Case Note: Case concerning appeal against the Order of Cauvery Water Disputes Tribunal. The court allowed the appeal on the ground that the Central Government had not made any reference of interim relief to it and set aside the order of the Tribunal and directed the Tribunal to decide the case on merits.

1991(1)SCALE802, 1991Supp(1)SCC240, [1991]2SCR501

IN THE SUPREME COURT OF INDIA

Decided On: 26.04.1991

State of Tamil Nadu
v.
State of Karnataka and Ors.

With

Union Territory of Pondicherry
v.
State of Karnataka and Ors.

Hon'ble Judges:
N.M. Kasliwal, M.M. Punchhi and R.M. Sahai, JJ.

JUDGMENT

N.M. Kasliwal, J.

1. Special Leave granted in S.L.P. (C) No. 4991 of 1991.

2. These appeals by grant of special leave are directed against the order of the Cauvery Water Disputes Tribunal dated January 5, 1991. The above appeals have been filed by the Governments of Tamilnadu and Union Territory of Pondicherry in respect of Civil Misc. Petition (in short 'C.M.P') Nos. 4 and 9 of 1990 by the Government of Tamilnadu and CMP. No. 5 of 1990 filed by the Union Territory of Pondicherry and dismissed by the Tribunal by a common order dated January 5, 1991.

3. As identical questions of law arise in these cases, we would state the facts of C.M.P. filed by the Government of Tamilnadu. The Government of Tamilnadu filed a complaint dated 6th July, 1986 on the ground that the interests of the State of Tamilnadu and of its inhabitants (particularly the farmers in the Cauvery Delta) had been and is prejudiciously and injuriously affected by the executive action taken and proposed to be taken by the upper riparian States of Karnataka and by the failure of that State to implement the terms of the agreements relating to the use, distribution and control of the waters of river

Cauvery. The said complaint was made to the Central Government under Section 3 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as 'the Act').

4. The Central Government by Notification dated 2.6.1990 constituted the Cauvery Water Disputes Tribunal and passed the following order of reference:

No. 21/1/90-WD ;
Government of India
(Bharat Sarkar)
Ministry of Water Resources
(Jal Sansadhan Mantralaya)

New Delhi, 2nd June, 1990.

REFERENCE

In the exercise of the powers conferred by Sub-section (1) of section 5 of the Inter-State Water Disputes Act, 1956 (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 therefore, emerging from letter No. 17527/K2/82 - 110 dated the 6th July, 1986 from the Government of Tamilnadu (copy enclosed).

By order and in the name of
The President of India
(M.A. CHITALE)
SECRETARY, (WATER RESOURCES)

Chairman,

The Cauvery Water Disputes Tribunal,

New Delhi.

5. During the pendency of above reference the Government of Tamilnadu filed C.M.P. No. of 1990 praying that the State of Kamataka be directed not to impound or utilise water of Cauvery river beyond the extent impounded or utilised by them as on 31.5.1972, as agreed to by the Chief Ministers of the Basin States and Union Minister for Irrigation and Power It was further prayed that an order be passed restraining the State of Kamataka from undertaking any new projects, dams, reservoirs, canals etc., and/or from proceeding further with the construction of projects, dams, reservoirs, canals etc. in the Cauvery basin.

6. On 8.9.1990 C.M.P. No. 5 of 1990 was filed by the Union Territory of Pondicherry seeking an interim order directing the States of Karnataka and Kerala to release the water already agreed to, that is, 9.355 T.M.C. during the months September to March.

7. The Government of Tamilnadu filed another emergent petition C.M.P. No. 9 of 1990 to direct the State of Karnataka to release at least 20 T.M.C. of waters as a first instalment pending final orders on C.M.P. No. 4 of 1990. This petition was submitted on the ground that the Samba crop cannot be maintained without additional supplies at Mettur Reservoir.

8. All the above C.M.Ps. were opposed by the State of Karnataka and the State of Kerala both on merits as well as on a preliminary objection that the Tribunal had no power or jurisdiction to entertain these petitions to grant any interim relief. The preliminary objection was based on the ground that the Tribunal constituted under the Act had limited jurisdiction. It had no inherent power like an ordinary civil court. It was having only those powers which have been conferred on it under the Act and there was no provision of law which authorised or conferred any jurisdiction on the Tribunal to grant any interim relief.) The Tribunal upheld the objection raised on behalf of the State of Karnataka, and State of Kerala and as a result of which by its order dated January 5, 1991 ordered that the Tribunal cannot entertain the applications for the the grant of interim reliefs and the C.M.P Nos. 4, 5 and 9 were held to be not maintainable in law and as such dismissed. Aggrieved against the aforesaid order of the Tribunal these appeals have been filed by the State of Tamilnadu and the Union Territory of Pondicherry.

9. Dr. Y.S. Chitalc, appearing on behalf of the respondent, State of Karnataka raised an objection that this Court had no jurisdiction to entertain any appeal against the impugned order of the Tribunal. It was submitted that Article 262 of the Constitution clearly provided that in respect of adjudication of disputes relating to waters of Inter-State rivers has to be decided by law made by Parliament in this regard. Clause (2) of Article 262 further provided that Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in Clause (1), notwithstanding anything contained in this Constitution. It was submitted that the Inter-State Water Disputes Act, 1956 was enacted by the Parliament, to provide for the adjudication of disputes relating to waters of Inter-State rivers, and river valleys. Section 11 of this Act provided as under:

Notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act.

It was thus contended that the above Section 11 clearly took away not only jurisdiction of any other Court but also of the Supreme Court in express terms.

10. On the other hand Mr. K. Parasarn, learned counsel appearing on behalf of the State of Tamilnadu contended that the provisions contained in Section 11 of the Act read with Article 262 of the Constitution only excluded the jurisdiction of the Supreme Court or any other Court to decide any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any Inter-State river or river valley. It was submitted that the appellants have not come before this Hon'ble Court to get a decision on merits of any dispute which is alrcdy pending before the Tribunal. The.grievance of the appellants is

only to the extent that the Tribunal wrongly decided that it had no jurisdiction to entertain any interim application, as such dispute was not referred to it in the reference made by the Central Government. It was submitted that this Court has the jurisdiction to decide the scope of the powers of the Tribunal under the Act and in case the Tribunal has wrongly refused to exercise jurisdiction under the Act, then this Court is competent to set it right and direct the Tribunal to entertain such application and to decide the same on merits.

11. In order to appreciate the above controversy it would be proper to refer to Article 262 of the Constitution and Section 11 of the Act which read as under:

Article 262 - Adjudication of disputes relating to waters of inter-state rivers or river valleys:

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in Clause (1).

Section 11:

Notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act.

12. A perusal of the above provisions leaves no manner of doubt that notwithstanding anything in the Constitution, Parliament is authorised by law to provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any dispute or complaint relating to the use, distribution or control of the waters of, or in, any intrr-Slate river or river valley. The dispute referred by the Central Government to the Tribunal under the Act relates to the above controversy and as such this Court has no jurisdiction to decide the merits of the dispute raised by the appellants and pending before the Tribunal. The controversy, however raised by the appellants in these appeals is that they had submitted the applications before the Tribunal for granting interim relief on the ground of emergency till the final disposal of the dispute and the Tribunal wrongly held that it had no jurisdiction to entertain the same. The Tribunal is a Statutory authority constituted under an Act made by the Parliament and this Court has jurisdiction to decide the parameters, scope, authority and jurisdiction of the Tribunal. It is the judiciary ic. the courts alone have the function of determining authoritatively the meaning of a statutory enactment and to lay down the frontiers of jurisdiction of any body or Tribunal constituted under the Statute. Francis Bennion in his book 'Statutory Interpretation' on pages 53 and 548 has dealt the matter as under:

P.53

Under the British Constitution, the function of determining authoritatively the meaning of a parliamentary enactment is entrusted to the judiciary. In the words of Richard Burn they have the exposition of Acts, which must not be expounded "in any other sense than is truly and properly the exposition of them'. This is but one aspect of the Court's general function of applying the relevant law to the facts of the case before it. The starting point is, therefore, to consider this function.

P.548

It is the function of the court alone to declare the legal meaning of an enactment. If anyone else (such as the draftsman of the provision) purports to lay down what the legal meaning is the court will tend to react adversely, regarding this as an encroachment upon its constitutional sphere.

A Constitution Bench of this Court in Sanjcev Coke Manufacturing Company v. Bharat Coking Coal Ltd. and Anr. observed as under:

No one may speak for the Parliament and Parliament is never before the Court. After Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court's is the only authentic voice which may echo (interpret) the Parliament. This the Court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the Court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for Parliament. No act of Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the Court may ultimately find and more especially by what may be gathered from what the legislature has itself said. We have mentioned the facts as found by us and we do not think that there has been any infringement of the right guaranteed by Article 14.

13. In Kehar Singh and Anr, v. Union of India and Anr. this Court observed as under: "In the course of argument, the further question raised was whether judicial review extends to an examination of the order passed by the President under Article 72 of the Constitution. At the outset we think it should be clearly understood that we are confined to the question as to the area and scope of the Pesident's power and not with the question whether it has been truly exercised on the merits. Indeed, we think that the order of the President cannot. be subjected to judicial review on its merits except within the strict limitations defined in Maru Ram v. Union of India. The function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power, or is vitiated by self-denial on an erroneous appreciation of the full amplitude of the power is a matter for the Court."

14. In the dispute relating to river Cauvery itself an application under Article 32 of the Constitution was filed by the Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimal Padhugapp Sangam which was said to be a society registered under the Tamilnadu Societies Registration Act asking this Court for direction to the Union of India to refer the dispute under Section 4 of the Act and this Court in Tamil Nadu Cauvery Neerppasana . Vilaiporulgal Vivasayigal Nalaurimal Padhugappu Sangam v. Union of India and Ors. allowed the petition and directed the Central Government to fulil its statutory obligation and notify in the official Gazette the Constitution of an appropriate tribunal for the adjudication of the water dispute.

15. Thus, we hold that this Court is the ultimate interpreter of the provisions of the inte . State Water Disputes Act, 1956 and has an authority to decide the limits, powers and the jurisdiction of the Tribunal constituted under the Act. This Court has not only the power but obligation to decide as to whether the Tribunal has any jurisdiction or not under the Act, to entertain any interim application till it finally decides the dispute referred to it. There is thus no force in the above argument raised by Dr. Y.S. Chitale.

16. We would not examine the controversies raised on merits in these appeals. It was contended on behalf of the appellants before the Tribunal that it had jurisdiction to entertain these miscellaneous petitions for interim relief. Firstly, for the reason that when the Tribunal while exercising powers of granting interim relief it will be only exercising 'incidental and ancillary powers', as the interim reliefs prayed for arise out of the water dispute which has been referred to the Tribunal. Secondly, under Article 262 of the Constitution of India, once the Parliament has enacted the Act providing for adjudication of a dispute in regard to sharing of water of Cauvery Basin, no other Court in the country has the jurisdiction to grant an interim relief and, as such, the Tribunal has the inherent powers to grant the interim relief, otherwise petitioners shall be left with no remedy for the enforcement of their rights.

17. The Tribunal examined the scheme of the Act and after adverting to the provisions of Sections 3 to 6-A of the Act held that this Act was a complete code in so far as the reference of a dispute is concerned. The Tribunal was authorised to decide only the 'water dispute' or disputes which have been referred to it. If the Central Goemment was of the opinion that there was any other matter connected with or relevant to the water dispute which had already been referred to the Tribunal, it was always open to the Central Government to refer also the said matter as a dispute to the Tribunal constituted under Section 4 of the Act. The Tribunal further held as under:

The interim reliefs which had been sought for even if the same are connected with or relevant to the water dispute already referred cannot be considered because the disputes in respect' of the said matters have not been referred by the Central Government to the Tribunal. Further, neither there is any averment in these petitions that the dispute related to interim relief cannot be settled by negotiations and that the Central Government has already formed the opinion that it shall be referred to the Tribunal. In case the petitioners of C.M.P. Nos. 4, 5 and 9 of 1990 are aggrieved by the conduct of the State of Karnataka and an emergent situation has arisen, as claimed, they could have raised a dispute before

the Central Government and in case the Central Government was of the opinion that the said dispute could not be settled by negotiations, the said dispute could also have been referred by the Central Government to the Tribunal.

18. The Tribunal then referred to the reference order dated 2.6.1990 and observed that in the letter dated 6.7.86, from the Government of Tamilnadu, which is the basis of the reference, the State of Tamilnadu sought reference of the following dispute to the Tribunal:

(a) The executive action taken by the Karnataka State in constructing Kabini, Hemavathi, Harangi Swarnavathi and other projects and expanding any ayacuts:

(i) which executive action has resulted in materially diminishing the supply of waters to Tamilnadu;

(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 Tribunal from the above letter dated 6.7.86 inferred that no interim dispute in regard to the release of waters by the Karnataka Government from year to year subsequent to the date of the request made by the State of Tamilnadu was at all referred to the Tribunal. The Tribunal thus held that in their opinion the Tribunal cannot entertain the prayer for interim relief unless the dispute relating to the same was specifically referred to the Tribunal. The Tribunal then < considered the question as to whether the granting of an interim relief by the Tribunal will be in exercise of incidental or ancillary powers. After referring to certain decisions of this Court, the Tribunal observed that the incidental and ancillary powers must relate to the actual dispute referred and not to any other matter including granting of interim reliefs which are not at all subject matter of reference. The Tribunal further held that the Tribunal will have the power to pass such consequential order as are required to be made while deciding the said dispute and will also have incidental and ancillary powers which will make the decision of the reference effective but these powers are to be exercised only to enable it to decide the reference effectively but not to decide disputes not referred including a dispute in regard to grant of interim relief/interim reliefs. The Tribunal also adverted to the provisions of Sections 9 and 13 of the Act as well as inter-State Water Disputes Rules, 1959 and held that these provisions were also indicative of the fact that the Tribunal had no power to grant any interim relief of the nature asked for. It was observed in this regard that in case intention of Parliament was that the Tribunal may be able to grant any interim relief without the dispute being referred to the Tribunal, it would have either provided such powers in the Act itself or in the rules framed under the Act, but this has not been done.

19. As regards the second submission the Tribunal held that it was wrong to contend that the State of Tamilnadu was left (sic) no remedy available to it, became it was open for the State of Tamilnadu to approach the Central Government and if the Central Government found that the dispute was connected with or related to the water dispute already referred to the Tribunal, it was open to it to refer the said dispute also to the Tribunal in regard to the granting of an interim relief. In the view taken above, the Tribunal was of the opinion that it cannot entertain the applications for the grant of interim reliefs.

20. We have considered the arguments made by Mr. K. Parasaran on behalf of the appellants and Dr. Chitale and Mr. Nariman for the respondents. Learned counsel for the Union Territory of Pondicherry adopted the arguments of Mr. K. Parasran and learned counsel for the State of Kerala adopted the arguments of Dr. Chitale.

21. A perusal of the order of reference dated 2.6.90 as already extracted above clearly goes to show that the Central Government had referred the water disputes regarding the inter-. State river Cauvery and the river valley thereof, emerging from letter dated 6th July, 1986 from the Government of Tamilnadu. Thus all the disputes emerging from letter dated 6th July, 1986 had been referred to the Tribunal. The Tribunal committed a serious error in omitting to read the following important paragraph contained in the aforesaid letter dated 6.7.86:

REQUEST FOR EXPEDITIOUS ACTION IN REFERRING THE DISPUTE TO TRIBUNAL:

From 1974-75 onwards, the Government of Kamataka 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 and crops. reached the withering stage has been briefly stated in note (Enclosure - XXVIII). It is patent that the Government of Karnataka have badly violated the inter-State agreements and caused irrepairable 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 Thiruchirapalli 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 falling for want of adequate wettings at crucial times. 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 in adding to the injury caused to our existing irrigation.

22. The above passage clearly goes to show that the State of Tamilnadu was claiming for an immediate relief as year after year, the realisation at Mettur was falling fast and thousands of acres in their ayacut in the basin were forced to remain fallow. It was specifically mentioned 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 their existing irrigation. The Tribunal was thus clearly wrong in holding that the Central Government had not made any reference for granting any interim relief. We are not concerned, whether the appellants are entitled or not, for any interim relief on merits, but we are clearly of the view that the reliefs prayed by the appellants in their C.M.P. Nos. 4, 5 and_9 of 1990 clearly come within the puriew of the dispute referred by the Central Government under Section 5 of the Act. The Tribunal has not held that it had-no incidental and ancillary powers for granting an interim relief, but it has refused to entertain the C.M.P. Nos. 4, 5 and 9 on the ground that the reliefs prayed in these applications had not been referred by the Central Government. In view of the above circumstances we think it is not necessary for us to decide in this case, the larger question whether a Tribunal constituted under the Water Disputes Act has any power or not to grant any interim relief. In the present case the appellants become entitled to succeed on the basis of the finding recorded by us in their favour that the reliefs prayed by them in their C.M.P. Nos. 4,5 and 9 of 1990 are covered in the reference made by the Central Government. It may also be noted that at the fag end of the arguments it was submitted before us on behalf of the State of Karnataka that they were agreeable to proceed with the C.M.P.s 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 (set out in the respective pleadings of the respective parties), including all applications for interim directions/reliefs by party States be determined by the Tribunal on merits. However, the above terms were not agreeable to the Slate of Tamilnadu as such we have decided the appeals on merits.

23. In the result the appeals are allowed, the Judgment of the Cauvcry Water Disputes, Tribunal dated 5.1.1991 is set aside and the Tribunal is directed to decide the C.M.P. Nos. 4, 5 and 9 of 1990 on merits. In the facts and circumstances of the case we direct the parties to bear their own costs.

R.M. Sahai, J.

24. I agree with brother Kasliwal, J. that under the constitutional set up it is one of the . primary responsibilities of this Court to determine jurisdiction, power and limits of any tribunal or authority created under a statute. But I have reservations on other issues including the construction of the letter dated 6th July, 1986. However, it is not necessary for me to express any opinion on it since what started as an issue of profound constitutional and legal importance fizzled out when the States of Kamataka and Kerala stated through their counsel that they, were agreeable for determination of the applications for interim directions on merits.