

(1997) 12 SC CK 0096

In the Supreme Court Of India

Case No : Original Suits No. 1/97 (with RR No. 1 and 3) (with I.A. No. 2) . With original suit 2/91

State of Karnataka

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Inter State Water Disputes Act, 1956 — Section 11

Citation : (1998) 4 JT 332 : (1997) 7 SCALE 611 : (1997) 5 SCALE 494 : (1997) 7 SCALE 114 : (1998) 9 SCC 671(1)

Hon'ble Judges : J. S. Verma, C.J;B. N. Kirpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The learned Attorney General of India says that the issues which were agreed to on the last date, i.e., 10.11.1997 are also accepted by the Union of India and that the Union of India does not propose any additional issue. We accordingly frame the following issues:

Original Suit No. 1 of 1997:

1. Whether the suit is barred by Article 262(2) of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956? (AP)
2. Whether the suit is liable to be dismissed as not disclosing cause of action? (AP)
3. Whether the suit is liable to be dismissed as seeking reliefs which are contrary to the Report and Decision of the KWDT?(AP)
4. What is the "decision" of the KWDT binding on the parties u/s 6 of the Act in relation to:

(a) Scheme 'B'

(b) Use of surplus water as contemplated in Clause (V)(c) read with Clause XIV(A) of the Award.

5. Whether reference to Scheme B in the 1st and the further report of the KWDT, disclose a complete scheme, and whether such scheme is capable of implementation at this stage, in view of circumstances referred to in para 11 of the preliminary objections and para 1 of the parawise reply in the Written Statement of Andhra Pradesh? (AP)

6. Is it just, fair and equitable to implement Scheme B at this stage?(MAH)

7. Whether in view of the fact that Scheme 'B' does not form part of the "Final Order" of KWDT in the original report u/s 5(2) and the further report u/s 5(3) of the Act, the suit seeking the implementation of Scheme 'B' is maintainable?(AP)

8. Whether insertion of Section 6A in 1980 in the ISWD Act, 1956, ipso facto entitles Karnataka to seek implementation of Scheme B as referred to in the reports of the Tribunal by framing a scheme? (KAR - as modified by AP)

9. Whether the right of Andhra Pradesh to utilise surplus waters in terms of the liberty granted by the decisions of the Tribunal, is reviewable in the present proceeding? (AP)

10. Whether the liberty to use surplus waters under the decision of the KWDT precludes utilisation of surplus waters by AP, by means of projects of permanent nature? (KAR - as modified by AP)

11. Whether the decision of the KWDT entitles the State of Andhra Pradesh to execute the following projects : - (KAR - as modified by AP)

(a) Telugu - Ganga Project

(b) Srisailem Right Bank Canal

(c) Srisailem Left Bank Canal

(d) Bhima Lift Irrigation

(e) Pulichintala Diversion

12. Is not the suit of the Plaintiff unnecessary and premature as there can be review of the Orders of the Tribunal after A.D. 2000? (MAH)

13. To what reliefs, if any, the Plaintiff is entitled to? (AP)

Original Suit No. 2 of 1997:

1. Whether the State of Karnataka has violated the binding decisions dated 24.12.1973 and 27.5.1976 rendered by the KWDT by executing the projects mentioned in para 66, 68 & 69 of the Plaintiff? (AP/KAR)

2. Has this Hon'ble Court jurisdiction to entertain and try this suit?(MAH)

3. Does the Plaintiff prove that the allocation of Krishna Waters by the KWDT in its Final Order are specific for projects and not enbloc as contended by the Defendant? (MAH)
4. Does the Plaintiff prove that the upper States are not entitled to construct projects without reference to and consent of the other States? (MAH)
5. Whether the Plaintiff is entitled to a declaration that all the projects executed and/ or which are in the process of execution by the State of Karnataka, and not in conformity with or in conflict with the Decisions of the KWDT are illegal and unauthorised? (AP)
6. Is not the Union Government duty bound to consult all the riparian States before according any approval/sanction/clearance/in-principle clearances to any schemes, projects proposed/undertaken, by any of the riparian States on the Inter-State river Krishna? (AP)
7. Whether the sanctions and the approvals granted by the 2nd Defendant to the State of Karnataka for the projects referred to in issue 1, without the prior concurrence of State of Andhra Pradesh are valid and binding upon the Plaintiff? (AP)
8. Whether sanctions and the approvals granted by the 2nd Defendant are liable to be reviewed, reconsidered afresh, after obtaining the views thereon of the other riparian States? (AP)
- 9 (a). Whether the construction of the Almatti Dam with a FRL of 524.256 m. together with all other projects executed, in progress and contemplated by Karnataka would enable it to utilise more water than allocated by the Tribunal.? (AP)
- 9 (b). Whether Karnataka could be permitted to proceed with construction of such a dam without the consent of other riparian states, and without the approval of the Central Government? (AP)
10. Whether the Plaintiff proves that the reservoir and irrigation canals as alleged in paragraph 68 of the Plaint are oversized. If so, are they contrary to the Decision of the Tribunal?(AP)
11. Whether the Plaintiff State of Andhra Pradesh proves specific allocation/ utilisation for UKP and canals as alleged? (AP)
12. Whether State of Karnataka is entitled to provide for any irrigation under Almatti canals and other new projects, when no allocation is made under the decisions of the KWDT?(AP)
13. Whether the Defendant State of Karnataka is entitled unilaterally to reallocate/readjust the allocation/utilisation under the UKP or any other project? Is concurrence of other riparian States necessary? (AP)
14. Whether the Union of India can permit and/or is justified in permitting the

State of Karnataka to proceed with various projects which are in violation of the Decisions rendered by KWDT?(AP)

15. Whether Upper Krishna Stage II Multipurpose Project could be executed without the environmental clearance under the Environment (Protection) Act, 1986 and the Notification issued by Central Government in 1994 in exercise of its powers under the said Act and the Rules made thereunder which mandatorily requires various analysis including dam break analysis?(AP)

16. Whether the acts of the State of Karnataka adversely affect or would adversely affect the State of Andhra Pradesh, and if so, with what consequences? (KAR)

17. Whether Hippargi was always part of the UKP and on that basis the KWDT awarded 5 TMC Utilisation thereunder?(AP)

18. Whether the utilisation of water under Chikkapada Salagi, Heggur and 5 other barrages is not 33 TMC as assessed by the Plaintiff State? (AP)

19. Whether the cumulative utilisations in the K2 sub-basin is 173 TMC as claimed by the State of Karnataka or 428.75 TMC as assessed by the plaintiff State? (AP)

20. Whether the State of Karnataka has violated the KWDT award by proceeding with several new projects in the sub-basin such as K-6, K-8 and K-9 in respect of which restrictions in quantum of* utilisations have been imposed in the final decision of the Tribunal?(AP)

21. Whether utilisations under Almatti would be of the order of 91 TMC as J claimed in para 66(iii) of the plaint? (AP)

22. To what reliefs if any, the plaintiff is entitled to?(AP)

2. The discovery inspection and interrogatories process will be completed within four weeks. List in the first week of January, 1998 for directions and the date for argument will be fixed.