

CASE NO.:
Appeal (civil) 6952-6954 of 2004

PETITIONER:
Gandhi Sahitya Sangh Trust

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 26/10/2004

BENCH:
RUMA PAL & ARUN KUMAR

JUDGMENT:
J U D G M E N T

(Arising out of SLP (Civil) Nos. 17562-17564 of 2004)

RUMA PAL, J.

Leave granted.

The Cauvery Water Disputes Tribunal was constituted under Section 4 of the Inter-State Water Disputes Act, 1956. It consists of three Members. Apart from the Chairman, there are two other Members, who have been nominated by the Chief Justice of India. These two nominees were at the time of their nomination judges of High Courts. The Tribunal has been functioning since 1990. The present appeals have been preferred challenging three orders dated 6th July, 2004, 23rd July, 2004 and 3rd August, 2004. The first order was passed by two Members of the Tribunal. Another Order was passed by the Chairman on the same day i.e. on 6th July, 2004. The reason for the two separate orders was a dispute between the Members of the Tribunal and the Chairman relating to the holding of an inspection of the Cauvery River Basin. By their order, the two Members directed the parties namely, the Governments of Tamil Nadu, Karnataka, Kerala and Union Territory of Pondichery to submit their proposed itinerary for the inspection in respect of the Cauvery Basin falling within their respective territories clearly indicating therein specific places which they would like the Tribunal to visit within one week. It was also specified that the Tribunal may inspect other spots/sites in the basin either on their own or at the instance of assessors appointed under Section 4(3) of the Act which would help the Members to arrive at a just, fair and proper decision in the matter. The other directions are immaterial for the purposes of these appeals. As far as the Chairman is concerned, he recorded that he had no objection to the other Members of the Tribunal going for inspection but recorded that inspection was not necessary primarily on the ground that there would be further delay and unnecessary expense involved.

On 20th July, 2004, the State of Karnataka filed an application bringing on record that it would make all necessary arrangements with regard to the places in Karnataka proposed to be visited by the two Members. Prior intimation was asked for, so that necessary and adequate arrangements could be made. It was further stated that on

receipt of the intimation of the places decided upon by the two Members a detailed itinerary would be drawn up and submitted to the Registrar to facilitate the working out of the directions of the two Members. It was also recorded that the State of Karnataka had already intimated sites in respect of which inspection should be carried out which fell within the State of Karnataka, on 15th July, 2004. A request was also made that record of proceedings should be maintained by the Tribunal including their observations on such inspection. It appears that on 21st July, 2004 the State of Karnataka filed an application seeking to place on record a statement dated 5th December, 2003 in which it had sought to set forth its stand on the issue of inspection of the basin. By an order dated 27th July, 2004, the application was disposed of by directing it to be taken on record. On 3rd August, 2004 an order was passed by two members of the Tribunal inter alia saying that:-

"the Inspection of sites/places in Cauvery basin will clarify the geographical aspects, the physiological and other related matters. The Assessors will assist in that behalf. The learned counsel of the party States and their technical hands are also accompanying us on inspection."

With regard to the preparation of an inspection memo it was said that due regard would be given to the inspection memo prepared by the Tribunal as was earlier constituted. A second order was passed by the two Members of the Tribunal on 3rd August, 2004 in which they made certain observations relating to the contents of the Chairman's order dated 6th July, 2004. The second order dated 3rd August, 2004 appears to be a justification of the decision of the two members to hold an inspection. In response to the second Order dated 3rd August, 2004, a third order was passed on the same date by the Chairman of the Tribunal substantially reiterating his stance on the delay in conclusion of the proceedings. The second and third orders passed were entirely improper and contrary to all norms of judicial etiquette. However, nothing turns on the second and third orders dated 3rd August, 2004 which were, in our view, an unseemly and wholly unnecessary exercise.

On 13th August, 2004, the Advocate for the State of Karnataka forwarded a tour programme in respect of the inspection to be held by the members of the Tribunal of sites within the State. A similar tour programme was given to the Tribunal by the State of Tamil Nadu.

It was at this stage that a special leave petition was filed on 19th August, 2004 by the appellant challenging the orders dated 6th July, 2004, 23rd July, 2004 and 3rd August, 2004. Permission to file the Special Leave Petitions was granted and the two members of the Tribunal were asked to defer their departure for inspection by 10 days by our order dated 24th August, 2004.

When the matters were listed before this Court on 10th September, 2004 for hearing, having considered the submissions made on both sides, we were of the view that the special leave petitions deserved to be rejected. The interim order passed by this Court earlier accordingly was vacated and the main matter was reserved for judgment. In our opinion, the appeals are liable to be dismissed as the appellant does not have the locus standi to object to the proceedings before the Tribunal. The appellant had not mentioned to this Court in its

special leave petitions that this Court had earlier dismissed a writ petition (TC No.11/1993) filed by it in connection with the functioning of the Tribunal when this Court held:-

"It is not disputed that the Tribunal was set up under the order of this Court and since its inception it is engaged in monitoring and adjudicating the dispute. Under Article 131 of the Constitution of India, the water disputes between two States can only be brought by a State and not by an individual or a society. We are, therefore, of the view that the petitioner has no locus standi to challenge the validity of the Act or setting up of the Tribunal and also the reference of the disputes for adjudication to the Tribunal."

Had we known of this order it is doubtful whether we would have entertained the appellant's petitions at all. If the association could not have been a party to the proceedings before the Tribunal it cannot be said to be a person aggrieved by the orders of the Tribunal in the proceedings. It is not as if that the parties appearing before the Tribunal were unable to ventilate their grievance against the orders for any reason. The State of Karnataka whose cause was said to be espoused by the appellant, did not itself choose to challenge any of the orders of the Tribunal. On the other hand, it is clear from the facts as narrated above that it had accepted the orders of the Tribunal and had submitted a detailed programme giving effect to the directions of the Tribunal. We are not therefore prepared to allow the State of Karnataka to step into the shoes of the appellant as was prayed by it during the hearing.

Having regard to the absence of locus standi in the appellant, it is unnecessary for us to decide the other issues raised by the appellant. The appeals are accordingly dismissed with costs.