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## MAJOR AGREEMENTS AND NEGOTIATIONS ON SHARING OF THE CAUVERI RIVER WATER

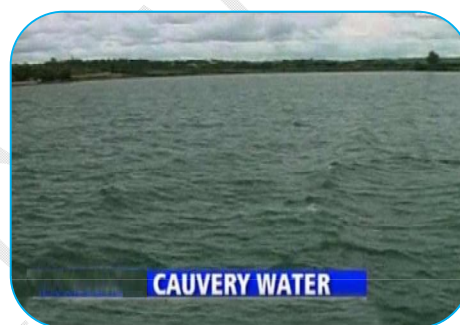
**R. Gurumurthy<sup>1</sup> and Dr. S. Xavier<sup>2</sup>**

<sup>1</sup>Part-Time PhD Research Scholar , P.G. & Research Department of History  
Periyar E.V.R. College (Autonomous) Tiruchirappalli, Tamil Nadu.

<sup>2</sup>Assistant Professor and Research Advisor , P.G. & Research Department of History  
Periyar E.V.R. College (Autonomous) Tiruchirappalli, Tamil Nadu.

### ABSTRACT:

The sharing of the Cauvery River has been the source of a serious conflict between the two states of Tamil Nadu and Karnataka. The genesis of this conflict rests in two agreements in 1892 and 1924 between the erstwhile Madras Presidency and Kingdom of Mysore. The 802 Kms (498 mi) Cauveri river has 44,000 km<sup>2</sup> basin area in Tamil Nadu. The inflow from Karnataka is 425 TMC ft whereas that from Tamil Nadu is 252 TMCft.



**KEYWORDS:** Cauvery River , serious conflict .

### INTRODUCTION :

Based on the inflow, Karnataka is demanding its due share of water from the river. It states that the pre-independence agreements are invalid and are asked heavily in favour of the Madras Presidency, and has demanded a renegotiated settlement based on "equitable sharing of the waters". Tamil Nadu, on the other hand, pleads that it has already developed almost 3,000,000 acres (12,000 km<sup>2</sup>) of land as a result has come to depend heavily on the existing pattern of usage. Any change in this pattern, it says, will adversely affect the

livelihood of millions of farmers in the state. Decades of negotiations between the parties bore no fruit. The Government of India then constituted a tribunal in 1990 to look into the matter. The problem became a bone of contention between Karnataka and other riparian states. Apex Court of India also delivered its judgements now and then added fuel to fire instead of providing a judgement accepted by all riparian states. Real solutions can be taken only when one has to study the detail on the major agreements on a historical base. Highlighting the above factors this research article attempts to

bring a historical narrative on the major agreements on the sharing of Cauveri river water.

### Major Agreements on the sharing of Cauveri River water The 1892 Agreement

As early as 1807, there was a correspondence between Madras and Mysore and better use of waters in the Cauveri and in its distributaries to the possible detriment of the interests of Madras.<sup>1</sup> This was the period (1800 - 1810) when a number of tanks restoration schemes and minor irrigation works in Mysore were initiated under Dewan Poornayya. During 1831 – 1881,

<sup>1</sup> S. N. Sadasivam, *River Dispute in India*, New Delhi, 2003, p.54.

when the Mysore administration was taken over by the British, schemes for irrigation development continued and a Public Works Department was established in 1856.<sup>2</sup>

In 1870 the Madras Government raised its concerns with the Mysore Government. An inconclusive exchange of correspondence in subsequent years led to a conference in May 1890 at Ootacamund. The conference was attended on the Mysore side by the president, Oliver St John, the Dewan, K. Shesadari Ayyar and the Chief Engineer Col. C. Bowen, and Madras was represented by the member of the Governor's Council, H.E. Strokes and the Chief Engineer of irrigation G.T. Wakh. The objective of the conference was to agree on the principles of a 'modus vivendi', which would, on the one hand, allow to Mysore reasonable freedom in dealing with her irrigation works, and on the other give to Madras practical security against injury to her interests. This conference was followed by an exchange of proposals between the two governments and by the second conference in May 1891. Following this meeting, Mysore proposed a set of 'Rules' which were accepted by the Madras Government in February 1892 after it secured certain modifications and clarifications.<sup>3</sup> These rules came to be known as "The Madras – Mysore Agreement of 1892".

Under the 1892 Agreement, main rivers, catchments and minor streams, and works in progress were listed respectively in three schedules to the Agreement Viz., schedules A, B and C<sup>4</sup>. In the Cauveri basin, the 15 main rivers listed in Schedule A included the Cauveri, the Hemavathy, the Lakshmanathirtha, the Kabini, the Swarnavathy and the Yagachi. The left bank tributaries below Sivasamudram, the Shimsna and the Arkavathy were omitted as being of its minor importance.

1. The agreement required that the Mysore Government should not without the previous consent of the Madras Government building of any new irrigation reservoirs across any part of the main rivers in schedule A or any 'new anicut' across the Cauveri lower than the Ramaswamy anicut and across the Kabini lower and Rampur anicut. New irrigation reservoirs were defined as such irrigation reservoirs or tanks as had not before existed, or if they had once existed, had been abandoned and been in disuse for more than 30 years.
2. When the Mysore Government desired to construct any new irrigation reservoir or any 'new anicut' requiring the previous consent of the Madras Government, full information regarding the proposed work had to be forwarded to the Madras Government and its consent obtained previously to the actual commencement of work. If a difference of opinion arose between the two governments in the case of any such work, it was to be referred to the final decision either of arbitrators appointed by both governments or of the Government of India.<sup>5</sup>
3. On its part, the Madras Government bound itself, not to refuse consent except for the protection of prescriptive right already acquired and actually existing, the existence and nature of such right and exercising it is in every case determined in accordance with the law on the subject of prescriptive right to use of water and accordance with what is fair and reasonable under all the circumstances of each individual cases.

As these provisions indicate, the 1892 rules established for the first time a framework between the two riparian states for consultation and dispute settlement.

### **The Griffin Arbitration, 1913 – 1914**

A hydro station at Sivasamudram to supply power to the Kolar Gold Field was the first proposal to be mooted by Mysore under the 1892 Agreement. Since it was a run of the river scheme that did not

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<sup>2</sup> Administrative Reforms Commission, *Report on Cauvery Water Dispute*, New Delhi, 1991, p. 127.

<sup>3</sup> A.S. Raj, *The Hindu*, Tiruchirappalli edition, 29.10.2002, p. 5.

<sup>4</sup> Government of India, Ministry of Irrigation and Power, *Report of the Cauvery Fact Finding Committee*, New Delhi, 1982, p. 133.

<sup>5</sup> *Madras State Administrative Report 1955-56*, p. 41.

involve any irrigation or interception of water, Madras gives its concurrence in 1900. Around 1906, Mysore began investigations into the construction of the Kannambadi dam below the Ramaswamy anicut on the Cauveri and about 13km upstream of Srirangapatna.<sup>6</sup>

On the Madras side investigation had begun as far back as 1856 on sites and schemes for a reservoir on the Cauveri to contain floods, ensure better regulation in the delta and extent irrigation areas. However, around 1900, the idea of a reservoir preferred. In order to improve the scheme, additional irrigation, apart from flood control and stabilization, was included as a component. In 1906, a proposal was formulated under which irrigation was to be provided by channels taking off at Kattalai above the Upper Anicut. This was the genesis of Cauveri Mettur project and Krishnarajasagar dam in Mysore.

The Government of India for its part was not willing to delink the two proposals and wanted the differences between Mysore and Madras to be settled by bilaterally prior to its approval of the Madras project. Since this was not found to be possible during the exchanges from 1910 onwards, the Government of India suggested arbitration; in June 1913, it appointed H.D Griffin, Judge of the Allahabad High Court, as the arbitrator assisted by M. Netherhole, Inspector General of irrigation.<sup>7</sup>

The award of the arbitrator, which came to be known as the Griffin award, was presented in 1914. It interpreted the 1892 Agreement to entitle Madras to such rights as it had acquired by prescription and as were fair and reasonable and held that a 20 year period was requisite to earn a title by prescription. It found that the construction and working of the proposed Kannambadi reservoir to its full height (124 ft) and (41.5TMC ft) would not necessarily interfere with the prescriptive rights of Madras. The extent of the prescriptive right was to be measured by the gauge reading the Upper Anicut which connotes a full and ample supply for the reasonable requirements of Madras irrigation according to the season. Specifically, the Griffin Award fixed the requirements of Madras for its existing irrigation at 22,750 cusecs equivalent to a gauge reading of 6.5 ft at the Upper Anicut. The award also dealt with related issues such as irrigation above the Upper Anicut, hot weather supply, seasonal regulation of flows, imparting and exchange of information between the two parties. Finally, the arbitrator held that the scheme of regulation could be reviewed, readjusted and revised by mutual agreement.<sup>8</sup>

### 1924 Agreement

The 1924 Agreement concluded between the Mysore Government and the Government of Madras certain rules and schedules defining the limits with which the new irrigation works are to be constructed by the Mysore Government without previous references to the Madras Government were framed. Moreover, this agreement provided more concessions to the Mysore Government under clause III of the said agreement the Mysore Government asked for the consent of Madras Government to the construction of a dam and a reservoir across and on the river Cauveri at Kannambadi now known as the Krishnarajasagar dam. The Mysore Government in their part nearby agree to regulate the discharge through and from the Krishnarajasagar reservoir strictly in accordance with the regulation set forth in the Annexure I which rules of regulation shall be and form part of this agreement.

According to the 1892 agreement the Mysore Government agree to furnish to the Madras Government within two years from the date of the present agreement dimensioned plans of anicuts and sluices or open heads at the off-takes of all existing irrigation channels having their source in the rivers Cauveri, Lakshmanathirtha and Hemavathi. Moreover, the Agreement provides the Mysore Government on their part shall be at liberty to carry out future extensions of irrigation in Mysore under the Cauveri and its tributaries to an extension now fixed at 110,000 acres. This extent of new irrigation of 110,000 acres shall be in addition to and irrespective of the extent of irrigation permissible under the rules of regulation forming annexure I to this agreement.

<sup>6</sup> Report of the Cauvery Fact Finding Committee, *op. cit*, p. 133.

<sup>7</sup> Madras State Administrative Report 1955-56, *op. cit*, p. 41.

<sup>8</sup> H.K. Sharadh Prasad, *The Hindu*, Bangalore edition, 14-07-2002, p. 14.

The Madras Government on their part to limit the new area of irrigation under the Cauveri Mettur project to 30,000 acres, and the capacity of the new reservoir at Mettur above the lowest irrigation sluice, to ninety-three thousand five hundred million cubic feet provided that, should scouring sluices be constructed in the dam at lower level than the irrigation sluice, the dates on which such scouring sluices are operated shall be communicated to the Mysore Government.<sup>9</sup> The Mysore Government and the Madras Government agree that the reserve storage for power generation purpose now provided in the Krishnarajasagar may be utilized by the Mysore Government agree that the reserve storage for power generation purpose row provided in the Krishnarajasagar may be utilized by the Mysore Government according to their convenience from any other reservoir hereafter to be constructed and the storage thus released from the Krishnarajasagar may be utilized for new irrigation within the extent of 110,000 acres provided for in clause (VI) above.

In addition to that the 1924 agreement facilitated to both the Government agree that the limitations and arrangements embodied in clauses (v) to (viii) at the expiry of fifty years from the date of the execution of these presents, be open to reconsideration in the light of the experience gained and of an examination of the possibilities of the further extension of irrigation within the territories of the respective Governments and to such modifications and additions as may be mutually agreed upon as the result of such reconsideration.<sup>10</sup> The Madras Government and the Mysore Government further agree that the limits of extension of irrigation specified in clauses (iv) and (v) above shall not preclude extensions of irrigation effected solely by the improvement of duty without any increase of the quantity of water used.

The Madras Government and the Mysore Government hereby agree that any time there should arise any dispute between the Madras Government and the Mysore Government touching the interpretation or carrying out of this agreement, such dispute shall be referred for settlement to arbitration.

### Negotiation in 1968-70

Correspondence between Karnataka and Tamil Nadu on the Cauveri waters took place in the mid - 1950's when work began on the Kabini project. A number of meetings were held at the official level, although the first ministerial-level meeting took place only in August 1968 under the chairmanship of the Union Minister for Irrigation and Power, K.L. Rao<sup>11</sup>. The Chief Minister of Karnataka, Veerendra Patil and then Tamil Nadu Minister for Public Works, M. Karunanidhi, participated. This was followed by five more meetings during 1970 in which Kerala also included as one of the basin states. These meetings, details regarding the Kabini and the Hemavathy projects discussed but Karnataka declined to give any assurance to adhere to the 1924 agreement to suspend work on these projects.

Meanwhile, in February 1970, Tamil Nadu requested the Government of India to refer the dispute to a tribunal under the Interstate Water Disputes Act, 1956 (ISWD Act, 1956). Since the Government of India refers the dispute to a tribunal and to direct Karnataka not to proceed with its new projects.<sup>12</sup> A suit was filed on the same lines by the riots of Thanjavur district. Kerala also moves the Supreme Court to refer the dispute to a tribunal and to restrain both Karnataka and Tamil Nadu from new works which would affect the interests of Kerala.

### Negotiation in 1972-78

At the suggestion of Prime Minister Indira Gandhi, the Chief Ministers of the basin states resumed their meetings in 1972 and attended by Chief Ministers Devaraj Urs, M. Karunanidhi, and C. Achutha Menon, it was decided that a serious attempt should be made to resolve the Cauveri dispute

<sup>9</sup> Report of the Cauvery Fact Finding Committee, *op. cit*, p. 147.

<sup>10</sup> K.S. Sonachalam, *Benefit Cost Evaluation of Cauvery – Mettur Project*, Madras, 1963, p. 72.

<sup>11</sup> M.J. Sri Hari Sharan, *The Hindu*, Mysore, 20.09.2002, p. 13.

<sup>12</sup> *Tamilarasu*, Malar 25, Journal 20-25, April - June 1991, p. 25.



between the states as early as possible by negotiations. It was agreed that the Government of India would appoint a fact-finding committee to collect all relevant data and examine the adequacy of the supplies or excessive use of water for irrigation purposes. The committee was only to collect the data and was not to make any recommendations. The chief ministers agreed to hold further discussions based on the committee's report and with the Government of India assistance, arrive at an agreed allocation of waters to the respective states in six months.

The Cauveri Fact-Finding Committee was constituted in June 1972 and gave its first report in December 1972.<sup>13</sup> The committee consisted of P.R. Ahuja (Engineer) Jatindra Singh (Engineer) J.S. Patel (Retired Agricultural Commissioner) and B.D. Pal (Judge). Responding to the requests made by the Chief Ministers in April 1973 for further verification of the data relating area irrigated and utilization, the CFFC gave an additional report in August 1973. Meanwhile, in June 1972, Tamil Nadu acting on the advice from Prime Minister Indira Gandhi to Chief Minister M. Karunanidhi withdraws its suit in the Supreme Court while reserving the right to move the court again if it is necessary.

A series of a meeting based on the CFFC's reports was held in 1973 and 1974 under the chairmanship of successive union ministers for irrigation (K.L. Rao, October 1973; K.C. Pant, June 1974; Jagajivan Ram, November 1974). At the final meeting of this series, held on November 29, 1974, a draft agreement was tabled by the Government of India. The draft was discussed in November 1974 and again at a February 1975 meeting but was not acceptable to the parties. In May 1975, Tamil Nadu renewed its request to the Government of India to refer the dispute to a tribunal.

The technical committee, consisting of engineers from the Government of India and the basin states, held a number of meetings between October 1976 and September 1977 but could not come up with an agreed report. During this period, Karnataka had also prepared a master plan for the development of the Cauveri basin under the guidance of the renowned engineer, N.D. Gulhati. At the next meeting of the Chief Ministers, held in August 1978, M.G. Ramachandran, who had succeeded M. Karunanidhi as Chief Minister of Tamil Nadu, rejected the 1976 draft as unacceptable to his state.<sup>14</sup>

### Negotiation in 1978-81

Between September 1978 and December 1980, four meetings were held under the chairmanship of the union ministers for irrigation. In 1980, Karnataka presented a 10 point formula. Draft proposals were furnished by both Karnataka and Tamil Nadu in 1981; they were commented upon by each of the basin states and in October 1981, a bilateral discussion was held between the Chief Ministers of Karnataka and Tamil Nadu on their respective proposals.

### Negotiation between 1983 and 1990

Efforts to resolve the dispute were to continue, although the meetings held during 1978-81 had indicated the little prospect of an agreement following a meeting in April 1983 under the chairmanship of the Union Ministers for Irrigation Ram Niwas Miraha, bilateral discussions were once again held between Karnataka and Tamil Nadu in January 1984 and in November 1985. These were followed by one more meeting in June 1986 under the Chairmanship of the Union Minister for Irrigation B. Shankaranand.<sup>15</sup>

In July 1986, Tamil Nadu again wrote to the Government of India making a formal request to refer the dispute to a Tribunal. In November 1986, a Tamil Nadu Farmers association in Tamil Nadu moved the Supreme Court to constitute a tribunal and the Tamil Nadu Government impleaded itself in their prayer.<sup>16</sup>

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<sup>13</sup> *Tamilarasu*, May, 1994, p. 5.

<sup>14</sup> *Frontline, Cauvery Dispute: A positive initiative*, Madras, April 24, 1992, p. 12.

<sup>15</sup> *The Penguin Year Book - 2008*, New Delhi, 2008, p. 48.

<sup>16</sup> C.V.J. Varma, *History of Cauvery – Mettur Project*, New Delhi, Central Board of Irrigation and Power, 1987, p. 127.

In 1987 a further meeting of the Chief Ministers was proposed by the Government of India but the Chief Minister of Tamil Nadu M.G. Ramachandran, declined to participate on the grounds that negotiations until then had not yielded results. The next meeting, held in September 1988 on the directions of the Supreme Court, was a bilateral one between the chief minister of Karnataka and the Governor of Tamil Nadu. After this meeting ended in predictable failure, the Tamil Nadu Governor pressed the Government of India for an early reference to a tribunal. Early in 1989, M. Karunanidhi, who had again become the Chief Minister of Tamil Nadu proposed a bilateral meeting to his counterpart in Karnataka, S.R. Bommai, but by the time date in late April had been agreed upon, it was Karnataka's turn to have come under President's rule. In August and December 1989, Tamil Nadu once again pressed the Government of India to refer the dispute to a tribunal.

In February 1990, the writ petition filed in 1986 came up again for hearing in the Supreme Court. The Court gave a final adjournment to April 24 and declared its intention to decide the case on merits. As the last move the chief ministers of the basin states met on April 5 under the chairmanship of the Union Minister for Irrigation, Manubhain Kotadia, and it was decided that a final bilateral discussion held between Karnataka and Tamil Nadu. This was held in Madras on April 19 and again proved inconclusive. Altogether, 26 meetings at the ministerial level were held between 1968 and 1990, of these 21 were presided over by union ministers for irrigation and 5 were a bilateral sessions between Karnataka and Tamil Nadu.<sup>17</sup>

### FORMATION OF TRIBUNAL

The Cauveri Water Disputes Tribunal was constituted on June 2, 1990, under section 4 of the ISWD Act, 1956, with Justice Chittatosh Mookerjee, Chief Justice of the Bombay High Court, as Chairman and Justice S.D. Aggarwal of the Allahabad High Court and Justice N.S. Rao of the Patna High Court as members. After the elapse of the 50 years old agreement, the Cauvery River continued to be a source of conflict for the two states. In April 1991, the Supreme Court of the Government of India reassigned a tribunal to settle the dispute as mandated in the inter-state river water disputes act. The tribunal heard arguments from both states and reached the decision that Karnataka must release 205 TMC of water from the Cauveri reservoirs to Tamil Nadu on a monthly basis. Karnataka declined to accept the ruling of the tribunal. The Government of Karnataka argued that the tribunal issued a decision that was not implementable. Due to failed monsoons, many parts of Karnataka were left with adequate water supplies.<sup>18</sup> If the government were to release more than 100 TMC of water to Tamil Nadu, then it would be disadvantageous to its own people.

The rejection of the Tribunal's decision pushed the negotiations on a downward spiraling path that eventually led to aborted talks. As mentioned previously, however; water issues seem to only except when there is a lack of adequate rain. In 1992, 1993 and 1994 the rain was sufficient to pacify the dispute between Tamil Nadu and Karnataka. The most recent conflict over the Cauveri River was in 1996 and continues still today. Beginning in 1995, the monsoons failed to fill the Cauveri tributaries possessed by Tamil Nadu on January 1, 1996, Prime Minister P.V. Narasimha Rao asked Karnataka to release an immediate 6 TMC FT (one thousand million cubic feet) of water to Tamil Nadu to save the standing crops. In addition, the prime minister announced the immediate formation of an expert council to "spot assess" the status of the standing crop of both states to include the level of water needed to sustain the crops. Small and medium-sized farmers are suffering due to a lack of water. Crops are withering as tempers flare. As a result of this desperation, threats have turned into acts of violence. Agitation is occurring in cities such as Mandya and Bangalore.

It should be noted that despite the stalemate in negotiations and the violence that exists, Karnataka has been releasing water from the Cauveri River to Tamil Nadu in installments for the last twenty years. The dispute between the two states is over the quantity of water released. The conflict

<sup>17</sup> V. Venkatraman, *Problems in Cauvery*, Tiruchy, 1990, p. 88.

<sup>18</sup> B. Vishwambhar, *Water Resource Management and Policy Perspectives*, Diamond Publications, Jaipur, 2004, p. 127.

between the people, particularly the farmers, is that there is a release at all. The inspection process and water dispute continue today. Karnataka still rejects the tribunal. The state is now suggesting that an independent monitoring committee be established. The committee would be called the Cauveri River committee and should take the form of a regulatory authority. The experts on the committee should be outside the control of either the state or the Tribunal. The Government of Karnataka has suggested that the committee be comprised of high ranking people with expertise in law, administration, agriculture and irrigation engineering. Thereafter Government of Tamil Nadu shifting case from the Supreme Court and Tribunal to the Parliament.<sup>19</sup>

As both states continue their struggle over the shared water dispute over the Cauveri River, it is likely that national intervention will be necessary. It has been noted by both states that the Government of India must become involved in order to secure the future security of the farmers in both Karnataka and Tamil Nadu; shared water is a national issue that goes beyond the Cauvery River. Numerous rivers in India are shared by two or more states. Similar to Cauvery, disputes, and violence, water supply is a national issue that is going to require a national response.

### CONCLUSION

The Cauveri River is one of the most contentious water supplies in Southern India. The Cauveri waters engaged the governments of Karnataka and Tamil Nadu from the mid-1950s until 1990 when the dispute was referred to the Cauveri Water Disputes Tribunal. The conflict between Tamil Nadu and Karnataka compounds a century-old dispute over the vital interests of farmers in Tamil Nadu and Karnataka. The Cauveri river dispute has been a serious issue since 1974 when a 50-year-old agreement between the Madras Presidency and the Princely Mysore state collapsed. Karnataka asserts that the 1924 agreement entailed discontinuation of the water supply to Tamil Nadu after 50 years. The conflict between Tamil Nadu and Karnataka compound a century-old dispute over the vital interests of farmers in Tamil Nadu and Karnataka. This must be settled with a permanent solution based on the agreements and negotiations of the past as early as possible to avoid unnecessary tension and untoward incidents. In this situation, the Supreme Court on February 16, 2018, gave a final verdict on the Cauvery river water dispute, reduced the allocation of water from Karnataka to Tamil Nadu. Karnataka will now supply 177.25 TMC instead of 192 TMC-a reduction of 14.75 TMC, from its Billigundlu site to Mettur dam in Tamil Nadu. The verdict could be an eye-opener for all inter-state river disputes.

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<sup>19</sup> L.K. Tripathi, *Water Resources Management (Conservation and Developments)*, Oxford University Press, Jaipur, 2007, p. 42.