

## Is the Supreme Court verdict on Cauvery fair?

With an additional allocation of 14.75 thousand million cubic feet (tmc ft) of water to Karnataka, the Supreme Court has given the State reason to rejoice. The order is fair and does not take away anything significant from Tamil Nadu. What it has done is to address some concerns that were present in the 2007 order of the Cauvery Water Disputes Tribunal, such as of drinking water in Bengaluru and the constraints of irrigation in southern Karnataka.

There is much to be satisfied with in what has been allotted to Karnataka in the recent order. On many points, the Court validates the objections raised by Karnataka to the 2007 tribunal order.

### Allocation for Bengaluru

For instance, the court makes it clear that the contentious 1924 agreement had lapsed. It noticed that the State did not have bargaining power at the time of entering the said agreement. Yet, post-Independence, Karnataka chose not to denounce the agreement. While the agreement cannot be called “unconscionable”, as Karnataka had not raised objections to it after Independence, the court observed that several clauses in the 1924 agreement did not indicate permanency, and had lapsed after 50 years, by 1974. The court also rightly observed that the overall population of river basin States has to be placed on a pedestal, and be taken into account as a fundamental principle for equitable distribution.

Keeping this in mind, the court acknowledges the need for a higher share of Cauvery water for Bengaluru, which now has more than 10 million inhabitants. The 2007 tribunal order had reduced Karnataka’s share for the sole reason that only one-third of Bengaluru falls within the river basin, and that 50% of the drinking water supply would be met through groundwater. The Supreme Court rightly notes that the tribunal’s view ignores the basic principle pertaining to drinking water. Keeping in mind the global status that Bengaluru has attained, an additional 4.75 tmc ft has been awarded to it in order to implement the existing water supply schemes. The remaining 10 tmc ft can be used to expand agricultural activities.

Does this additional allocation deprive Tamil Nadu? No. While lowering the allocation of surface water, the Supreme Court has ruled that a minimum of 10 tmc ft of groundwater is available in the Cauvery delta for safe use by Tamil Nadu. This had been ignored in the tribunal order.

### Pending issues

However, there are certain issues in the order that need to be addressed. The Inter-State Water Disputes (ISWD) Act, 1956 stipulates that besides the chairperson and two former High Court or Supreme Court judges appointed by the Chief Justice of India, a minimum of two assessors (technical experts) are to assist the tribunal. While the Supreme Court sought the assistance of technical experts in the coal scam and the iron ore mining case, it has not done so in the Cauvery dispute. Prime among these unresolved issues is the framing of a deficit formula for sharing water, and construction of hydel projects on the common boundary of the river. For instance, Karnataka plans a run-of-the-flow Mekedatu hydel project. The status of this project is yet to be decided within the framework of the judgment.

Similarly, issues of climate change and allocation of regenerated and surplus water have not been considered. As a result, basin States like Karnataka will continue to knock at the doors of the Supreme Court for redress.

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