

DELHI WATER SUPPLY AND SEWAGE DISPOSAL UNDER A
TAKING AND ANR.

v.
STATE OF HARYANA AND ORS.

FEBRUARY 29, 1996

B
[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Constitution of India, 1950 : Articles 32 and 262. Inter State Water Disputes Act, 1956 :

States Water Dispute—Memorandum of Understanding regarding—River—Upper riparian States using water for irrigation purposes—Cannot deny the lower riparian States use of water for quenching the thirst.

*Contempt—Public Interest Litigation—Seeking directions to State concerned to maintain regular flow of water in Jamuna River so that Delhi residents do not face problem of drinking water—Interim order by Court directing the States for allocation of water to Delhi with immediate effect—Non compliance with order of Supreme Court—Ground given for non compliance that under the Memorandum of understanding Delhi was not entitled to extra water—Held *volte-face* by State deserves strong disapproval—Assurance given by Advocate General for compliance with Court order—Consequential dropping of contempt proceedings—Directions issued to State concerned to ensure that Delhi continue to get as much water for domestic use through river Jamuna which can be filled in the two water reservoirs and treatment plants at Wazirabad and Hyderpur—Held Court's order was not dependent on memorandum of understanding—Held order was not only binding on parties but also on upper Jamuna River Board.*

State of Connecticut v. Commonwealth of Massachusetts, 75 Law Ed. 602; American Jurisprudence, Vol. 78 2d p.293; C.D. Harris v. John Brooks, 54 American Law Reports 2d series p. 1440, referred to.

CIVIL ORIGINAL JURISDICTION : Contempt Petition No. 111 of 1995.

AND

Contempt Petition No. 113 of 1995.

A

IN

Writ Petition (C) No. 537 of 1992.

(Under Article 32 of the Constitution of India).

B D.P. Gupta, Solicitor General, Arun Jaitley, Gopal Subramaniam, N.N. Goswamy, V.C. Mahajan, Shahid Rizvi, Ms. Shabnam Lone, (Comdr. Sureshwar D. Sinha) in person, (Y.P. Mahajan) for Mrs. Anil Katiyar, K.B. Rohtagi, Ram Prakash Gupta, H.L. Sibal, Sunil Gupta, Ms. Indu Malhotra, Ms. Kavita Wadia, Ms. Sushma Suri, R.B. Mishra, M.K. Roy, Sudhanshu, C Kamlendra Misra, B.K. Prasad, S.A. Matto, S.M. Ashri, Aruneshwar Gupta, (NP) and Naresh K. Sharma for the appearing parties.

The following Order of the Court was delivered:

Water is a gift of nature. Human hand cannot be permitted to D convert this bounty into a curse, an oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purpose. A river has to flow through some territory; E and it would be travesty of justice if the upper-riparian States were to use its water for purpose like irrigation, denying the lower riparian States the benefit of using the water even for quenching the thirst of its residents.

2. The plight of residents of Delhi in not getting sufficient water even for drinking, led Commodore S.D. Sinha to approach this Court under F Article 32 of the Constitution by filing a public interest petition, which came to be registered as Writ Petition (C) No.537 of 1992 seeking, inter alia, a direction to the concerned Governments to maintain regular flow of water, in Jamuna river so that the residents of Delhi do not face problem of drinking water, which, however, was being so faced because of non-release of sufficient quantity of water from Tajewala Head. As intricate G questions of law were found to be involved, on the suggestion of the court, Commodore Sinha agreed to have the guidance and assistance of a senior lawyer through the Supreme Court Legal Aid Committee.

3. It is this which found Senior Advocate, Shri K.K. Venugopal H before us. The learned counsel took pains to bring to our notice by

referring to some decisions of the American Court, as well as to some writings, that drinking is the most beneficial use of water and this need is so paramount that it cannot be made subservient to any other use of water, like irrigation. So, the right to use of water for domestic purpose would prevail over other needs. It is because of this that it was contended that what has been stated in Article 262 of the Constitution dealing with adjudication of disputes relating to waters of inter-State river or river valleys, read with Inter-State Water Disputes Act, 1956, could not exclude the jurisdiction of this Court to entertain the grievance of the petitioner.

4. Shri Venugopal in support of his contentions-relied upon high authorities of *State of Connecticut v. Commonwealth of Massachusetts*. 75 Law Ed. 602; American Jurisprudence, Vol. 78, 2d p.293; and *C.D. Harris v. John Brooks*, 54 American Law Reports 2d series p 1440. We found plausibility in the contentions and were inclined to unfold new jurisprudential arena, despite strong objection to the same being taken by the State of Haryana, which came to be represented by its Advocate General, Shri H.L. Sibal, at a later stage. Shri Sibal pleaded in the alternative not to base our decision on the principle of law advanced by Shri Venugopal, as a Memorandum of Understanding (MOU) between U.P., Haryana, Rajasthan, Himachal Pradesh and National Capital Territory of Delhi, regarding allocation of surface flow of Jamuna, had come to be signed on September 12, 1994. The Advocate General urged that we may ask the concerned States to act as per the said MOU. We found merit in the submission and Shri Venugopal too raised no objection, and rightly. But, as to act according to the MOU required deliberation by Upper Jamuna River Board; and as there was some difficulty in doing so because its membership could not be finalised; and as the summer months were fast approaching, a need was felt by us to give appropriate direction to take care of the hardship likely to be faced during those months.

5. This led us to pass order dated March 31, 1995. The operative part reads as below:

"After hearing the representatives of all the States concerned and the Union of India and their learned counsel, we are of the view that the Board having been legally constituted, the Memorandum of Understanding has become executable under law. The State of Delhi which is in dire need of water is, to be given its allocation

A of water with immediate effect. We, therefore, direct all the parties to the Memorandum of Understanding to assure that sufficient water, which according to Mr. Mathur is about 2-1/2 times of the seasonal allocation, is released from Tajewala Head so that Delhi gets 0.076 B.C.M.* for its consumption during the period March to June, 1995.

B We issue special directions to the States of Haryana and Uttar Pradesh through their Chief Secretaries of the Irrigation Departments to release the water as directed by us for the consumption of Delhi from Tajewala Head with effect from April 6, 1995. While passing this order, we take this opportunity to request the respective Chief Ministers of the two States of Haryana and Uttar Pradesh to direct the concerned officers/officials of their respective Governments to have our directions regarding supply of water to Delhi, complied with.

C We make it clear that this order is as an interim measure till the time the members of the Board and the Review Committee are appointed and they become functional. As soon as the Board becomes functional, it will be at liberty to pass any direction in the light of this order as they deem fit and in accordance with the Memorandum of Understanding in the interest of all the States which are signatories to the Memorandum of Understanding.

E List this writ petition and I.A. No. 6 be listed on May 5, 1995 at 2.00 p.m. to review the situation arising out of our order".

F 6. The averment in these two contempt petitions, one of which is by the Delhi Water Supply and Sewage Disposal Undertaking and the other by Commodore Sinha, is that the aforesaid order was wilfully violated by the contemners. The grievance being common, they were heard together and are being disposed of by this common order.

G 7. The contemners agree that no water at all was released pursuant to the above order. Their shocking stand is that under the MOU, Delhi was not to get any extra water beyond what it was getting before March 31, 1995. We are piqued at this statement inasmuch as the order of 13th

H * It is this quantity of water, Delhi has to get under the MOU, between March to June.

March would then cease to have any meaning – an exercise in futility. Shri A Jaitley appearing for the Water Supply Undertaking would not agree to this stand. The learned Solicitor General, who was requested to assist us in these proceedings, ultimately stated that the stand of Haryana may not be correct, though the learned Solicitor was initially of the view that perhaps under the MOU Delhi was not entitled to any extra water. B

8. If the stand of Haryana regarding the MOU, as advanced in these proceedings by the learned Advocate General, be correct, we have no doubt that the State had misled the Court when the order of 31st March was passed. It thwarted the passing of an appropriate order which we would have passed but for the understanding given to us on March 31, 1995 by Haryana. With summer months ahead, we would have called upon Haryana to allow the required quantity of water to pass through the Tajewala Head as we would have thought necessary. The volte-face by Haryana had undoubtedly to be viewed seriously and it deserves to be disapproved strongly. We would have indeed found the concerned persons guilty of contempt for misleading the Court and preventing it from passing such order as thought just and proper by it, inasmuch as the course of administration of justice definitely got deflected because of the twists in the stand of the State. C D

9. Despite the aforesaid being the position, we are refraining from using our contempt jurisdiction inasmuch as the learned Advocate General has assured that Haryana would see that Delhi gets as much of water which it is presently receiving through Jamuna, if so directed by us. It is because of this statement that Shri Jaitley submitted that the Water Supply Undertaking is not keen to pursue the contempt proceeding. Commodore Sinha too has taken the same stand. It is this gesture, along with the statement made by the learned Advocate-General, which has led us to close this proceeding, despite the highly objectionable conduct of the concerned persons. E F

10. So far as water supply from river Jamuna to Delhi is concerned, we order and direct that Delhi shall continue to get as much water for domestic use from Haryana through river Jamuna which can be consumed and filled in the two water reservoirs and treatment plants at Wazirabad and Hyderpur. Both the Wazirabad and Hyderpur reservoirs shall remain full to their capacity from the water supplied by Haryana through river Jamuna. We direct the State of Haryana through all its officers who are G H

A party to these proceedings and who have filed affidavits before us not to obstruct the supply of water to Delhi as directed by us at any time. This order of ours is not dependent on the MOU mentioned above or any other proceedings which may be initiated under any other law between the parties.

B 11. We, therefore, close the proceeding by requiring Haryana to make available the aforesaid quantity of water to Delhi throughout the year. Let it be made clear that any violation of this direction would be viewed seriously and the guilty persons would be dealt with appropriately. This order of ours would bind, not only the parties to this proceeding, but

C also the Upper Jamuna River Board.

T.N.A.

Matter disposed of.