

ITEM NO.1

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.12/2016

In

I.A. 10/2016

In

Civil Appeal No.2456/2007

STATE OF TAMIL NADU

Appellant(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

(For modification of Order dated 05.09.2016/06.09.2016 passed by the Court)

Date : 12/09/2016 This application was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)

Mr. Shekhar Naphade, Sr. Adv.
Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Subramaniam Prasad, Sr. Adv.
Mr. G. Umapathy, Adv.
Mr. C. Paramasivam, Adv.
Mr. B. Balaji, AOR

For Respondent(s)

Mr. F.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. R.S. Ravi, Adv.
Mr. V. N. Raghupathy, AOR
Mr. J.M. Gangadhar, Adv.
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Mr. A.S. Nambiar, Sr. Adv.
Mr. V. G. Pragasam, AOR
Mr. P.K. Manohar, Adv.
Mr. Shanta Vasudhuan, Adv.

Mr. Prabu Ramasubramanian, Adv.
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Mr. Jishnu M.L., Adv.
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Mrs. Beena Prakash, Adv.
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Mr. Ramesh Babu M. R., AOR

Mr. R. Nedumaran, AOR

Mr. S. Wasim A. Qadri, Adv.
Mr. Ajay Kumar Singh, Adv.
Mr. S.S. Rawat, Adv.
Mr. Raj Bhadur, Adv.
Mr. D.S. Mahra, AOR

Mr. Rajesh Mahale, AOR

Mr. Ajit S. Bhasme, AOR

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

The present interlocutory application, being I.A. No.12 of 2016 which was mentioned yesterday, viz. 11.09.2016, is taken up today. In the affidavit of urgency in support of taking up of the application for hearing, if we allow ourselves to say so, is absolutely disturbing and to say the least, totally deprecable. Paragraph 3 of the said affidavit reads as follows:-

"I submit that this application for modification of the interim order dated 05th September, 2016, passed by this Hon'ble Court is necessitated not merely because of the spontaneous agitations in the various parts of Karnataka including Bangalore, Mandya, Mysore and Hassan in the Cauvery basin which has paralysed the normal life besides destroying the public and private properties (in hundreds of crores of rupees) as evident from the newspaper reports from

06.09.2016 to 10.09.2016, but having regard to the ground realities of needs and requirements as stated in the application."

That apart, the application for modification contains certain averments which follow the tenor of similar language which cannot be conceived of to be filed in a court of law, seeking modification of an order. Agitation in spontaneity or propelled by some motivation or galvanized by any kind of catalytic component, can never form the foundation for seeking modification of an order.

An order of this Court has to be complied with by all concerned and it is the obligation of the Executive to see that the order is complied with in letter and spirit. Concept of deviancy has no room; and disobedience has no space. The citizens cannot become law unto themselves. When a court of law passes an order, it is the sacred duty of the citizens to obey the same. If there is any grievance, they are obligated under the law to take recourse to permissible legal remedies. The tenor of the application filed by the State of Karnataka does not reflect so, but, on the contrary, demonstrates otherwise. We decry it. We must appreciably state what Mr. Fali S. Nariman, learned senior counsel appearing for the State of Karnataka has submitted without any kind of equivocation that the affidavit has been erroneously drafted, but the prayer, in essence, requires a hearing. Learned senior counsel would submit that he will not press any of the grounds which relate to the said

assertions or averments, but would solely rely on other grounds and the final order passed by the Tribunal. Keeping in view the aforesaid submission, we proceed to record the proponents of Mr. Nariman, learned senior counsel for the State of Karnataka in respect of the reliefs sought for in the application. The prayers in the application read as follows:-

"(a) Hear this application urgently on Sunday.

(b) Modify the order dated 05.09.2016 (as corrected on 06.09.2016) already passed by this Hon'ble Court, subject to further orders later on, restricting the releases to 10000 cusecs per day for six days totalling 60000 cusecs (66465 cusecs has already been released from Karnataka reservoirs from 05.09.2016 to 10.09.2016 and at the inter State border Bilingundlu, the release as gauged by the Central Water Commission has been 34529 cusecs from 05.09.2016 to 10.09.2016); and

(c) Keep in abeyance the Clause (c) of the directions of the Hon'ble Court in its order dated 05.09.2016 as corrected on 06.09.2016."

Be it stated, though the prayer (b) of the application is couched in a different language, as the quoted portion hereinabove would clearly show, Mr. Nariman has emphasized on clause (c). It is because the principal prayer of the State of Karnataka is to keep the directions contained in the order dated 5th September, 2016, in abeyance till the Supervisor Committee takes a decision. In support of the said argument, Mr. Nariman has produced a comparative chart indicating storage and flow position of Karnataka reservoirs

and Tamil Nadu's Reservoir's at Mettur Reservoir and gauged flow at Biligundulu from 1st September to 12th September, 2016. According to him, the total water in the reservoir in the State of Karnataka is less than that of the total water in the reservoir in the State of Tamil Nadu. Additionally, it is submitted by Mr. Nariman that out flow from Mettur Reservoir to the systems depending on Mettur is 1250 cusecs per day for 'samba' crops and, therefore, the agony expressed by Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu, on the earlier occasion, possibly was due to some kind of anxiety expressed by the State of Tamil Nadu. Additionally, it is urged by Mr. Nariman that the State of Karnataka has released approximately 84168 cusecs at Biligundulu from 5th September to 12th September, 2016, and by the end of today it may exceed a lac. It is urged by him that the water cannot be precisely measured because it takes two days to reach the concerned area and depends upon the flow and various other factors. It is also argued that when the Supervisory Committee is meeting today and it is going to decide with regard to the necessity having regard to the plight of both the States, it would be appropriate that the order passed on the earlier occasion should be kept in abeyance, otherwise the State of Karnataka would suffer immensely as there will be shortage of drinking water and water for irrigation. Emphasis has been laid by him that in the final order passed by the Tribunal it had really

not adverted to the deficit concept in a month and, hence an arithmetical calculation in this context would not be seemly.

The State of Tamil Nadu has filed the counter affidavit to the interlocutory application. In paragraph 5 of the said affidavit, it has been asserted as follows:-

"I state that State of Karnataka had an inflow of about 4 TMC in its four major reservoirs from 01 to 10th September, 2016. The flow realized at Billigundulu due to the release from Karnataka's reservoirs upto 11.09.20q16 is about 4.8 TMC. Thus it is evident that Karnataka has released to Tamil Nadu only the inflows received by it and the depletion in storage is due to its own drawal and not on account of release to Tamil Nadu as alleged by Karnataka."

Various grounds have been urged as to how the present application is faulted. Mr. Naphade, learned senior counsel appearing for the State of Tamil Nadu would contend that the comparative chart filed by the State of Karnataka is a flawed one, inasmuch as the storage of water in the State of Karnataka is computed on the basis of "Live Storage", whereas the storage of the State of Tamil Nadu at Mettur Reservoir is shown on the basis of "Gross Storage". Learned senior counsel would canvass that for the State of Tamil Nadu 50 TMC water is required to be stored for the purpose of sustained relief for the relevant period. Criticizing the application filed by the State of Karnataka, it is put forth by him that when the State of Tamil Nadu had made an internal

arrangement for its own protection, the State of Karnataka cannot question the same and in no circumstances think of flouting the final order, for the final order pertains to release of water on the basis of adjudication of Cauveri dispute.

Mr. Naphade and Mr. Rakesh Dwivedi, learned senior counsel appearing for the State of Tamil Nadu have submitted that law and order situation can never be a ground for keeping the order of this Court in abeyance or modification of the same. We have, in the beginning, stated that we have not appreciated the grounds stated in the application and decried the same. We reiterate the same. Therefore, the criticism on that score by Mr. Naphade need not be adverted to further in detail.

We have noted the two prayers, namely, to keep our earlier order in abeyance and modification of the direction contained therein. Mr. Nariman has laid stress on abeyance of the order as the State of Karnataka is facing enormous difficulty with regard to the water situation. The said submission has its limitations. In that context, we are obliged to refer to our order dated 5th September, 2016. The relevant part of the said order deserves to be reproduced. It reads as follows:-

"Mr. Nariman, learned senior counsel appearing for the State of Karnataka has drawn our attention to

paragraph 'D' of Clause IX of the final order of the Tribunal. It reads as follows:-

"D. The Authority shall properly monitor the working of monthly schedule with the help of the concerned States and Central Water Commission for a period of five years and if any modification/adjustment is needed in the schedule thereafter, it may be worked out in consultation with the party States, and help of Central Water Commission for future adoption without changing the annual allocation amongst the parties."

Learned senior counsel for the State of Karnataka would submit that it is obligatory on the part of the State of Tamil Nadu to approach the Supervisory Committee that has been constituted vide Notification dated 22nd May, 2013. Learned senior counsel has drawn our attention to paragraphs 2 and 3 of the Notification, which deal with the constitution of the Supervisory Committee and the role of the Committee. For appropriate appreciation, we reproduce the said paragraphs. They read as under:-

"Constitution of the Supervisory Committee:- (1) There shall be a Committee under this scheme to be known as the Supervisory Committee (hereinafter referred to as the Committee).

(2) The Committee referred to in sub-rule(1) shall consist of the following, namely:-

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| (a) Secretary, the Ministry of Water Resources, Government of India | Chairman,
<i>ex officio</i> |
| (b) Chief Secretaries to the State Governments of Karnataka, Tamil Nadu, Kerala and the Union Territory of Puducherry or his duly nominated representative | Members,
<i>ex officio</i> |
| (c) Chairman, Central Water Commission | Members,
<i>ex officio</i> |
| (d) Chief Engineer, Central Water Commission | Member-Secretary |

3. Role of the Committee:- The role of the Committee shall be to give effect to the implementation of the Order dated the 5th February,

2007 of the Tribunal:

Provided that in case of any doubt or difficulty, the Chairman, Supervisory Committee and, if necessary, any of the parties may apply to Hon'ble Supreme Court for appropriate directions with notice to the other States and the Union Territory."

At this juncture, we must appreciably state what the State of Karnataka has stated. We have been handed over a note by Mr. Nariman and paragraphs 2 and 3 of the same contain certain suggestions. We think it seemly to reproduce the said suggestions. They are as follows:-

"2. Meanwhile the Supervisory Committee constituted under notification dated 22.05.2013 shall meet immediately from day to day and take decision on the further releases, if any, to be made by Karnataka in the month of September, but after ascertaining ground realities in the Cauvery Basin in Karnataka and Tamil Nadu. The Supervisory Committee shall meet at least once in a month to monitor the flows till the end of the season in December, 2016.

3. In response to the Hon'ble Court's observation's made on 02.09.2016, the Respondent State of Karnataka as a goodwill gesture will ensure flows at the Inter-State Border, Biligundlu, at the rate of not less than 10000 cusecs⁶ per day (about 0.86 tmc), as measured by the gauge station of the Central Water Commission as from 7th September, 2016 to 12th September, 2016."

Mr. Naphade, learned senior counsel has submitted that the State of Tamil Nadu has no objection to approach the Supervisory Committee, but as far as the sustenance of the crops and interest of the farmers in the State of Tamil Nadu is concerned, instead of 10 cusecs of water per day (about 0.86 TMC), there should be release of 20 cusecs of water per day.

Having heard learned counsel for the parties, we think it condign to direct as follows:-

(a) The applicant, the State of Tamil Nadu, shall

approach the Supervisory Committee within three days from today. Response, if any, by the State of Karnataka be filed within three days therefrom.

(b) The Supervisory Committee shall pass appropriate direction in this regard within four days from the date of filing of the reference keeping in view the language employed in the final order of the Tribunal. Be it clarified, the Supervisory Committee is bound by the language used in the order passed by the Tribunal.

(c) Coming to the immediate arrangement, keeping in view the gesture shown by the State of Karnataka and the plight that has been projected with agony by Mr. Naphade, we think it appropriate to direct that 15 cusecs of water per day be released at Biligundulu by the State of Karnataka for ten days.

(d) The State of Tamil Nadu is directed to release water proportionately to the Union Territory of Puducherry."

On a perusal of the aforesaid order, it is clear as noon day that the State of Karnataka, as a good gesture, had offered 0.86 TMC, that is, 10000 cusecs of water per day and out of the said water, the State of Tamil Nadu was required to release water proportionally to the Union Territory of Puducherry. Today, the prayer is to keep the entire order in abeyance. The prayer for abeyance does not commend us. We reject the same.

As far as the prayer for modification is concerned, we must again, despite the repetition, note the acceptance with anguish and regret by Mr. Nariman that pleading in the application and also in the affidavit filed for urgency, are not appropriate. However, as Mr. Nariman has expressed regret and we have blamed the State authorities and stated

that it is the duty of the Executive to maintain law and order and see that the order of the Court is complied with, we do not intend to say anything further on that score. Coming back to the issue of modification, Mr. Nariman, learned senior counsel has highlighted that there is need of water as there is less of drinking water and the suffering of the farmers are immense. Mr. Naphade, on the earlier occasion, as well as today, has highlighted the issue of farmers in Tamil Nadu. The Supervisory Committee is an expert body and it has been constituted *vide* Notification dated 22nd May, 2013. It is required to take a decision in conformity with the final order of the Tribunal.

Be it noted, though the matter was directed to be listed on 16th September, 2016, but as there is difficulty, the matter has to be listed on 20th September, 2016 at 2.00 p.m.

Regard being had to the facts and circumstances in entirety, we are inclined to modify the order dated 5th September, 2016, to the extent that the State of Karnataka shall release 12000 cusecs of water per day and the said direction, shall remain in force till 20th September, 2016.

As we have adjourned the matter to be taken on that day, we expect the inhabitants of both the States, namely, the State of Karnataka and State of Tamil Nadu, shall behave regard being had to the respect for law and order and the

Executive of both the States are under the constitutional obligation to see that the law and order prevails. Mr. Fali S. Nariman, learned senior counsel appearing for the State of Karnataka and Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu undertake to intimate the same to the competent authorities of the States.

Call on the date fixed for further hearing.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master