

Supreme Court of India
State Of Orissa Vs. Government Of India & Anr. on 6 February, 2009
Author: M Katju
Bench: Altamas Kabir, Markandey Katju
IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 443 of 2006

State of Orissa ... Petitioner Vs.

Government of India & Anr. ... Respondents J U D G M E N T

ALTAMAS KABIR, J.

1. The State of Orissa has filed this writ petition under Article 32 of the Constitution of India, wherein the Government of India has been made the Respondent No.1 and the State of Andhra Pradesh has been made the Respondent No.2, inter alia, for the following reliefs :-

"a) direct the Government of India to constitute an appropriate Tribunal under Section 4 of the Inter State

Water Disputes Act, 1956 and thereafter, refer to it the dispute

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relating to the construction of Side

Channel Weir and Flood Flow Canal

Project at Katragada on the river

Vansadhara by the State of Andhra

Pradesh;

b) issue a writ of mandamus commanding the State of Andhra Pradesh to forbear

from carrying on any works of the

proposed project;"

2. As indicated in the very opening paragraph, the writ petition was filed by the State of Orissa for a direction to the Central Government to constitute a Water Disputes Tribunal under the Inter-State Water Disputes Act, 1956 and to refer to the Tribunal the dispute contained in the complaint made by the State of Orissa on 13th February, 2006, as to whether the State of Andhra Pradesh was justified in constructing a Side Channel Weir and Flood Flow Canal Project on the river Vansadhara at Katragada, which would adversely affect the supply of water from the river to the State of Orissa and adversely affect the livelihood of thousands of people of Orissa in glaring violation of Article 21 of the Constitution of India.

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3. In order to understand the stand taken by the State of Orissa in the matter, it would be necessary to set out the facts of the case giving rise to the dispute.

4. The river Vansadhara originates in the South West of Lanjigarh in the Kalahandi District of Orissa and continues its journey for 239 kms. before entering the Bay of Bengal. Out of the said 239 kms., a length of 154 kms. lies in the State of Orissa, 29 kms. forms the border between the State of Orissa and Andhra Pradesh and the remaining 56 kms. lies within the State of Andhra Pradesh. The said river and its valley is fed by the South-West monsoon beginning in the middle of June and ending in the month of October each year and is followed by the retreating monsoon and North-East monsoon till the end of January. According to the State of Orissa, about 80% of the total volume of water comes from the catchment area lying in Orissa. While the farmers in Andhra Pradesh utilize 7 TMC of water from the river, the inhabitants of Orissa utilize 12 4

TMC for drinking purposes and water tanks etc. in the up-stream and down stream of Katragada.

5. During the period from 1956-60, the State of Andhra Pradesh proposed the construction of Gotta Barrage and Neradi Barrage across the Vansadhara river. During the aforesaid period, many meetings were held between the officials of the two State Governments to resolve the dispute of allocation of water. On 30th September, 1962, an Agreement was signed by the Additional Chief Engineer of Orissa and the Additional Secretary, PWD, of Andhra Pradesh, which was recorded in Minutes dated 30th September, 1962. In 1971, the State of Andhra Pradesh started construction of the Gotta Barrage (Vansadhara Stage-I) which was completed in the year 1982. Thereafter, it also constructed Phase-I of Stage-II of the Vansadhara project, i.e., right bank canal. Several meetings were held between the officials, including the Chief Ministers of the two States, and Agreements were signed pertaining to allocation of water of the Neradi Barrage. On 30th 5

December, 1994, a meeting was held between the Chief Ministers of the two States and it was decided that all the available water would be shared between the two States on a 50:50 basis annually. The discussions relating to the distribution of water from the Neradi Barrage were recorded and is reproduced hereinbelow :

"NERADI BARRAGE :

Government of Orissa agrees in

principle to the proposal of Government of Andhra Pradesh for going ahead with the project subject to the following conditions.

(1) Hydrology data available in the C.W.C. Water year Book upto 1992 was studied

by the Orissa Engineers. Based on

this analysis it is found that in

Vansadhara basin approximately 76.47

TMC water is available in monsoon.

During non-monsoon months the yield

may approximately be 7 TMC. All the available water will be shared between

the two States on 50:50 basis annually. The above figure regarding

water availability would be updated

from time to time on the basis of

additional data as and when available.

(2) No area in Orissa will be submerged as a result of construction of the

proposed Neradi Barrage, except 106

acres of land to be acquired in Orissa

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State for various purposes as indicated in the Project Report.

(3) To ensure that the back water stretch is limited only to 3 kms on the upstream, the river has to be widened by removing

construction between the chainage 10.37 to 13.65 kms to the section as suggested in the supplementary mathematical model run by the C.W.C. The Government of Orissa, in consultation with C.W.C. will however conduct sensitivity studies within a period of 3 (three) months incorporating varying 'n' values which has not been

carried out so far by the C.W.C. This study will indicate the water surface

profile upstream and downstream of the

barrage and the extent of likely back

water stretch in Orissa. Based on the sensitivity study the height and length of the wall may need revision, the design of which will need to be agreed by the Orissa Government.

(4) A joint technical committee consisting of the Engineer-in-Chief of both the States will be formed to approve broad design and construction features of the barrage as well as water sharing and flood management.

Sd/- Sd/-

Shri N.T. RAMA RAO Shri BIJU PATNAIK CHIEF MINISTER CHIEF MINISTER ANDHRA PRADESH ORISSA."

6. After the meeting of the two Chief Ministers and the decision arrived at by them, several meetings 7

were held between the officials of both the States in regard to the allocation of water of the river flowing through both the States. At this stage, while considering the technical design of the Neradi Barrage, the Government of Andhra Pradesh announced a new project by investment of Rs.850 crores. The Chief Minister of Andhra Pradesh on 6th January, 2005, announced that the waters of the Vansadhara river would be diverted at Katragada to a 34 kms. long Flood Flow Canal and be stored in the Heeramandalam reservoir to irrigate 1.07 lakh acres of land by utilizing 19 TMC of water. It was apprehended by the State of Orissa that the said proposed project would deprive the villagers of Orissa lying on the opposite bank in the down stream from even dry-weather flow and there was also a possibility of shifting of the river course itself. On 18th February, 2005, the Principal Secretary, Department of Water Resources, Government of Orissa, wrote to his counter-part in Andhra Pradesh protesting against the new project. The said objection culminated in a meeting of the Ministers 8

of the two States on 24th February, 2005 at Hyderabad against the new proposal for the project at Katragada and the said meeting ended with the following resolution:

"1) Constitution of a Technical Committee with the Engineers from both the States to study all aspects of Vansadhara Project Phase II of State-II, including submergence in Orissa, if any, and submit the report not later than three months. 2) No work will be taken up by both

the States in the river bed or banks or on Flood flow Canal, till the final Report of the Technical Committee is submitted and accepted by both the Governments.

3) No work, which will jeopardize the

interest of any State, shall be taken up. 4) The relevant Project information

will be furnished to the Central Water

Commission, as per requirements.

5) The delegation of Ministers of

both the States shall meet as frequently as possible to sort out all the matters of mutual interest as regards to Irrigation Project....."

7. It is the grievance of the State of Orissa that despite the resolution adopted at the Inter-State meeting held on 24th February, 2005, whereby four meetings were proposed to be held, no such meetings 9

were convened, and, on the other hand, despite the undertaking given by the two States, the State of Andhra Pradesh continued with its construction work on the Flood Flow Canal by continuing with land acquisition and other preliminary works. Even Bhoomi Pujan was alleged to have been conducted by the State of Andhra Pradesh in connection with the aforesaid project. It is the said conduct of the officials of the State of Andhra Pradesh, which resulted in the filing of the writ petition and also a complaint under Section 3 of the Inter State Water Disputes Act, 1956 and the Rules framed thereunder to the Union of India. Following the said complaint, an Inter-State Meeting with Secretaries of the Irrigation/Water Resources Departments of the two States was convened on 24th April, 2006 by the Secretary (Water Resources), Government of India. However, no action was taken by the Government of India with regard to the request made by the Government of Orissa to restrain the Government of Andhra Pradesh from going ahead with the construction of the Vansadhara Phase-II of Stage-II 10

(Katragada Flood Flow Canal) or to constitute a Water Disputes Tribunal under Section 4(1) of the Inter State Water Disputes Act, 1956 (hereinafter referred to as "1956 Act"). While, on the one hand, the Government of India remained inactive, the State of Andhra Pradesh proceeded with the work of the Side Channel Weir and Flood Flow Canal at Katragada on the river Vansadhara compelling the State of Orissa to move the instant writ petition for the reliefs as indicated hereinbefore.

8. Appearing for the State of Orissa, Mr. Raju Ramachandran, learned Senior Advocate, submitted that the dispute between the State of Orissa and the State of Andhra Pradesh was in effect a "water dispute" within the meaning of Section 2(c) of the 1956 Act, as it relates to the apportionment of the waters of the Vansadhara river between the two States which would be adversely affected by the decision of the State of Andhra Pradesh to divert the waters of the said river at Katragada to a 34 kms. long Flood Flow Canal for storage in the 11

Heeramandalam reservoir which would have the effect of depriving the inhabitants in the State of Orissa in the downstream area of water for drinking and for other purposes.

9. "Water dispute" has been defined in Section 2(c) of the 1956 Act as follows :-

"Water dispute" means any dispute or difference between two or more State

Governments with respect to -

(i) the use, distribution or control of the waters of, or in, any Inter-state

river or river valley; or

(ii) the interpretation of the terms of any agreement relating to the use,

distribution or control of such waters

or the implementation of such

agreement; or

(iii) the levy of any water-rate in contravention of the prohibition contained in Section 7."

In this regard, reference may also be made to Article 262 of the Constitution of India, which provides as follows :-

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"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)."

10. A similar provision is contained in Section 11 of the 1956 Act, which reads as follows :- "11. Bar of jurisdiction of Supreme Court and other Courts -

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."

11. In the light of the above provisions, both of the 1956 Act and the Constitution, and having regard to the inaction of the State authorities to settle 13

the dispute, Mr. Ramachandran submitted that the State of Orissa was compelled to file the complaint to the Central Government under Section 3 of the 1956 Act for the constitution of a Tribunal in terms of Section 4 thereof.

12. While considering the nature of the dispute, this Court on 30th April, 2007, urged the parties, if possible, to arrive at a settlement, which did not prove fruitful.

13. Referring to Section 3 of the 1956 Act, Mr. Ramachandran contended that it was for the State Government to arrive at a decision that a water dispute had arisen with the Government of another State and subject to fulfilling the conditions indicated in Section 3, it could request the Central Government to refer the water dispute to a Tribunal for adjudication, as has been done in the instant case. Mr. Ramachandran also referred to Section 4 of the 1956 Act, which deals with the constitution of the Tribunal and submitted that when a request 14

under Section 3 was received from any State Government in respect of a water dispute and the Central Government was of the opinion that the water dispute could not be settled by negotiation, the Central Government would have to, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute. Mr. Ramachandran urged that the provisions of both Sections 3 and 4 of the 1956 Act were reflected in prayer (a) of the writ petition, in which a direction has been sought on the Government of India to constitute an appropriate Tribunal under Section 4 of the 1956 Act.

14. Mr. Ramachandran also pointed out that in the counter affidavit filed on behalf of Union of India, it has been stated in paragraphs 2, 3 and 4 that necessary steps had already been taken pursuant to the complaint filed by the State of Orissa in accordance with the provisions of the 1956 Act and the Government of India was hopeful of a negotiated settlement of the dispute. In paragraph 3 it has 15

been indicated that only in the event of failure of negotiations for settlement of the water dispute, necessary steps may be taken or directions may be issued for the constitution of a Tribunal.

15. Mr. Ramachandran urged that despite all efforts, a negotiated settlement has eluded the parties and, on the other hand, the State of Andhra Pradesh has continued with the construction work of the Side Channel Weir and Flood Flow Canal Project at Katragada.

16. Having regard to the above, Mr. Ramachandran referred to the decision of this Court by a Bench of three Judges in Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam vs. Union of India & Ors. (1990 (3) SCC 440), wherein in a similar application under Article 32 of the Constitution regarding the equitable distribution of the waters of the river Cauvery, a direction was sought on the Union of India for the constitution of a Water Disputes Tribunal under the 16

1956 Act. While considering the provisions of Section 4, this Court was of the view that in view of the mandatory provisions of Section 4 by use of the word "shall", it was both mandatory and obligatory on the part of the Central Government to constitute an appropriate Tribunal and to refer the dispute to it. Having held as above, this Court directed the Central Government to constitute such Tribunal for adjudication of the water dispute indicated in the judgment. Mr. Ramachandran submitted that a similar direction may also be issued in the instant case in view of the failure of the Central Government to act in terms of Section 4 on the complaint made by the State of Orissa under Section 3 of the 1956 Act.

17. Learned senior counsel, Mr. Dipankar Gupta, who appeared for the State of Andhra Pradesh, at the very outset contended that the relief prayed for by the State of Orissa in the Writ Petition was not a "water

dispute" within the meaning of Section 2(c) of the 1956 Act. Mr. Gupta submitted that in 17

principle both the States had agreed to the sharing of the waters of the Vansadhara river on an equal basis and without disturbing the said arrangement, the State of Andhra Pradesh had taken a decision to divert a part of the river waters, within its allocation, to Katragada, to benefit a large number of farmers living in the said region. Mr. Gupta urged that the construction of the Side Channel Weir and the Flood Flow Canal at Katragada and the Neradi Barrage was undertaken after a series of meetings and discussions held between the Chief Ministers of the two States and at several inter-State meetings, in particular the meeting held on 5th December, 2006, the State of Orissa agreed for a mathematical model study of the side weir and the meeting in that connection was scheduled to be held on 18th December, 2006, at Pune, at the instance of the Central Water and Power Research Studies, Pune. Mr. Gupta submitted that the representatives of the State of Andhra Pradesh attended the said meeting where it was decided to conduct certain tests in relation to the construction of the Weir at Katragada. Pursuant 18

to the meeting held on 5th December, 2006, the State of Orissa agreed to conduct a Technical Committee meeting on 5.1.2007, at Bhubaneswar. As it appears from the materials on record such meeting did not in fact take place although in principle the State of Orissa had agreed to the aforesaid constructions subject to the report of the Technical Committee of the Government of Orissa.

18. Mr. Gupta submitted that despite the best efforts of the State of Andhra Pradesh, owing to the non-cooperation on the part of the State of Orissa, the construction of the Side Channel Weir and the Flood Flow Canal and the Neradi Barrage were stalled.

19. Mr. Gupta reiterated his opening submission that there was, in fact, no dispute which was required to be referred to a Water Disputes Tribunal to be constituted under the 1956 Act, as both the States in principle had agreed to sharing of the waters of the Vansadhara river on an equal basis. All that 19

was required was for the representatives of the States to sit together and with the help of their representatives and Technical Committees arrive at a solution whereby the aforesaid construction work could be undertaken without disturbing the flow of water to the State of Orissa accented to its entitlement.

20. The submissions made by Mr. Dipankar Gupta were to some extent supported by the stand taken on behalf of the Union of India. Referring to the averments made in the counter-affidavit filed on behalf of the Union of India, Mr. Navin Prakash, learned counsel, submitted that it had always been and is still the endeavor of the Union of India to settle the dispute which has arisen between the two States by a negotiated settlement. In fact, this submission has been repeated throughout the counter- affidavit filed on behalf of the Union of India and orally it was also submitted that the Union of India was still making attempts to solve the said disputes through negotiated settlement.

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21. While advancing submissions on the writ petition, submissions were also advanced by learned counsel on prayer (b) in the writ petition praying for a Mandamus to command the State of Andhra Pradesh from carrying on any work in respect of the proposed project. Mr. Ramachandran contended that unless the State of Andhra Pradesh was restrained from continuing with the construction of the Side channel Weir and the Flood Flow Canal at Katragada till the constitution of the Water Disputes Tribunal, not only would the writ petition become infructuous, but even the constitution of the Tribunal would become redundant and meaningless.

22. Replying to Mr. Ramachandran's submissions, Mr. Dipankar Gupta referred to the provisions of Sections 9 and 11 of the 1956 Act, and submitted that under Section 11 not only all Courts, but also the Supreme Court would not be entitled to exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under the Act. 21

23. Mr. Gupta submitted that in view of such bar, if it was ultimately decided that the dispute between the two States was a water dispute and the same should be referred to a Water Disputes Tribunal under the Act, this Court would have no jurisdiction to pass any orders which were either of an interim or transitory nature involving the dispute.

24. In this regard Mr. Gupta referred to the views expressed by a Constitution Bench of this Court on a Presidential Reference under Article 143 of the Constitution involving the Cauvery Water Disputes Tribunal [1993 Supp (1) SCC 96(II)], wherein the same question regarding the exclusion of the jurisdiction of the Supreme Court under Section 11 of the 1956 Act read with Article 262 of the Constitution was under consideration and it was held that the Tribunal could pass interim orders in any pending water dispute when a reference for such relief is made by the Central Government under Section 5(2) of the Act.

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25. From the submissions made on behalf of the respective parties, including the Union of India, it is quite evident that the final outcome of this writ petition would depend upon the decision as to whether the dispute between the State of Orissa and the State of Andhra Pradesh regarding the diversion of the Vansadhara river waters by the construction of the Side Channel Weir and the Flood Flow Canal constitutes a water dispute within the meaning of Section 2(c) of the 1956 Act. Admittedly, in principle the two States had agreed to the sharing of the Vansadhara river waters on an equal basis. What we are called upon to decide is whether the diversion of a portion of the river waters into a Side Channel Weir and a Flood Flow Canal violates the said agreement and if it does, whether the same would amount to a water dispute between the two States.

26. The said proposal of diverting the waters of the river was disputed by the State of Orissa from as 23

far back as in 2005, when the construction work on the said two projects had just commenced. It is not disputed that several joint meetings were held between the representatives of the two State Governments on this issue, including several meetings between the Chief Ministers of the two States. It is also evident that the Union of India, to whom the complaint had been made by the State of Orissa on 13.2.2006, had made attempts to bring about a negotiated settlement between the two States which did not materialize. On the one hand the complaint made by the State of Orissa remains indisposed of, and on the other, the construction of the Side Channel Weir and the Flood Flow Canal and the Neradi Barrage had continued.

27. During the hearing, an amendment made to Section 4 of the 1956 Act, which became effective from 28.3.2002, was brought to our notice. Sub-section (1) of Section 4, which is relevant for our purpose originally read as follows:

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"4. Constitution of Tribunal.- (1) When any request under Section 3 is

received from any State Government in

respect of any water dispute and the

Central Government is of opinion that

the water dispute cannot be settled by

negotiations, the Central Government shall, by notification in the Official

Gazette, constitute a Water Disputes

Tribunal for the adjudication of the

water dispute."

After amendment of sub-section (1) by the Inter- State Water Dispute (Amendment) Act, 2002, sub- section (1) of Section 4 reads as follows: "4. Constitution of Tribunal.- (1) When any request under Section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, within a period not exceeding one year from the date of receipt of such

request by notification in the Official Gazette, constitute a Water Dispute Tribunal for the adjudication of the water dispute."

(Emphasis added)

28. What is important in the amendment is that in the event of a genuine water dispute between two 25

States a time-frame has now been fixed for the constitution of a Water Disputes Tribunal to settle the water dispute. Previously, there was no such time frame and a request made for constitution of such a Tribunal could be prolonged indefinitely, as has been done in the instant case, without the formation of such a Tribunal or without rejecting the prayer of the State of Orissa to constitute such a Tribunal. It is now almost three years since the complaint was made by the State of Orissa but the Central Government has not taken any action in the matter. In this scenario, the prayer made by the State of Orissa does not appear to be unreasonable since the dispute between the two States does not confine itself to the construction of the Side Channel Weir and the Flood Flow Canal, but primarily it involves the unilateral decision taken by the State of Andhra Pradesh to divert the river waters to the State of Andhra Pradesh, which could possibly disturb the agreement to share the waters of the river equally.

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29. In my view, such a dispute must be held to be a water dispute within the meaning of Section 2(c) (i) of the 1956 Act, which refers to any dispute between two or more State Governments with regard to the use, distribution or control of the waters of or/in any inter-State river or river valley. Moreover, the time frame inserted into Sub-section (1) of Section 4 of the Act also persuades me to grant the reliefs prayed for by the State of Orissa since its complaint is pending from 13.2.2006.

30. Coming to the question of grant of interim order during the interregnum, I am satisfied that unless some interim protection is given till the constitution of the Water Disputes Tribunal by the Central Government, the objection raised by the State of Orissa will be rendered infructuous, which certainly is not the intention of the 1956 Act. Notwithstanding the powers vested by Section 9 of the Act in the Water Disputes Tribunal to be constituted by the Central Government under Section 4, which includes the power to grant the interim 27

order, this Court under Article 32 of the Constitution has ample jurisdiction to pass interim orders preserving the status quo till a Tribunal is constituted which can then exercise its powers under Section 9. The bar under Section 11 of the Act will come into play once the Tribunal is constituted and the water dispute is referred to the said Tribunal. Till then, the bar of Section 11 cannot operate, as that would leave a party without any remedy till such time as the Tribunal is formed, which may be delayed.

31. I, accordingly, allow the writ petition and direct the Central Government to constitute a Water Disputes Tribunal within a period of six months from date and to refer to it the dispute relating to the construction of the Side Channel Weir and Flood Flow Canal Project at Katragada on the river Vansadhara by the State of

Andhra Pradesh for diversion of the waters of the said river which could adversely 28

affect the supply of water from the said river to the State of Orissa.

32. I also direct that pending constitution of the Water Disputes Tribunal and reference of the above dispute to it, the State of Andhra Pradesh will maintain status quo as of date with regard to the construction of the Side Channel Weir and the Flood Flow Canal at Katragada. Once the Tribunal is constituted the parties will be free to apply for further interim orders before the Tribunal.

33. The writ petition is disposed of accordingly.

34. There will be no order as to costs. _____J.

(ALTAMAS KABIR)

New Delhi

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Dated:6.2.2009

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 443 OF 2006

State of Orissa .. Petitioner -versus-

Government of India & Anr. .. Respondent (s) JUDGMENT

Markandey Katju, J.

1. I have perused the judgment of my learned brother Hon'ble Altamas Kabir, J. in this case and I entirely agree with the reasoning, the conclusion and the directions which have been given therein. However, I wish to add a few words of my own.

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2. The English poet Coleridge in his poem 'The Rime of the Ancient Mariner' wrote :-

"Water, Water everywhere, but not a drop to drink";

3. This is precisely the situation of the people living in large parts of India. Despite having immense reservoirs of water in the form of the Himalayas in the North and the Arabian sea, Indian Ocean and the Bay of Bengal in the West, South and East of India, there are water shortages everywhere often leading to riots, road blocks and other disturbances and disputes for getting water. In many cities, in many colonies people get water for half an hour in a day, and sometimes not even that e.g. in Delhi, Tamil Nadu, Rajasthan, U.P., Northeast, etc..

In large parts of rural areas there is shortage of water for irrigation and drinking purpose. Rivers in India are drying up, ground water is being rapidly depleted, and canals are polluted. The Yamuna in Delhi looks like a black drain. Several perennial rivers like the Ganga and Brahmaputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting over-pumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels. Farmers are having a hard time finding ground water for their crops e.g. in Punjab. In many places 32

there are serpentine queues of exhausted housewives waiting for hours to fill their buckets of water. In this connection John Briscoe has authored a detailed World Bank report, in which he has mentioned that despite this alarming situation there is widespread complacency on the part of the authorities in India.

4. Often there are disputes between States in India relating to the waters of inter State rivers, as in the present case. To resolve these disputes Parliament has enacted the Inter State Water Dispute Act, 1956, which was amended in 2002. This Act has provided for a mechanism for resolving such water disputes between States through Tribunals constituted under Section 4 of the Act.

5. Experience has shown that while such Tribunals have played a role in resolving such disputes to a certain extent, but they have not, and cannot resolve the water shortage problem permanently. For instance if there is a dispute between State A and State B relating to water, and if the Tribunal decides in favour of State A then the farmers and persons living in urban areas in State B often resort to agitations which may even lead to violence. Hence the real solution of the water shortage problem in the country can 33

only lie in utilizing the immense water reserves in the sea and in the snow mountains by scientific methods. Rain water must also be scientifically managed.

6. As regards sea water, the basic problem is how to convert saline water into fresh water through an inexpensive method. The methods tried till now have been distillation and reverse osmosis, but these are expensive methods. We have to find out inexpensive methods for this, by scientific research. Similarly, the immense water reserves in the Himalayas in the form of ice can be utilized for the people of the North and Central Indian States.

7. In my opinion, it is science which can solve this problem.

8. It is indeed sad that a country like India which solved the problem of town planning 6000 years ago in the Indus Valley Civilization and which discovered the decimal system in Mathematics and Plastic Surgery in Medicine in ancient times, and is largely managing Silicon Valley in U.S.A. today has been unable to solve the problem of water shortage till now. In my opinion there is no dearth of eminent scientists in the field who can 34

solve this problem, but they have not been organized and brought together and not been requested by the Central and State Governments to solve this problem, nor given the facilities for this.

9. In my opinion the right to get water is a part of right to life guaranteed by Article 21 of the Constitution. In this connection, it has been observed in Delhi Water Supply & Sewage Disposal Undertaking and Anr. vs. State of Haryana and Ors. 1996(2) SCC 572 : "Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which water is put being drinking, it would be mocking nature to force the people who live on the bank of a river to remain thirsty";.....

10. Similarly in Chameli Singh & Ors. vs. State of U.P. & Ors. 1996(2) SCC 549 this Court observed :

".....Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights."..... 35

11. The same view was taken in several other decisions by this Court in various other decisions.

12. I, therefore, recommend to the Central Government to immediately constitute a body of eminent scientists in the field who should be requested to do scientific research in this area on a war footing to find out scientific ways and means of solving the water shortage problem in the country. This body of scientists should be given all the financial, technical and administrative help by the Central and State Governments for this purpose. They should be requested by the Central and State Governments to do their patriotic duty to the nation in this connection, and by scientific research to find out the ways of solving the water shortage problem in the country. The help and advice of foreign scientific experts and/or Indian scientists settled abroad who are specialized in this field may also be taken, since the solution to the problem will not only help India but also foreign countries which are facing the same problem, some of which may already have progressed significantly in this area.

13. In particular this body of scientists should be requested to perform the following tasks :

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(i) To find out an inexpensive method or methods of converting saline water into fresh water. (ii) To find out an inexpensive and practical method of utilizing the water, which is in the form of ice, in the Himalayas.

(iii) To find out a viable method of utilizing rain water. (iv) To utilize the flood water by harnessing the rivers so that the excess water in the floods, may instead of causing damage, be utilized for the people who are short of water, or be stored in reservoirs for use when there is drought.

14. In my opinion the Central Government should constitute such a body of scientists immediately and give them all the help failing which the hardships of the people of India will further increase causing great suffering and social unrest everywhere. The problem brooks no delay for being addressed not even for a day.

15. In the end I would like to quote the couplet of the great Hindi poet Rahim:

"jfgeu ikuh jkfB;s]fcu ikuh lc lwu ikuh x;s uk Ecjs] e(rh] ekuqT] pwu_

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"Rahiman paani raakhiye, bin paani sab soon Paani gaye na oobrey, moti, manush , choon"
.....J.

(Markandey Katju)

New Delhi;

February 06, 2009