

STATE OF TAMIL NADU

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v.

P. K. SINHA AND ANR.

(Contempt Petition (Civil) No. 898 of 2018

In

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Civil Appeal No. 2453 of 2007)

MAY 18, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND  
DR. D.Y. CHANDRACHUD, JJ.]**

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*Inter-State Water Disputes:*

*Supreme Court by judgment dated 16.02.2018, while modifying the award of the Cauvery Water Disputes Tribunal and allocating waters of Cauvery river to the States of Tamil Nadu, Karnataka and Kerala and Union Territory of Puducherry, directed Central Government to frame a scheme u/s. 6A of Inter-State River Water Disputes Act, 1956 – Central Government with a view to arrive at a consensus for framing of the proposed Scheme, initiated consultations with party States/Union Territory – To avoid further litigation by the States, in respect of constitution and functions of the proposed Board, Central Government filed interlocutory application seeking certain clarifications – State of Tamil Nadu filed contempt petition complaining about non-framing of the scheme by the Central Government within a period of six weeks as granted by Supreme Court – Another contempt petition was filed by private party – Interlocutory applications were filed by State of Tamil Nadu and Union Territory of Puducherry – Central Government produced Draft Scheme before Supreme Court – Appropriateness of Clauses 9(3)(i) and 9(3)(vii) as well as 9(3)(iii) in the Draft Scheme was questioned by State of Karnataka – State of Kerala contended that effect of the Scheme would impinge upon the rights of the States in respect of conservation and use of water which was exclusively a State subject covered by Entry 17 in List II of Seventh Schedule to the Constitution – Held: The fact that the subject of water forms part of Entry 17 of List II of the Seventh Schedule, cannot be the basis to whittle down the efficacy of the Award passed by the*

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- A *Tribunal as modified by Supreme Court and in particular the Scheme to ensure smooth, effective and efficient implementation of the Award of the Tribunal as modified by Supreme Court – The Draft Scheme has been drafted singularly for that purpose and the same will have to be taken forward to its logical end in accordance with law with promptitude – Award of the Tribunal qualifies the volume of river water to be shared and apportioned between the States – The parties cannot be allowed to reopen the issues already settled in the Award and as modified by Supreme Court, indirectly in the guise of questioning the appropriateness of clause 9(3)(iii) in the Draft Scheme – The Authority cannot be expected to issue directions mechanically and that the Authority must have complete power to enforce its directions so as to comply with the Award as modified by Supreme Court – Draft Scheme is in consonance with the dictum and directions in the Award and also in conformity with s. 6A of the 1956 Act – Draft Scheme to be taken to its logical and in accordance with law – Contempt petitions and the IAs disposed of – Inter-State Water Disputes Act, 1956.*

CIVIL ORIGINAL JURISDICTION : Contempt Petition (Civil)  
No. 898 of 2018 in Civil Appeal No. 2453 of 2007

- E From the Judgment and Order dated 16.02.2018 of this Hon'ble Court in C. A. No. 2453 of 2007.

WITH

M.A. No.934/2018 in C.A. No. 2453 OF 2007

Contempt Petition (Civil) No. 1131 of 2018

- F M.A. No. 937/2018 in C.A. No. 2453 OF 2007

I.A. No.47065/2018, I.A. No.50562/2018 and

I.A. No.68455/2018.

- G K.K. Venugopal, AG, M. R. Naik, AG (Karnataka), Shekhar Naphade, Rakesh Dwivedi, Subramonium Prasad, Shyam Divan, Jaideep Gupta, A.S. Nambiar, Sr. Advs., G. Umaphathy, C. Paramasivam, K.V. Vijayakumar, Imtiaz Ahmed, Mrs. Naghma Imtiaz, Ahmed Zargham, Ms. Amra Moosavi, Naresh Kumar (for M/s. Equity Lex Associates), Mukesh Kumar Maroria, V. G. Pragasam, S. Wasim A. Qadri, Mrs. Madhavi Divan, Rohit Bhat, Mohan V. Katarki, Brijesh Kalappa,
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R.S. Ravi, V. N. Raghupathy, Ranvir Singh, J.M. Gangadhar, Abdul Azeem Kalebudde, G. Prakash, Jishnu M.L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, Vijay Shankar V.L., S. Prabu Ramasubramanian, S. Manuraj, P.K. Manohar, Mrs. Shanta Vasudevan, Advs. for the appearing parties. A

The Order of the Court was passed by B

**A. M. KHANWILKAR, J.** 1. This Court on 16<sup>th</sup> February, 2018 pronounced its judgment and final order in Civil Appeal Nos.2453/2007, 2454/2007 and 2456/2007 and directed the Central Government to frame a scheme under Section 6A of the Inter- State River Water Disputes Act, 1956 (for short, “1956 Act”), for smooth implementation of the Award passed by the Tribunal and as modified by this Court for carrying out the rights of the States with regard to allocation or sharing of water. C  
The Central Government with a view to arrive at a consensus for framing of the proposed scheme, initiated consultations with party States/Union Territory. The first meeting for that purpose was convened on 9<sup>th</sup> March, 2018 in which the modalities of the scheme including the composition of the Authority were discussed. The party States then submitted responses and in view of the divergent views expressed by the party States/U. T., it was felt that if the Scheme was to be framed by the Central Government itself, States may again approach this Court. To avoid further litigations by the States in respect of constitution and functions of the proposed Board, the Central Government felt it necessary to seek clarification of this Court for which I.A. No.47065/2018 was filed on 31<sup>st</sup> March, 2018 for the following reliefs: D  
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“(a) Clarify whether it is open to the Central Government to frame the Scheme under 6‘A’ at variance with the recommendations contained in the report of CWDT regarding Cauvery Management Board. F

(b) Clarify that in case the Cauvery Management Board as recommended in the report of CWDT is to be constituted, does the Central Government have the following flexibility: G

(i) To modify the composition of the Board to a mixture of administrative & technical body, and not purely a technical body as recommended by CWDT in its report, for effective conduct of the business of the Board and considering overall sensitivity of the issues involved. H

A (ii) Clarify whether the Board framed by the Central Government under 6A of ISWRD Act, 1956 can have functions different from the ones recommended for Cauvery Management Board by CWDT in its report.

B (c) Any other guidance or directions that Hon'ble Supreme Court may like to give in the light of divergent views expressed by party States/UT with regard to framing of the Schemes under Section 6A of the ISRWD Act, 1956.

C (d) Allow application for extension of time of Three months for implementation of Order dated 16.02.2018 in this instant Civil Appeal.

(e) Pass such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

D 2. On the same day i.e. 31<sup>st</sup> March, 2018, the State of Tamil Nadu filed a contempt petition being Contempt Petition (Civil) No.898 of 2018, complaining about the non-framing of the scheme by the Central Government within a period of six weeks as granted by this Court. The State of Tamil Nadu also prayed for a direction to the respondents named in the said contempt petition to forthwith frame a scheme in accordance with the judgment of this Court dated 16<sup>th</sup> February, 2018 by providing for Cauvery Management Board and Cauvery Water Regulation Committee with all powers to give effect to the decision of the Tribunal as well as the judgment of this Court. Besides the contempt petition filed by the State of Tamil Nadu, another contempt petition came to be filed by a private party, namely, Mr. R.K.R. Anantaraman, Member of Legislative Assembly on 3<sup>rd</sup> April, 2018. On the same date, the matter was mentioned by the counsel for the Union of India for taking up the application filed by Union of India, for hearing. This Court directed the said application to be listed on 9<sup>th</sup> April, 2018. In the meantime, I.A. No.50562 of 2018 came to be filed on behalf of the Union Territory of Puducherry on 5<sup>th</sup> April, 2018 for the following reliefs:

G “(i) direct the Respondent/Government of India to take effective steps to implement the judgment dated 16.02.2018 passed by this Hon'ble Court in C.A. No.2453 of 2007 and other connected appeals without further delay;

H (ii) direct the Respondent/Government of India to frame a scheme under Section 6-A of the Inter State Water Disputes Act

constituting Cauvery Management Board (CMB) and Cauvery Water Regulation Committee (CWRC) for effective implementation of the directions of this Hon'ble Court without further delay; and A

(iii) to pass such other order or orders as may be deemed fit and proper in the interests of justice.” B

3. The aforementioned applications/contempt petition were listed on 9<sup>th</sup> April, 2018 when this Court passed the following order:

“We have heard Mr. K.K. Venugopal, learned Attorney General for the Union of India appearing in M.A. No. 934/2018, Mr. Shekhar Naphade and Mr. Rakesh Dwivedi, learned senior counsel alongwith Mr. G. Umapathy, learned counsel appearing for the State of Tamil Nadu, Mr. Shyam Divan, learned senior counsel alongwith Mr. Mohan V. Katarki, learned counsel for the State of Karnataka, Mr. Jaideep Gupta, learned senior counsel for the State of Kerala and Mr. A.S. Nambiar, learned senior counsel for the Union Territory of Puducherry. C D

Regard being had to our judgment, we direct the Union of India to file a Draft Scheme before this Court CONMT.PET.(C) 898/2018 etc. 3 on or before 3.5.2018. We have so directed as we do not want the controversy to continue before this Court. We request learned senior counsel for the parties to convey to the competent authorities of the respective States to maintain peace at this juncture, so that this Court can put the final stamp on the Scheme after due deliberation. E

Let the matter be listed on 3.5.2018.”

4. Again the matters were listed on 3<sup>rd</sup> May, 2018 when the Court passed the following order: F

“Let the matter be listed on 8.5.2018 to enable learned counsel for the State of Karnataka to obtain instructions. Mr. K.K. Venugopal, learned Attorney General for India alongwith Mr. Tushar Mehta, learned Additional Solicitor General of India and Mr. S. Wasim A. Qadri, learned counsel appearing for the Union of India shall obtain instructions as to what steps have been taken to frame the scheme, and the same shall be put forth by way of an affidavit by the next date of hearing after serving a copy on both sides. Call on date fixed.” G H

A 5. On 8<sup>th</sup> May, 2018, a request was made by Mr. K.K. Venugopal, learned Attorney General for India for some more time as the draft scheme was ready but it was yet to be placed before the Cabinet of Ministers. This Court after hearing the parties for some time, passed the following order:

B “It is submitted by Mr. K.K. Venugopal, learned Attorney General for India that the draft Scheme is ready, but it shall be placed before the Cabinet as expeditiously as possible. The same is seriously opposed to by Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu on many a ground. C Regard being had to delay, we direct the Secretary, Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India, to remain personally present with the draft Scheme, as directed by this Court in the judgment, before this Court at 10.30 a.m. on 14<sup>th</sup> May, 2018. We have directed for personal appearance of the aforesaid Secretary so that the D authorities under the Scheme can implement the judgment passed by this Court as the same has the status of the decree. Call on the date fixed.”

E 6. In the meantime, the State of Karnataka filed I.A. No.68455 of 2018 to place on record an affidavit showing the status of the total water in the Water Year 2017-18 and in particular, during the months of March and April, 2018. All the I.As. and the contempt petitions were again taken up on 14<sup>th</sup> May, 2018 in terms of the order dated 8<sup>th</sup> May, 2018. The draft scheme framed by the Central Government was produced before this Court. The counsel appearing for the States requested the Court for a copy of the draft scheme so that they would F be able to make submissions as to whether the scheme was in consonance with the judgment of this Court. This Court passed the following order on 14<sup>th</sup> May, 2018:

G “In pursuance of our earlier order, Mr. U.P. Singh, Secretary, Ministry of Water Resources, River Development and Ganga Rejuvenation is personally present. He has filed the draft Scheme framed by the Central Government. Mr. Shekhar Naphade, Mr. Jaideep Gupta and Mr. A.S. Nambiar, learned senior counsel appearing for the States of Tamil Nadu, Kerala and Union Territory of Puducherry respectively, would submit that they may H be given copies of the draft Scheme only to examine whether the said Scheme is in consonance with the judgment of this Court.

The copies of the Scheme be given in the course of the day. Let the matter be listed on 16.5.2018. The personal appearance of the Secretary, Ministry of Water Resources, River Development and Ganga Rejuvenation is dispensed with.”

7. On 16<sup>th</sup> May, 2018, Mr. Shekhar Naphade, learned senior counsel appearing for the State of Tamil Nadu, Mr. Jaideep Gupta, learned senior counsel appearing for the State of Kerala and Mr. A.S. Nambiar, learned senior counsel appearing for the Union Territory of Puducherry made submissions regarding the appropriateness of some of the clauses in the said draft scheme. Mr. Shyam Divan, learned senior counsel appearing for the State of Karnataka expressed his inability to offer any comments for want of instructions. He submitted that due to the recent developments due to elections to the Karnataka Legislative Assembly, it was not possible for the Advocate on Record for the State, who was instructing him, to take instructions from the State Government. This Court made it clear that as long as the Advocate on Record for the State of Karnataka was not discharged, it was open to him to assist the Court as an officer of the Court and offer his comments on the draft scheme, if so advised.

8. After due deliberations, Mr. K.K. Venugopal, learned Attorney General for India requested this Court to defer the matter till 17<sup>th</sup> May, 2018, so as to make necessary changes in the draft scheme in deference to the observations made by this Court. Accordingly, the matter was deferred till 17<sup>th</sup> May, 2018. On 17<sup>th</sup> May, 2018, the learned Attorney General produced the corrected copy of the draft scheme after duly incorporating necessary changes in the concerned clauses of the draft scheme to bring it in line with the observations made by this Court on the previous date of hearing.

9. With reference to the corrected copy of the draft scheme, Mr. Shyam Divan, learned senior counsel appearing for the State of Karnataka submitted his objections in writing. Mr. Jaideep Gupta, learned senior counsel appearing for the State of Kerala maintained his objections taken on the earlier occasion that the effect of the scheme would impinge upon the rights of the States in respect of the conservation and use of water which was exclusively a State subject, covered by Entry 17 in List II of the Seventh Schedule to the Constitution. In addition, he also supported the objections raised by the State of Karnataka in respect of clauses 9(3)(i) and 9(3)(vii) as well as 9(3)(iii).

A 10. Mr. Venugopal, learned Attorney General countered the  
 objections raised by the State of Karnataka and State of Kerala. He  
 submits that the dispensation envisioned in the concerned clauses is  
 essentially to ensure smooth and effective implementation of the scheme.  
 He submits that the implementation of the scheme will be strictly in  
 B accordance with the distribution of water to the respective States/U.T.  
 in consonance with the Award of the Tribunal as modified by this Court.

C 11. Mr. A.S. Nambiar, learned senior counsel appearing for the  
 Union Territory of Puducherry emphasized that the authority constituted  
 for implementation of the scheme must be invested with complete power  
 for ensuring smooth implementation of the scheme in accordance with  
 the Award passed by the Tribunal and as modified by this Court.

12. For completion of record, we deem it apposite to reproduce  
 the draft corrected scheme produced by the learned Attorney General  
 before this Court. The same reads thus:

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**CAUVERY WATER MANAGEMENT SCHEME**

**(MINISTRY OF WATER RESOURCES, RIVER  
 DEVELOPMENT AND GANGA REJUVENATION)**

E **New Delhi, the May, 2018**

F **S. O.** .....Whereas the Central Government, in exercise of  
 the powers conferred upon it by Section 4 of the Inter-State  
 River Water Disputes Act, 1956 (33 of 1956) (hereinafter referred  
 to as ‘the Act’;) had constituted by notification number S.O.  
 437(E), dated 2<sup>nd</sup> June, 1990, the Cauvery Water Disputes  
 Tribunal (CWDT) (hereinafter referred to as ‘the Tribunal’) to  
 adjudicate upon the water dispute regarding the Inter-State river  
 Cauvery and the river valley thereof among the States of  
 Karnataka, Kerala, Tamil Nadu and Union Territory Puducherry  
 (then Pondicherry);

G And whereas the Tribunal investigated the matters referred to it  
 and forwarded to the Central Government a Report under Sub-  
 Section (2) of Section 5 of the said Act, on 05.02.2007. The  
 party States filed Special Leave Petitions (SLPs) in the Supreme  
 Court against the 5(2) Report of the Tribunal. The Supreme Court  
 H converted the SLPs filed by the party States into Civil Appeals.

On 04.02.2013, the Supreme Court directed the Government of India to notify the 5(2) Award of the Tribunal. In pursuance of which, the Government of India notified the 5(2) Award of CWDT dated 05.02.2007 vide S.O.404 (E) dated 19.02.2013. A

And whereas Supreme Court pronounced its judgment and final order in Civil Appeals 2453/2007, 2454/2007 & 2456/2007 on 16.02.2018 and directed the Central Government to frame a “scheme” under Section 6 A of the Act to implement the Tribunal Award further modified by the Supreme Court order dated 16.02.2018. B

Now, therefore, in exercise of the powers conferred by Section 6A of the said Act, the Central Government hereby frames the scheme, inter-alia, constituting **the Cauvery Water Management Authority (hereinafter referred to as the “Authority”)** and the Cauvery Water Regulation Committee (hereinafter referred to as ‘the Committee’) to give effect to the decision of the Cauvery Water Dispute Tribunal as modified by the Supreme Court in its order dated 16.02.2018, namely:- C D

(1) This Scheme may be called the Cauvery Water Management Scheme, 2018,

(2) It shall come into force on the date of its publication in the Official Gazette. E

**I. Establishment of Cauvery Water Management Authority**

**1. Name of the Authority: It shall be called as Cauvery Water Management Authority**

**2. Status and Constitution of the Authority:** F

1. The Authority shall be a body corporate having perpetual succession and a common seal and shall sue and be sued.

2. **Composition of the Authority** : The Authority shall consist of the following members: G

(a) **Chairman-** To be appointed by the Central Government amongst serving officers:

(i) Who is a senior and eminent engineer with wide experience in water resource management; handling of inter-State water H

A sharing issues; construction, operation and maintenance of irrigation projects; or

(ii) an All India Service Officer, in the rank of Secretary or Additional Secretary to the Government of India with experience in wate resources and inter-State water sharing issues.

B Chairman shall have tenure of 5 years or till 65 years of age, whichever is earlier.

(b) **Two whole time Members-** To be appointed by Central Government for a term of three years extendable to five years.

C (i) One Member (Water Resources) – an engineer not below the rank of Chief Engineer from the Central Water Engineering Services (CWES) cadre.

(ii) One Member (Agriculture) – not below the rank of a Commissioner from the Ministry of Agriculture & Farmers' Welfare.

D (c) **Two Part Time Members** – Representatives of the Central Government of the rank of Joint Secretary to be nominated by Ministry of Water Resources,

River Development & Ganga Rejuvenation and Ministry of Agriculture and Farmers' Welfare respectively.

E (d) **Four Part Time Members from States** – Administrative Secretaries in charge of Water Resource Departments of each State Government of Kerala,

Karnataka, Tamil Nadu and Union Territory of Puducherry who shall be nominated by their respective State Governments.

F **3. Secretary of the Authority:**

The Authority shall have a Secretary who shall be an engineer to be appointed by the Central Government for a term of three years extendable to five years not below the rank of Chief Engineer from the CWES cadre. He shall not have any voting rights.

G **4. Quorum and Voting:** Six Members shall form a Quorum and the concurrence of the majority shall be necessary for transaction of the business of the Authority except such business

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as the Authority may from time to time prescribe as routine. The Members shall have equal powers. A

The next meeting will be held within three days if the meeting is postponed for want of quorum and for that meeting quorum will not be necessary.

**5. Disposal of Business by the Authority:** B

(a) On the following matters, the Authority shall record its decision by a resolution at a meeting in which the Chairman and all the Members from the party States are present:-

(i) Framing of Rules of Business; C

(ii) Delegation of functions to a Member or Secretary or any official of the Authority;

(iii) Categorizing any part of the business of the Authority as of a formal or routine nature;

(iv) Any other matter which any of the four party States require that it shall be decided at a meeting of the Authority. D

(b) Chairman of the Authority can invite representatives from Central Water Commission, National Institute of Hydrology, Indian Agricultural Research Institute (IARI) and/or any other agency including universities as special invitees to attend the Authority meetings or otherwise, in carrying out the functions specified under this scheme. E

(c) Subject to the foregoing provisions, the Authority shall frame its own rules for the conduct of its business. F

**6. Indemnity of Members:**

No Member, officer or employee of the Authority shall be liable for loss, injury or damages resulting from:

(a) action taken by such Member, officer or employee in good faith and without malice under the apparent authority of the orders, even though such action is later determined to be unauthorised, or G

(b) the negligent or wrongful act of omission of any other person employed by the Authority and serving under such H

A Member, officer or employee unless such member, officer, or employee failed to exercise due care in the appointment of such other person or the supervision of his work.

**7. Officers and Servants of the Authority:**

B The Authority may from time to time appoint or employ such and so many officers and employees as it thinks fit and remove or dismiss them, under the rules and regulations applicable to the appointment, removal and dismissal of the Central Government officers and employees. All such officers and employees shall be subject to the sole control of the Authority. The Authority  
C may, with the previous approval of the Central Government, make regulations to regulate conditions of service of all such officers and employees in respect of the residential accommodation, house rent allowance, travelling allowance, daily allowance, conveyance allowance and medical reimbursement. The scales of pay and  
D the other service conditions shall be as applicable to Central Government employees.

Persons employed in the services of the three States and the Union Territory of Puducherry may be appointed or employed by the Authority in such proportions as the Authority may deem fit. The Authority shall arrange with the State Government/Union  
E Territory to spare the services of the persons employed in the State Government/Union Territory for whole time employment with the Authority, or for the performance of any work or services for the Authority. The Authority may also make direct recruitment of any personnel or obtain the same from the Centre or other  
F sources as considered appropriate.

**8. Administrative and Field Organisation Costs:**

(i) All expenses of the Authority (including salary and other expenses of the Chairman and independent Members) shall be borne by the State Governments, in the ratio of Kerala – 15%  
G Karnataka – 40%, Tamil Nadu – 40%; and Union Territory of Pondicherry – 5%. The expenses pertaining to Member representing a State shall be borne by the State concerned.

(ii) The cost of maintaining, operation and controlling of gauging and other hydrological systems for communicating data shall be  
H borne by the State concerned. The cost of construction and

maintenance of the storages, power installations, diversion works, head-works and canal networks shall be borne wholly by the State Government in whose territory the works are located. A

**9. Powers, Functions and Duties of the Authority:**

1. The Authority shall be charged with the power and shall be under a duty to do any or all things necessary, sufficient and expedient for securing compliance and implementation of the final decision and directions of the Tribunal further modified by Supreme Court Order dated 16.02.2018 including: B

(i) Storage, apportionment, regulation and control of Cauvery waters. C

(ii) Supervision of operation of reservoirs and with regulation of water releases therefrom with the assistance of Regulation Committee.

(iii) Regulated release by Karnataka, at the inter-State contact point presently identified as Billigundulu gauge and discharge station, located on the common border of Karnataka and Tamil Nadu. D

2. The Authority may constitute one or more sub-committees and assign to them such of its functions and delegate such of its powers as it thinks fit. E

3. In particular and without prejudice to the generality of the foregoing functions, the Authority shall perform inter-alia, the following functions:

(i) The Authority at the beginning of the water year, i.e. first June each year would determine the total residual storage in the specified reservoirs. As, it is not possible to know the amount of season-wise river flows which will be available during a season; it will be assumed that the inflows will be according to 50% dependable year (yield 740 TMC). The share of each State will be determined on the basis of the flows so assumed together with the available carry over storage in the reservoirs. The withdrawals will be allowed during the first time interval of ten days of the season on the basis of the share worked out for each party State, limited to the water requirements during the same period F  
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- A indicated by each State by placing an indent of water demand with Cauvery Water Regulation Committee.
- (ii) The Authority will take stock of the actual yield in the basin at the end of the previous time interval as well as the utilization/releases and storage built up during the interval and assess the trend of inflows and authorize withdrawals to the States for the subsequent time interval accordingly. For giving effect to the aforesaid provision, the Authority may have to repeat this exercise for two or more time intervals.
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- C (iii) The Authority shall ensure the implementation of the Award of the Tribunal modified by the Supreme Court order dated 16.02.2018 including the carry -over storage during good year and the water releases for environmental purposes. The Authority through the Regulation Committee and with the help of CWC, and other Central/State organizations as necessary will identify situations of distress in the basin. Distress caused by diminution of water flows during the period will be shared by the party States after the distress conditions and their extent is determined by the Authority, keeping in view water shares allotted to parties.
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- E (iv) The following important reservoirs in the basin namely: Banasurasagar in Kerala, Hemavathy, Harangi, Kabini and Krishnarajasagara in Karnataka and Lower Bhavani, Amaravathy and Mettur in Tamil Nadu shall be operated in an integrated manner by the concerned State under the overall guidance of the Authority for each ten day period throughout the year to meet the seasonal water requirements of the various States for irrigation, hydro-power generation, domestic and industrial uses etc. The remaining quantities of the surplus water shall be conserved as far as possible and spillage of water shall be reduced to the minimum.
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- G (v) The Authority shall maintain an account of cropping pattern, area cropped and area irrigated for each party State. The Authority shall also maintain an account of domestic and industrial water usage by each party State.
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- (vi) The Authority is to set up a well-designed communication network in the Cauvery basin for transmission of data and a computer based control room for data processing to determine the hydrological conditions including distress, if any. For this purpose, it may utilize the latest technology. For operational purposes, this work may be entrusted by the Authority to CWC or any other Central/State Government organization. A  
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- (vii) At the start of irrigation season i.e. 1<sup>st</sup> June of every year, all the party States through their representatives in the Authority shall submit an indent for the supplies required by them at each reservoir site (capacity 3 TMC and above) for the month of June broken in 10 daily intervals. The Authority will examine reasonableness of the indents keeping in view the cropping pattern and extent of area to be irrigated and order releases keeping in view the overall ceiling prescribed by the Tribunal and modified by the Supreme Court Order dated 16.02.2018 for the month after determining the available carry-over storage and taking into consideration the likely inflows during the month. The Regulation Committee shall release water on ten daily bases as ordered by the Authority. C  
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- In case of deficiency in the water availability during any month as reported by the Regulation Committee, the Authority will consider reduction in the indent of the parties in proportion to the quantities allocated to each State by the Tribunal as modified by the Supreme Court order dated 16.02.2018 for the designated crops. F
- The Regulation Committee shall keep a watch on the actual performance of the monsoon during each ten daily interval and report position to the Authority indicating therein the extent of variation from the normal. The Authority on receipt of such information will consider any change in the release ordered by them earlier. Similar exercise will continue as the monsoon progresses during the succeeding months till the end of the water year i.e. 31<sup>st</sup> May of every year. G
- (viii) The Authority has to ensure that the State Governments should construct proper hydraulic structures at all important H

- A anicut sites in the basin with provision of appropriate regulation mechanism. Besides, regular monitoring of the withdrawals at such diversion structures on the part of the State would be necessary.
- B (ix) The Authority may direct party States to furnish data in respect of carry-over storage in reservoirs, including inflows and outflows, rainfall data, the area irrigated and water utilized.
- C (x) The Authority shall arrange collection of data for important rain gauge stations maintained by Indian Metrological Department (IMD)/ Central Water Commission (CWC)/ States in the Cauvery basin; as also inflow data measured at important nodal points on the Cauvery river system through the Cauvery Regulation Committee which will suitably compile the rainfall data for different monsoon seasons along with the inflows measured at different sites.
- D (xi) the Authority or any Member or any representative thereof shall have power to enter upon any land or property upon which any hydraulic structure or any work of gauging or measuring device has been or is being constructed, operated or maintained by any agency in the Cauvery basin
- E (xii) To hold and dispose of property, enter into contracts, sue and be sued and do all such acts as may be necessary for the proper exercise and discharge of its jurisdiction, powers and functions.
- F (xiii) To construct or make direction to construct additional gauging stations to the States concerned with the assistance of Central Government and CWC for implementing the decision of the Tribunal.
- G (xiv) If the Authority finds that any Government of the party States namely Tamil Nadu, Kerala, Karnataka and Union Territory of Pondicherry do not co-operate in implementing the decision/direction of the Tribunal, it can seek the help of the Central Government **for implementation of the Award of the Tribunal as modified by the Hon'ble Supreme Court order of 16.02.2018.**
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- (xv) If any delay/shortfall is caused in release of water on account of default of any party State, the Authority shall take appropriate action to make good the deficiency by subsequently deducting indented releases of that party State. A
- (xvi) The Authority will advise the party States to take suitable measures to improve water use efficiency, by way of promoting micro-irrigation (drip and sprinkler), change in cropping pattern, improved agronomic practices, system deficiency correction, command area development etc. B
- (xvii) The Authority will advise the party States to adopt efficient technologies for water conservation and preservation. C
- (xviii) The Authority shall comply with directions **with respect to composition, establishment and administration** that the Central Government may provide time to time.
- (xix) The Authority may delegate such of its power, as it thinks fit to Cauvery Water Regulation Committee. D

**10. Annual Report of the Authority:**

The Authority shall prepare and transmit to each of the four parties as early as possible in any case before 30<sup>th</sup> September of each year, an Annual Report covering the activities of the Authority for the preceding year. The Authority shall make available to each State on its request any information within its possession any time and always provide access to its records to the States and their authorized representatives. E

**11. Records of the Authority and their Location:**

The Authority shall keep a record of all meetings and proceedings, maintain regular accounts, and have a suitable office where documents, records, accounts and gauging data shall be kept open for inspection by the Central Government and Government of each of the party States and Union Territory or their representatives at such time and under such regulations as the Authority may determine. F  
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**The headquarters of the Authority shall be at New Delhi.**

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**A            12. Contracts and Agreements:**

The Authority shall enter into such contracts and agreements as may be necessary and essential for the full and proper performance of the functions and duties conferred or imposed on it.

**B            13. Financial Provision:**

- (i) The Government of India shall initially contribute a sum of Rs. 2 crores (two crores only) for the functioning of the Authority.
- C            (ii) All the capital and revenue expenditure required to be incurred by the Authority shall be borne by the State Governments of Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry in the ratio of 15:40:40:5 respectively.
- D            (iii) On the constitution of the Authority, the Governments of the State of Kerala, Karnataka, Tamil Nadu and Union Territory of Puducherry shall contribute Rupees two crores in the ratio indicated in (ii) above, towards the fund of the Authority in the first instance; and later on make advance payments on a quarterly basis as demanded by the Authority keeping in view the Annual Budget of the Authority.
- E            (iv) The Authority shall maintain detailed and accurate accounts of all receipts and disbursements and shall after the closing of each financial year, prepare an annual Statement of Accounts and send copies thereof to the Accountant General and concerned basin States.
- F            (v) The accounts maintained by the Authority shall be audited by the Comptroller and Auditor General of India or his nominee, who shall certify, subject to such observation as he may wish to make on the annual accounts of the Authority. The Authority shall forward to the Accountant General, the Central Government and the concerned basin States – the copies of the Report of the Comptroller and Auditor General of India and shall include the same in its Annual Report.
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- (vi) To perform any other function which is supplemental, incidental or consequential to all or any of the functions specified in sub-paragraphs (i) to (v) above. A

**14. Decision of the Authority:**

The decision of the Authority on all matters for the purposes of implementing the award of the Tribunal as modified by the Supreme Court order dated 16.02.2018 including but not limited to the matters covered under paragraph 9, shall be final and binding on all the party States/UT. B

**15. Constructions outside jurisdiction of the Authority:** C

Save and except to the extent otherwise prescribed in the order of the Tribunal and judgment of the Supreme Court, the planning, construction and maintenance of the projects will be carried out by each State/UT Government through its own agencies. D

**II Cauvery water Regulation Committee**

**1. Composition of the Cauvery Water Regulation Committee:**

There shall be a Cauvery Water Regulation Committee with the following composition: E

- 1) Full-Time Member (Water Resources) of the Authority : Chairman
- 2) One representative each of the States of Kerala, Karnataka, Tamil Nadu and Union Territory of Puducherry not below the rank of Chief Engineer. F
- 3) One representative of IMD of the rank of Joint Secretary : Member
- 4) One representative of Central Water Commission dealing with river gauging not below the rank of Chief Engineer G
- 5) One representative of the Central Ministry of Agriculture & FW not below the rank of Commissioner : Member
- 6) Secretary to the Authority : Member Secretary H

A **The headquarters of the Cauvery Water Regulation Committee shall be at Bengaluru.**

**2. Functions of the Cauvery Water Regulation Committee:**

B The Regulation Committee shall ensure the implementation of the provisions contained in the final order of the Tribunal further modified by the Supreme Court order dated 16.02.2018 in accordance with the directions of the Authority namely:-

C a) to collect daily water levels, inflows and storage position at each of the following reservoirs – Hemavathy, Harangi, Krishnarajasagara, Kabini, Mettur, Bhavanisagar, Amaravathy and Banasurasagar.

b) to ensure ten daily releases of water on monthly basis from the reservoirs as directed by the Authority.

D c) to collect data of water released from the aforesaid reservoirs on 12 hourly basis.

E d) the Authority's representatives at each of the reservoirs shall monitor proper implementation of the regulation instruction issued by the Regulation Committee; in the event of any variation, the representative shall immediately inform the Secretary of the Committee for appropriate action.

e) to collect daily water flows passing through presently identified inter-State contact point i.e., Billigundulu gauge and discharge site and keep the Authority suitably informed.

F f) to compile and reconcile monthly water account for each reservoir.

g) to collect and compile weekly information about important rain gauge stations of the IMD in order to be able to broadly assess the position of monsoon and keep the Authority informed about the status of the monsoon.

G h) the State representative, in-charge of the major projects will keep the Regulation Committee regularly informed about the occurrence of the rainfall in the commands and whether any change in the releases is required.

H i) to prepare seasonal and annual report of the water account and submit the same to the Authority as indicated below:-

- South-West monsoon season - 1<sup>st</sup> June to 15<sup>th</sup> October (inclusive of fortnight of October) A
- North East Monsoon season - 16<sup>th</sup> October to 31<sup>st</sup> January
- Hot weather season - 1<sup>st</sup> February to 31<sup>st</sup> May

**3. Meetings of the Regulation Committee:** B

1) The Regulation Committee shall meet once in ten days during the months of June and October when the southwest and northeast monsoon set in; after the monsoon has set in, the meeting will be held at least once a fortnight but the Committee shall have the powers to convene meetings as often as necessary. In the case of any emergency situation, a minimum of 48 hours notice shall be given for holding a meeting. C

2) In case, the State which is likely to be affected is not represented in the meeting, then the possibility of calling another meeting will be examined by the Committee. D

Provided that if the situation is such that it is not possible to delay taking a decision, then the Committee may decide the issue by majority vote even in the absence of representative from the affected State.

3) The quorum for meeting of Regulation Committee shall be six Members. E

4) All the Members including the Chairman and Member Secretary of the Committee shall have voting right; the Chairman shall also have a casting vote. F

Sd/-  
U.P. Singh  
Secretary  
Ministry of Water Resources,  
River Development & Ganga  
Rejuvenation, Govt. of India  
New Delhi-110001.” G

13. As aforementioned, the comments on the draft corrected scheme are mainly at the behest of State of Karnataka and State of Kerala. No suggestion has been offered by the State of Tamil Nadu to H

A the corrected draft scheme, except to submit that the implementation of the scheme should be with utmost dispatch in consonance with the Award, as modified by this Court, in its letter and spirit. He submitted that there is distress situation in the State of Tamil Nadu due to scarcity of water which can be remedied to some extent by the effective implementation of the scheme.

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D 14. After hearing the parties, we are of the considered opinion that the suggestions/objections of the State of Karnataka and State of Kerala are devoid of merit. The fact that the subject of water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, forms part of Entry 17 of List II of the Seventh Schedule to the Constitution, cannot be the basis to whittle down the efficacy of the Award passed by the Tribunal and as modified by this Court and, in particular, the scheme to ensure smooth, effective and efficient implementation of the Award of the Tribunal, as modified by this Court. The draft scheme has been formulated singularly for that purpose and the same will have to be taken forward to its logical end in accordance with law with promptitude.

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G 15. Reverting to the specific grievance with regard to clauses 9(3)(i) and 9(3)(vii), the argument is that the same would compel the States to furnish/place an indent for the supplies required by them on each reservoir site. That is wholly unnecessary as the Award passed by the Tribunal quantifies the volume of river water to be shared and apportioned between the States. This objection does not commend us inasmuch as the necessity to furnish/place an indent of water demand and about the total water reservoir is to work out the quantity of river water to be released during the relevant period in consonance with the proportion specified in the Award as modified by this Court and, in particular, on the principles delineated in the decision of this Court under Point No. X about the method and manner of apportionment to be followed. That is to further the rights of the States/U.T. for just and reasonable use of water from the allocable water on equitable basis and not to impinge upon their rights and moreso for smooth and effective implementation of the Award as modified by this Court.

H 16. Coming to the suggestion/objection in reference to clause 9(3)(iii) of the draft scheme, reliance has been placed on the recommendation made by the Assessors to the Tribunal forming part of the report of the Tribunal. The Assessors had advised that 10 TMC

each as carry-over storage in the reservoirs of the two States may be provided to take care of any delay in onset of South-West monsoon. That may be the recommendation of the Assessors but the allocation and distribution of river water will have to be in full conformity with the Award as modified by this Court and as aforementioned on the principles of apportionment to be followed as delineated in Point No. X of the judgment of this Court.

17. Needless to observe, we cannot allow the parties to reopen the issues already settled in the Award and as modified by this Court, indirectly in the guise of questioning the appropriateness of clause 9(3)(iii) in the draft scheme. The Authority constituted under the scheme will be bound by the contours regarding apportionment of river water in terms of the Award as modified by this Court and while doing so, is expected to take into account all factors that may be relevant at the given point of time, including to identify the situation of distress in the basin caused due to identifiable factors before quantifying the water quantity for being released or allotted to the party States/U.T. for the relevant period.

18. We appreciate the stand taken by Mr. Nambiar, learned senior counsel appearing for Union Territory of Puducherry, that the Authority cannot be expected to issue directions mechanically and that the Authority must have complete power to enforce its directions so as to comply with the Award, as modified by this Court, in its letter and spirit, concerning the apportionment of water between the party States/U.T. We say no more.

19. Considering the fact that the Union of India has already formulated the draft scheme and has also offered explanation in I.A. No.47065 of 2018 and the affidavit filed on 7<sup>th</sup> May, 2018 in M.A. No.934/2018 about the reasons which were beyond the control of the appropriate authority dealing with framing of the scheme, we do not wish to continue the contempt action any further. For the same reason, the directions sought in I.As. filed by the concerned party also need not detain us. For, the corrected draft scheme is in consonance with the dictum and directions in the Award as modified by this Court and also in conformity with Section 6A of the 1956 Act. The draft scheme ought to be taken forward to its logical end in accordance with law with utmost dispatch.

20. In view of the above, we dispose of all the I.As., M.As. and the contempt petitions by this common order, on accepting the assurance given on behalf of the Union of India that the draft scheme will be taken

A to its logical end in accordance with law, with utmost dispatch. We hope and trust that the draft scheme reproduced in paragraph 12 above, is notified in the Official Gazette and given effect to with promptitude before the onset of the impending monsoon.

21. Accordingly, all the I.As., M.As. and the contempt petitions  
B are disposed of.

Kalpana K. Tripathy

Matters disposed of.