired full storage. This raised Madras' hackles and the dispute continued. As a result, the then British Government of India referred the matter

to arbitration under Rule IV of the 1892 Agreement. The Cauvery dispute thus had come up for arbitration for the first time.

Sir H D Griffin was appointed arbitrator and M. Nethersole, the Inspector General of Irrigation in India, was made the Assessor. They entered into proceedings on 16 July 1913 and the Award was given on 12 May 1914. The award upheld the earlier decision of the Government of India and allowed Mysore to go ahead with the construction of the dam up to 11 TMC.

The agreement also stipulated that Mysore was not to increase its area under irrigation more than 110,000 acres (450 km²) beyond what was already existing, while the same cap for Madras Presidency was pegged at 301000|acre|km². Nonetheless, Madras still appealed against the award and negotiations continued. Eventually an agreement was arrived at in 1924 and a couple of minor agreements were also signed in 1929 and 1933. The 1924 agreement was set to lapse after a run of 50 years. As a result of these agreements, Karnataka claims that Mysore was forced to give up rights.

Post independence developments

In 1947, India won independence from the British. This changed the equations drastically. Tamil Nadu was carved out of Madras Presidency and Mysore province became a state.

Further in 1956, the reorganization of the states of India took place and state boundaries were redrawn based on linguistic demographics. Kodagu or Coorg (the birthplace of the Kaveri), became a part of Mysore state. Huge parts of erstwhile Hyderabad state and Bombay Presidency joined with Mysore state. Parts of Malabar which earlier formed part of Madras Presidency went to Kerala. Pondicherry had already become a de facto Union territory in 1954.

All these changes further changed the equations as Kerala and Pondicherry also jumped into the fray. Kerala staked its claim as one of the major tributaries of the Kaveri, the Kabini, now originated in Kerala. Karaikal region of Pondicherry at the tail end of the river demanded the waters that it had always used for drinking and some minimal agriculture. While these additional claims complicated matters greatly at a technical level, Mysore state and Tamil Nadu still remained the major parties to the dispute.

By the late 1960s, both states and the Central government began to realize the gravity of the situation as the 50 year run of the 1924 agreement was soon coming to an end. Negotiations were started in right earnest and discussions continued for almost 10 years.

While discussions continued, a Cauvery Fact Finding Committee (CFFC) was constituted. The brief of the CFFC was to inspect the 'ground' realities and come up with a report. The CFFC came up with a preliminary report in 1972 and a final report in 1973. Interstate discussions were held based on this report. Finally in 1974, a draft agreement which also provided for the creation of a Cauvery Valley Authority was prepared by the Ministry of Irrigation. This draft however, was not ratified.

While all these discussions went on, Tamil Nadu's irrigated lands had grown from a pre-Mettur command area of 1,440,000 acres (5,800 km²) to 2,580,000 acres (10,400 km²) while Karnataka's irrigated area stood at 680,000 acres (2,800 km²). Karnataka maintains that these figures demonstrate the lop-sided nature of the agreement.

In 1976, after a series of discussions between the two states and the Central government chaired by Jagjeevan Ram, the then Irrigation Minister, a final draft was prepared based on findings of the CFFC. This draft was accepted by all states and the Government also made an announcement to that effect in Parliament. Tamil Nadu came under President's rule soon after that and the agreement was put on the backburner. When President's rule was lifted, the All India Anna Dravida Munnetra Kazhagam (AIADMK) with M. G. Ramachandran at the helm came to power for the first time in Tamil Nadu and the dispute took a new turn.

The Tamil Nadu government now rejected the draft agreement and started insisting that the 1924 agreement had only provided for an extension and not a review. It began insisting that status quo be restored and everyone go back to the agreements of 1892 and 1924. This however, did not cut ice with Karnataka which had throughout maintained that those agreements were partisan and had been signed between unequal partners.

When Karnataka began construction of the Harangi dam at Kushalanagara in Kodagu, it was once again met with resistance from Tamil Nadu. Tamil Nadu went to court demanding the constitution of a Tribunal under the Inter State Water Disputes Act (ISWD) of 1956. It also demanded the immediate stoppage of construction work at the dam site. As a result of Tamil Nadu's protests, Karnataka had to fund the construction under the non-plan head and this led to a severe strain on its finances.

Later Tamil Nadu withdrew its case demanding the constitution of a tribunal and the two states started negotiating again. Several rounds of discussions were held in the 1980s. The result was still, a stalemate. In 1986, a farmer's association from Tanjavur in Tamil Nadu moved the Supreme Court demanding the constitution of a tribunal. While this case was still pending, the two states continued many rounds of talks. This continued till April 1990 and yet yielded no results.

The constitution of the tribunal

The Supreme Court then directed the government headed by Prime Minister V. P. Singh to constitute a tribunal and refer all disputes to it. A three man tribunal was thus constituted on 2 June 1990. The tribunal was headquartered at New Delhi and was to be headed by Justice Chittatosh Mookerjee.

The four states presented their demands to the tribunal as under

- Karnataka - claimed 465 billion ft³ (13 km³) as its share
- Kerala - wants 99.8 billion ft³ (2.83 km³) as its share
- Pondicherry - claims 9.3 billion ft³ (0.3 km³)
- Tamil Nadu - wants the flows to be ensured in accordance with the terms of the agreements of 1892 and 1924 (ie. 566 billion ft³ (16 km³) for Tamil Nadu and Pondicherry; 177 billion ft³ (5 km³) for Karnataka and 5 billion ft³ (0.1 km³) for Kerala).

Soon after the tribunal was set up, Tamil Nadu demanded a mandatory injunction on Karnataka for the immediate release of water and other reliefs. This was dismissed by the tribunal. Tamil Nadu now went back to the Supreme Court which directed the tribunal to reconsider Tamil Nadu's plea.

The tribunal reconsidered Tamil Nadu's plea and gave an interim award on 25 June 1991. In coming up with this award, the tribunal calculated the average inflows into Tamil Nadu over a period of 10 years between 1980–81 and 1989–90. The extreme years were ignored for this calculation. The average worked out to 205 billion ft³ (5.8 km³) which Karnataka had to ensure reached Tamil Nadu in a water year. The award also stipulated the weekly and monthly flows to be ensured by Karnataka for each month of the water year. The tribunal further directed Karnataka not to increase its irrigated land area from the existing 1,120,000 acres (4,500 km²)

Karnataka deemed this extremely inimical to its interests and issued an ordinance seeking to annul the tribunal's award. The Supreme Court now stepped in at the President's instance and struck down the Ordinance issued by Karnataka. It upheld the tribunal's award which was subsequently gazetted by the Government of India on 11 December 1991.

Karnataka was thus forced to accept the interim award and widespread demonstrations and violence broke out in parts of Karnataka and Tamil Nadu following this. Thousands of Tamil families had to flee from Bangalore in fear of being attacked and lynched by pro-Kannada activists. The violence and show down, mostly centered in the Tamil

populated parts of Bangalore, lasted for nearly a month and most schools and educational institutions in Bangalore remained closed during this period.

In 1995, the monsoons failed badly in Karnataka and Karnataka found itself hard pressed to fulfill the interim order. Tamil Nadu approached the Supreme Court demanding the immediate release of at least 30 billion ft³. The Supreme Court refused to entertain Tamil Nadu's petition and asked it to approach the tribunal. The tribunal examined the case and recommended that Karnataka release 11 billion ft³. Karnataka pleaded that 11 billion ft³ was unimplementable in the circumstances that existed then. Tamil Nadu now went back to the Supreme Court demanding that Karnataka be forced to obey the tribunal's order. The Supreme Court this time recommended that the then Prime Minister, Mr. P. V. Narasimha Rao intervene and find a political solution. The Prime Minister convened a meeting with the Chief Ministers of the two states and recommended that Karnataka release 6 billion ft³ instead of the 11 billion ft³ that the tribunal ordered. Karnataka complied with the decision of the Prime Minister and the issue blew over.

Constitution of the CRA

Karnataka had all through maintained that the interim award was not 'scientific' and was inherently flawed. It had, nevertheless, complied with the order except during 1995–96 when rains failed. What complicated matters was that the Interim award was ambiguous on distress sharing and there was no clear cut formula that everyone agreed upon to share the waters in the case of failure of the monsoon.

In 1997, the Government proposed the setting up of a Cauvery River Authority which would be vested with far reaching powers to ensure the implementation of the Interim Order. These powers included the power to take over the control of dams in the event of the Interim Order not being honoured. Karnataka, which had always maintained that the interim order had no scientific basis and was intrinsically flawed, strongly protested the proposal to set up such an authority.

The Government then made several modifications to the powers of the Authority and came up with a new proposal. The new proposal greatly reduced the executive powers of the Authority. The power to take over control of dams was also done away with. Under this new proposal, the Government set up two new bodies, viz., Cauvery River Authority and Cauvery Monitoring Committee. The Cauvery River Authority would consist of the Prime Minister and the Chief Ministers of all four states (Karnataka, Tamil Nadu, Pondicherry, Kerala) and was headquartered in New Delhi. The Cauvery Monitoring Committee on the other hand, was an expert body which consisted of engineers, technocrats and other officers who would take stock of the 'ground realities' and report to the government .

In the summer of 2002, things once again came to a head as the monsoon failed in both Karnataka and Tamil Nadu. Reservoirs in both states fell to record low levels and inevitably tempers rose. The sticking point yet again, as in 1995–96 was how the distress would be shared between the two states. The tribunal had overlooked this crucial point when it gave the interim award and it had returned once again to haunt the situation. Tamil Nadu demanded that Karnataka honour the interim award and release to Tamil Nadu its proportionate share. Karnataka on the other hand stated that the water levels were hardly enough to meet its own demands and ruled out releasing any water in the circumstances that prevailed.

A meeting of the CRA was called on 27 August 2002 but the Karnataka chief minister walked out of the meeting. The focus now shifted to the Supreme Court which ordered Karnataka to release 1.25 billion ft³ of water every day unless CRA revised it. Karnataka started the release of water but pressed for another meeting of the CRA which was fixed for 8 September. The Tamil Nadu Chief Minister this time boycotted the meet citing insufficient notice as the reason. A minister from her cabinet, however represented Tamil Nadu. The CRA revised the Court's order from 1.25 billion ft³ to 0.8 billion ft³ per day.

This time however, the Karnataka government in open defiance of the order of the CRA, refused to release any water succumbing to the large scale protests that had mounted in the Kaveri districts of the state. Tamil Nadu aghast at the defiance, went back to the Supreme Court. Karnataka now resumed the release of water for a few days, but stopped it again on 18 September as a protesting farmer committed suicide by jumping into the reservoir and the protests threatened to take a dangerous turn.

The centre now stepped in and asked Karnataka to release the water. The SC meanwhile, in response to Tamil Nadu's petition asked the CRA for details of the water release and water levels in the reservoirs. The CRA in turn ordered for the inspections of the reservoirs. While the CRA inspected the reservoirs in Karnataka, Tamil Nadu (on 23 September) flatly refused to grant them permission to inspect its reservoirs. This move by Tamil Nadu Chief Minister, coupled with her earlier walkout and boycott of the CRA meets, came in for severe criticism from all quarters. On 30 September the Supreme court ordered Tamil Nadu to co-operate with the CRA and Tamil Nadu gave in.

The flare up had by now, well and truly taken an ugly turn and there were accusations and counter accusations being thrown all around in both states. The opposition parties in Tamil Nadu too had jumped into the fray and at the same time joining Jayalalitha in stinging rebukes of both the Centre and the CRA, while the opposition parties in Karnataka expressed their full solidarity with the Congress-led Karnataka government to protect their right to the Kaveri water.

To add to all this, the dispute had already spilled onto the streets in the district of Mandya in Karnataka and was threatening to spread to other parts of the state too. Precipitating the matters on the streets, the SC ordered Karnataka on 3 October to comply with the CRA and resume the release of water.

Karnataka once again refused to obey the orders of SC. Tamil Nadu slapped another contempt petition on Karnataka and soon the issue degenerated into a 'free for all' with all and sundry from both states joining the protests. Soon, film actors and various other cross sections of society from both states were on the streets. Tamil TV channels and screening of Tamil films were blocked in Karnataka. Also all buses and vehicles from Tamil Nadu were barred from entering Karnataka. The belligerence soon hit a crescendo with Tamil activists calling for a stoppage of power from the Neyveli Power station to Karnataka as a tit-for-tat measure. A Pan-Tamil militant outfit (a month or so later) went ahead and blasted a major power transformer supplying power to the neighbouring states of Karnataka and Andhra Pradesh.

The Karnataka Chief Minister, Mr. S. M. Krishna on the other hand, fearing that the situation might spiral out of control, embarked on a *padayatra* from Bangalore to Mandya. While some saw this as merely a gimmick, some, like U R Ananthamurthy saw it as a good faith effort to soothe tempers and joined him in the *yatra*.

2003–2006

This period did not see any major flare up in the dispute even though the summer of 2003 saw a dry spell in both states. The monsoons in 2004, 2005 and 2006 was quite copious and this helped a great deal in keeping the tempers calm. While the last 3 or 4 years have been relatively quiet as far as jingoistic voices are concerned, a flurry of development has been afoot in the courts.

The term of the tribunal was initially set to expire in August 2005. However, in the light of the many arguments the court was yet to hear, the tribunal filed a request for extension of its term. The extension was granted and the tribunal's term was extended for another year until September 2006. Early in 2006, a major controversy erupted over the 'Assessor's report' that was apparently 'leaked' to the press. The report had suggested a decision which Karnataka summarily rejected. Another major controversy erupted when just a couple of months before the September 2006 deadline, the tribunal recommended the formation of another expert committee to study the 'ground realities' yet again. This was unanimously and vehemently opposed by all the four states party to the

dispute. The states contended that this move would further delay a judgment which has already been 16 years in the making.

More than the disapproval of all the four states of the new expert committee that was proposed, the proposal turned out to be a major embarrassment for the tribunal. This was because, not only were the four states opposed to it, even the Chief Judge of the tribunal was opposed to it. However the other two assistant judges on 3-man adjudication team, overruled the opinion of the main Judge. And all this was done in a packed courtroom and this led to petty bickering and heated arguments between the three judges in the packed courtroom. This left everyone in the courtroom shocked and the Tamil Nadu counsel was moved to remark that it was embarrassing that the judges probably needed help settling their own disputes before adjudicating on the dispute at hand. Nonetheless, the new expert committee was formed and carried out further assessments. Subsequently, the extended deadline of the tribunal also passed and the tribunal was given yet another extension.

Judgement

The Cauvery Water Disputes Tribunal announced its final verdict on 5 February 2007. According to its verdict, Tamil Nadu gets 419 billion ft³ (12 km³) of Cauvery water while Karnataka gets 270 billion ft³ (7.6 km³). The actual release of water by Karnataka to Tamil Nadu is to be 192 billion ft³ (5.4 km³) annually. Further, Kerala will get 30 billion ft³ and Pondicherry 7 billion ft³. Tamil Nadu appears to have been accepting the verdict while the government of Karnataka, unhappy with the decision, filed a revision petition before the tribunal seeking a review.

On 19th Sep 2012, Prime Minister Manmohan Singh, who is also the Chairman of Cauvery River Authority (CRA), directed Karnataka to release 9,000 cusecs of Cauvery water to Tamil Nadu at Biligundlu (the border) daily from September 21, 2012. But Karnataka felt that this was impractical due to the drought conditions prevailing because of the failed monsoon. Karnataka then walked out of the high level meeting as a sign of protest.

On Sep 21, 2012, Karnataka filed a petition before the Cauvery River Authority seeking review of its September 19 ruling.

On Sep 24, 2012, Tamil Nadu Chief Minister directed the officials to immediately file a petition in the Supreme Court seeking a direction to Karnataka to release Tamil Nadu its due share of water.

On Sep 28, 2012, the Supreme Court slammed the Karnataka government for failing to comply with the directive of the CRA. Left with no other option, Karnataka started releasing water. This led to wide protests and violence in Karnataka.

On Oct 4, 2012, the Karnataka government filed a review petition before the Supreme Court seeking a stay on its September 28 order directing it to release 9,000 cusecs of Cauvery water every day to Tamil Nadu, until October 15.

On Oct 6, 2012, Several Kannada organisations, under the banner of "Kannada Okkoota", called a Karnataka bandh (close down) on October 6 in protest against the Cauveri water release.

On Oct 8, 2012, Supreme Court of India has announced the release of 9000 cusecs has to be continued and its up to the CRA head, the Prime Minister is the responsible person.

On Oct 8, 2012, the Prime Minister ruled out a review of the Cauvery River Authority's (CRA) decision asking Karnataka to release 9,000 cusecs of water daily to Tamil Nadu till October 20, rejecting the plea by both the Congress and BJP leaders from Karnataka. Within a few hours from this, Karnataka stopped release of Cauvery water to Tamil Nadu.

On Oct 9, 2012, Tamil Nadu chief minister directed authorities to immediately file a contempt petition against the Karnataka government for flouting the verdict of the Supreme Court by unilaterally stopping the release of Cauvery water to Tamil Nadu.

On Oct 17, 2012, Tamil Nadu made a fresh plea in the Supreme Court reiterating its demand for issuing appropriate directions to Karnataka to make good the shortfall of 48 tmc ft of water as per the distress sharing formula.

Much of the water-sharing problem can be solved if Karnataka and Tamil Nadu agree to limit their area under irrigation-intensive crops like paddy and sugarcane to one season, and grow alternative crops like ragi, maize, pulses, oil seeds, etc., in the other two seasons. By switching over to less water demanding crops, even the area under irrigation can be increased. Horticultural crops, traditionally water-intensive, can be made less so by adopting drip irrigation practices. But for all this to happen, politicisation of the issue must stop!