

(2011) 09 PAT CK 0007
In the Patna High Court
Case No : CWJC No. 3521 of 1993

Saryu Roy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 79
Constitution of India, 1950 — Article 262
Inter State Water Disputes Act, 1956 — Section 4

Citation : (2012) 2 PLJR 577

Hon'ble Judges : S.K. Katriar, J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Sanjay Kumar, Anjani Kumar Saran and Saryu Roy in person, for the Appellant; S.N. Pathak, Ragib Ahsan, Gopesh Kumar for the Respondent No. 1, M/s Anil Kumar Sinha, K.D. Chatterjee for the Respondents No. 2 and 3, M/s Gopesh Kumar, Purushottam Kr. Jha, Shiv Kumar for the Respondents No. 4 and 5, Mr. F.R. Mallick for the Respondent No. 6, Mr. Anshuman Singh for the Respondent No. 7, M/s Dhananjay Kumar Singh for the Respondent No. 8, Mr. Devendra Kr. Sinha, Abhinay Raj for the Respondent No. 9 and Mr. Satyavarta Verma for the Respondent No. 10, for the Respondent

Judgement

S.K. Katriar, J.—This writ petition in the nature of a Public Interest Litigation has been preferred by the farmers of various villages of the erstwhile districts of Shahabad and Patna in the State of Bihar. The districts have recently been bifurcated into different districts. The erstwhile district of Shahabad has been split into present districts of Buxar, Bhojpur, Rohtas and Kaimur. The petitioners have been irrigating their lands from the Sone canal network created way back in 1874 for irrigation facilities in the then district of Shahabad and complain that the flow of water in river Sone has substantially reduced because of the intervention in the State of Uttar Pradesh, and seek directions for remedial measures so that agricultural activities in these districts do not suffer. A brief statement of facts essential for the disposal of this writ petition may be indicated. River Sone originates at Village-Amar Katak in the district of Shahdol,

State of Madhya Pradesh. It traverses through five States, namely, the States of Madhya Pradesh, Chattisgarh, Uttar Pradesh, Jharkhand and Bihar. The river merges itself in river Ganga at Maner, near Patna.

1.1. Way back in 1853, the British Government conceived of a network of canals for irrigation facilities covering the then district of Shahabad to be fed by the waters of river Sone. The Sone canal system was completed in 1874 covering 1901 kms., irrigating 22.50 lakh acres of land, which continued till 1960. The entire water of Sone river flowed through the State of Bihar as a result of which the Sone canal system had throughout the year adequate water to irrigate the fertile lands of the then district of Shahabad. The district, therefore, acquired the reputation of the rice-bowl of Bihar.

1.2. After India gained independence, development work was undertaken by the State of Uttar Pradesh which seems to be substantially water-dependent. This led to conflict of interest between the States of Madhya Pradesh and Bihar. The uninterrupted and total flow of water of the river from 1874 to 1960 into Bihar feeding the wide network of Sone canal system started receiving depleted quantity of water affecting the irrigation facilities, particularly the district of Shahabad. In more than substantially agriculture-dependent State of Bihar, the rice-bowl has suffered a serious casualty. This led to a number of meetings and agreements between various riparian States.

1.3. The problem particularly accentuated after the Uttar Pradesh Government decided to set up Rihand Dam on Rihand river, a tributary of Sone river, in the year 1962. This led to conferences and agreements between the States of Uttar Pradesh, Madhya Pradesh and the State of Bihar. We may usefully refer to the Bansagar agreement dated 16.9.1973 (Annexure-4), between the three States. This was followed by another agreement of the same date (Annexure-5), between the States of Uttar Pradesh and Bihar. This was followed by order dated 1.3.1980, to constitute Sone River Commission by the Government of India, to go into the diverse issues, which submitted its report in 1981. This was followed by a Joint Operation Committee for Rihand Reservoir by order dt. 30.10.1992 (Annexure-B series). There are other reports and minutes of discussion between the various States. This was followed by creation of Joint Operation Committee confined to Rihand Reservoir.

2. The conflict of interest between the States of Uttar Pradesh and Bihar was accentuated by further developments which were entirely of industrial nature. The State of Uttar Pradesh, or a Public Sector Undertaking of Govt. of India (respondent no. 3), wanted to set up industries on the banks of the river which for its operation needed water from Sone river, a good deal of which was of consumptive nature. We are informed at the Bar that consumptive use of water connotes that, after its use for the purpose in hand, it is not at that stage available for further use because it loses its existence as water. For example, if water is used for irrigation facilities, it loses its existence and is no longer available there. The State of Uttar Pradesh also contemplated grant of licence to

different private entrepreneurs to set up industries which would draw water from the river. Some of them have been given clearance, and the rest await clearance on account of intervention of the State of Bihar.

2.1. We must take note of a very important development in the present context. The Parliament brought on the statute book the Bihar State Reorganization Act, 2000 (Act 30 of 2000), as a result of which the present State of Jharkhand was carved out of the undivided State of Bihar with effect from 15.11.2000. Similarly, the Parliament enacted the Madhya Pradesh Reorganization Act, 2000 (Act 28 of 2000), as a result of which the present State of Chhattisgarh was carved out of the erstwhile undivided State of Madhya Pradesh. The net result of promulgation of these two Acts of the Parliament is that there are now five riparian States, and the Sone river now traverses through five States all of which are now entitled to their independent stand.

2.2. In so far as the issues raised in the present writ petition are concerned, the dispute mainly appears to be between the States of Uttar Pradesh and Bihar mainly because hydro-electrical and industrial activities involving consumptive use of water are taking place in the State of Uttar Pradesh which are adversely affecting the agricultural interests of the State of Bihar. To this has to be added the promulgation of the National Water Policy, 2002 (enumerated in the counter affidavit of Respondent No. 7). The net result of creation of the industrial units on the banks, or near about river Sone or its tributaries, in the State of Uttar Pradesh has substantially reduced the flow of waters of river Sone in the State of Bihar. The position which seems to emerge is that the Sone canal network is starved of water adversely affecting the agricultural operations in the erstwhile district of Shahabad consequently the rice-bowl of Bihar. It is further relevant to state that, after creation of the two new States, meetings have taken place between the five States under the aegis of the Central Government.

3. The position which clearly emerges before us on the basis of the materials on record, is that a serious and bona fide dispute regarding sharing of river water has undoubtedly arisen between the States of Uttar Pradesh and Bihar. We wish to caution the Central Government as well as the five riparian States, particularly the States of Uttar Pradesh and Bihar, that they should now rise to the occasion to solve the problems before it gets out of control. Protracted meetings, discussions, resolutions of the Governments so far, all of which are non-statutory in nature, though may be efforts to solve the problems by negotiated settlements, have failed to solve the problem. The problem is simmering and should be solved before unhappy situations arise. Violence should not be the only cause of action for constructive settlement. Principle of non-violence must never be underestimated. To use the biblical expression--let swords ought to be beaten into ploughshares.

4. In this background, we proceed to examine the contentions advanced on behalf of the learned counsel for the parties. Mr. K.D. Chatterjee appearing for respondent no. 3 submits that the present writ petition is not maintainable. In

view of the strident provisions of Article 262 of the Constitution of India, the Courts are completely denuded of the jurisdiction to deal with disputes relating to waters of inter-State rivers or river valleys. Article 262 of the Constitution of India is reproduced hereinbelow:--

262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.---(1) Parliament may by law provides 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).

In view of the mandate of the Article 262, the Parliament in its wisdom simultaneously brought on the statute book the Inter-State Water Disputes Act, 1956 (Act XXXIII of 1956), and River Boards Act 1956, (Act 49 of 1956), which provide the only judicial forum to solve inter-State river water disputes. Learned counsel for the remaining respondents have in one voice supported the preliminary objection raised by the learned counsel for respondent no. 3.

5. Petitioner No. 1 appearing in person challenges the validity of the preliminary objection and submits that, in view of the nature of the dispute raised by the petitioners, it is not covered by the provisions of Article 262 of the Constitution of India read with the two Acts of the Parliament. He submits that such Tribunals do not serve any practical purpose, hardly solve a dispute, are very time-taking, and experience has shown that those are inefficacious remedies. He submits in the same vein that the petitioners do not raise the larger issues which may pervade the water-sharing dispute between the riparian States. The petitioners confine their grievances to the effect that, in view of the historical background of creation of the Sone Canal System in 1874, which continued till 1960, the same should continue to be fed with adequate water for the agriculture-dependent population of the area. In his submission, this does not raise any dispute between two States, and the relief prayed for in this writ petition may be granted de hors Article 262, read with the Acts of the Parliament.

6. We have considered the submissions of the learned counsel for respondent no. 3 fully supported by the remaining respondents, and strongly opposed by petitioner no. 1 on the question of maintainability of this writ petition. In our view, the issues raised in the present proceeding undoubtedly raises a serious, important, and significant issue regarding sharing of river-waters between the riparian States, particularly the States of Uttar Pradesh and Bihar. It appears to us that the State of Bihar enjoyed monopoly of use of Sone waters upto 1960. The problems commenced, and started accumulating, after the Govt. of Uttar Pradesh set up the Rihand Reservoir followed by its further grandiose plans of industrial projects based on the waters of the river Sone and its tributaries. The historical background of monopoly use of the waters of river Sone till 1960 was a

legacy of the pre-industrialization days, and may have to give way to the newer thoughts and newer methods of economic development, to which has to be added the right of every riparian State to its own share of waters. To this has to be further added the creation of two new States with their independent existence and personality as independent States in the Union of India with effect from 15.11.2000. Therefore, in this background we are clearly of the view that one part of the submission advanced on behalf of petitioner no.1 that the issues lie in a very narrow compass is trying to over-simplify the issues.

7. However, we tend to agree with the other part of the submission on behalf of the petitioners that the proceedings of Commissions set up to resolve disputes regarding inter-State river water are dilatory, lack in efficacy, and constitution of such Commissions are more as a fire-fighting measures. Mr. Fali S. Nariman, Senior Advocate, has stated as follows in his article entitled "Inter-State Water Disputes: A Nightmare!", incorporated in the book Water and the Laws in India, edited by Ramaswamy R. Iyer, (published by SAGE www.sagepublications.com):--

Nearly 10 years ago, the Department of Economics, University of California, published a well-researched Study on "India's Institutions Governing Inter-State River Waters". It recorded the following dismal conclusions:

- (i) that Indian water dispute settlement mechanisms were "ambiguous and opaque";
- (ii) that in situations of pure conflict where the initial allocation of rights was at stake, a search for a negotiated solution had become futile";
- (iii) that the adjudication process prescribed under the Inter-State Water Disputes Act, 1956, was "slow and cumbersome"; and
- (iv) that the entanglement of Inter-State Water Disputes with more general Centre-State conflicts had compounded the problem of Inter-State Water Management.

Having appeared as Senior Counsel in two major inter-State water disputes-first over the Narmada River (from 1971 to 1978) and then over the Cauvery River (from 1990 to 2007)-I confirm as valid the conclusions of the California University study.

In my view, inter-State water disputes are ill-served by the present mechanism under the constitutional scheme and the law enacted by Parliament-the Inter-State Water Disputes Act, 1956 (ISWD Act). The Act has not worked efficiently, nor has it inspired the confidence of party States participating in tribunal adjudication (provided for in the 1956 Act).

However, we are bound to acknowledge, and implement, the provisions of Article 262 of the Constitution which makes it abundantly clear that the jurisdiction of the Courts in this country is completely ousted with respect to water disputes of inter-State rivers or river valleys. This has to be read with the provisions of the

aforesaid two enactments. Once a case is made out to invoke the jurisdiction under one or both the Acts, there is no discretion left in anybody, and the dispute has to be adjudicated by the forum under the two Acts of the Parliament.

8. We would like to sound the requisite note of caution that the two Acts enacted under Art. 262 of the Constitution have to be clearly distinguished from the Commissions of Inquiry Act, 1952 (hereinafter referred to as 1952 Act), which has a fundamentally different scope and has perhaps often times been used by the Government as a fire-fighting measure. It appears to us that petitioner no.1 has in his mind the Inquiry Commissions under the 1952 Act, which are more in the nature of fact-finding Commissions and do not bind the Government. On the other hand, the findings of the Commissions under the two Acts of the Parliament of 1956 bind the parties. In that view of the matter, we have no hesitation in concluding that, in view of the nature of the issues raised in this writ petition, the same is not maintainable in this Court in view of the provisions of Article 262 of the Constitution read with the 1956 Act. The preliminary objection of respondent no. 3 is hereby upheld.

9. This however does not conclude matters. Learned counsel for respondent no. 3, respondent no. 6, respondent nos. 4 and 5, respondent nos. 9, 11, 12, respondent no. 8, respondent no. 7, respondent no. 10, and respondent nos. 1 and 2, have made elaborate submissions on facts. With minor variations, they have taken a uniform stand in the matter, and have submitted that direction may be issued for constitution of a tribunal u/s 4 of the Inter-State Water Disputes Act.

10. We have on record the reports of a number of Committees, before and after creation of the two States, some of which are under the aegis of the Central Government, none of which took into account a holistic view of the entire issues relating to water-sharing of river Sone between the riparian States. The agreements, the minutes of discussion, or exchange of letters, took a myopic view of the issues in hand which do not seem to consider the whole of the problem. On the one hand is the claim of the residents of the erstwhile district of Shahabad, nay the whole State of Bihar, for adequate supply of water to the Sone canal system. Petitioner No.1 has during the course of his submissions gone to the extent that if remedial measures are not promptly taken, it may result in suicide by farmers. On the other hand is the persistent effort of the State of Uttar Pradesh to proceed with industrialization involving consumptive use of the waters of river Sone. It is further relevant to state that none of the reports, meetings, or the exchange of correspondences are enforceable by Courts. Furthermore, there are strong allegations that those too are not being enforced in their true letter and spirit because of the further developments taking place. On the other hand, the recommendations of the tribunal under the Inter-State Water Disputes Act are enforceable by Courts. The petitioners as well as the learned counsel for the State of Bihar have in one voice submitted that the State of Uttar Pradesh is arrogating to its use far more quantity of water than

was allotted to it under the Bansagar Agreement. Petitioner No. 1 Has gone to the extent of submitting that no share of water for consumptive use was at all allotted to the State of Uttar Pradesh. The apprehension of petitioner no. 1 to some extent or to a larger extent may be correct that proceedings of these tribunals are dilatory and time-taking, and may ultimately reduce the efficacy of the findings even if those are binding on the parties. This is not the occasion to consider the diverse reasons and the circumstances which bring about delay in such matters.

11. We wish to content ourselves by recalling the two-fold conclusions of a research work in law that, by its inaction, inefficiency, corruption or the like, government or Governmental bodies and/or instrumentalities of the Government are passing on their own decision-making to Courts. The second conclusion is that they are parties to at least 70% of the litigations in this country. To this has to be added the conclusion of Bibek Debroy in his book entitled "In the pock: Absurdities of Indian Law", where he concludes that the pending litigations in this country without any addition thereto, will take 324 years for disposal. This conclusion was recorded way back in the year 2000. A Judge of the Andhra Pradesh High Court has recently revised it and has reached the conclusion that it will now take 350 years to conclude the pending litigations in this country without any addition thereto. This clearly reflects the responsibility of the Governments or the instrumentalities of the Governments in this country in bringing about the near-collapse situation of the Courts in this country.

12. In view of the foregoing discussion, we are clearly of the view that the facts and circumstances of this case fully make out a case for a direction to the Union of India to constitute a Tribunal under the provisions of the Inter-State Water Disputes Act, 1956. Paragraph-9 of the aforesaid Agreement of Bansagar, dated 16.9.1973 (Annexure-4), is reproduced hereinbelow:--

9. As the hydrology of the river Sone and its tributaries is not well established and as Ganga waters are abundantly available for utilization by lift, the three States agree that the Government of India may set up a special river commission for study of Sone river and draw up a comprehensive plan for the region, taking into account any readjustments in the use of waters considered necessary by the States. These studies may be made available in 5 to 10 years. Based on these studies, further planning of irrigation and other benefits to the region will be undertaken after discussions and agreements between the States.

"10.....

(Emphasis added)

Sd/-

ABDUL GAFOOR Chief Minister Bihar

Sd/-

P.C.SETHI Chief Minister Madhya Pradesh

Sd/-

AKBAR ALI KHAN

Governor Uttar Pradesh

New Delhi

Dated the 16th September, 1973

The following portion of the Agreement on Rihand Project 1973, dated 16.9.1973 (Annexure-5) is also reproduced:--

Detailed studies are to be made by a team of Engineers from Bihar and Uttar Pradesh States to draw up detailed recommendations including financial aspects, for consideration by the Government of Bihar and Uttar Pradesh."

(Emphasis added)

Sd/- ABDUL GAFOOR Chief Minister Bihar

Sd/- (Akbar Ali Khan) Governor Uttar Pradesh

New Delhi

Dated the 16th September, 1973

It is thus evident that the riparian States, as the situation existed on the date of the two agreements, contemplated constitution of further Committees.

13. We are fully supported by the judgment of the Supreme Court in Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam Vs. Union of India and others, . That was a case where a comparable situation had come up for the consideration of the Supreme Court. On a consideration of the provisions of Article 262 of the Constitution and the Inter-State Water Disputes Act, the Supreme Court directed the Union of India to constitute a Tribunal under the provisions of the Act.

14. In the result, this writ petition is disposed of with the direction to the Union of India to constitute a Tribunal under the provisions of the Inter-State Water Disputes Act, 1956. The Union of India shall also keep in mind the provisions of the River Boards Act as well as Section 79 of the Bihar Reorganization Act and Section 76(1) of the Madhya Pradesh Reorganization Act. We wish to sound the requisite note of caution that the observations on facts made hereinabove are on the basis of affidavits, and are meant only for the disposal of the present writ petition. We would like to further clarify that we have not gone into the merits of the claims and the counter claims, the allegations and the counter allegations, in this case. We have noticed some of the facts on record to ascertain whether or not there is bona fide and serious inter-State dispute with respect to issues relating to sharing of waters of Sone river. Before we part with the records, we

must record our deep appreciation of the manner in which Mr. Saryu Roy, petitioner no.1, conducted the proceedings before us, the ability with which he assisted us, and maintained his patience ever since the case was lodged in this Court.

Ahsanuddin Amanullah, J.

I agree.