

Minutes of the Sixth meeting of the Group on Legal Aspects under Task Force for Interlinking of Rivers held on 02.02.2017 at New Delhi.

The Sixth meeting of the Group on Legal Aspects under Task Force for Interlinking of Rivers was held on 02.02.2017 at 15:00 hrs, Sewa Bhawan, R.K. Puram, New Delhi. The meeting was chaired by Shri A.D. Mohile, Former Chairman, CWC and Chairman of the Group. At the outset, the Chairman of the Group welcomed all the members and invitees and others participants. He told that good progress has been made in drafting of report. However due to some unavoidable reasons meeting could not be held earlier. Later, Shri K.P. Gupta, Director (Technical), NWDA took up the Agenda Items. The list of the participants is enclosed at Annex-I.

Item No. 5.1: Minutes of the meeting of the 5th meeting of the Group on Legal Aspects under Task Force for Interlinking of Rivers held on 2nd December, 2016 at New Delhi.

The minutes of the 5th meeting of the Group on Legal Aspects under Task Force for Interlinking of Rivers held on 2nd December, 2016 at New Delhi were circulated to all the members vide letter dated 1st February, 2017. Chairman expressed the view that if the Members have not got sufficient time to go through the minutes, they may offer their observations at later date also, preferably in track mode. However, Prof. Avdhesh Pratap and others present in the meeting told that they have gone through the minutes. Prof Avdhesh Pratap told that he would be providing additional material on some relevant Supreme Court Judgement and legal position on sharing of water in USA & South Africa for inclusion in Draft of Section-3. After deliberation the Minutes of the 5th meeting of the Group on legal aspects held on 2.12.2016 were confirmed by the Group as circulated.

Item No 5.2: Discussion on of Draft report of the Group on Legal Aspects.

Shri K.P. Gupta, Director (Technical) informed the Group that draft report of first 3 Sections(namely Section-I Introduction, Section-2 Inter-State Issues Involved in ILR Programme and Section-3 Law on water allocation and water transfers) have already been circulated among the Members. However, draft report in respect of following 3 Sections are yet to be prepared and circulated:

- (i) Section 4 (The work done by the Group)
- (ii) Section 5 (Recommendations of the Group)
- (iii) Section 6 (Acknowledgement)

The Chairman told that drafting of Section 4 can be done by NWDA based on the minutes of the previous meetings. So he requested Members of the Group and other participants to finalise Recommendation of the Group for Section-5. After detailed discussion, following recommendations of the group were drafted for inclusion in the draft to be circulated:

1. The constitutional provision

The Group recommends that there is no need for any constitutional amendment for bringing the subject of water and its management either under the concurrent list or under the Union list. The present position where the inter-state river basins (rivers and river valleys) are covered by the List-I of Entry-56 of the Union list is enough. Passing of suitable legislation under this entry by the Union Legislature, in public interest would serve the purpose. Apart from being not necessary, any constitutional amendment will be difficult and a long drawn process requiring the involvement of the State Legislatures.

2. The enabling Legislations :

Group recommends that one or more Central legislation may be passed for the purpose of facilitating inter-basin transfer to non basin states. While the drafting of such legislation may require considerable effort, the essential features could be as follows:

- a) It may be declared that for inter State rivers and river valleys, it is in public interest that the following guidelines may be adopted and implemented by all concerned including the States:
 - “National Water Policy, 2012”
 - “National Guidelines for Allocation of Waters of Inter-state Rivers Amongst States” (the draft guidelines in this regard were prepared by CWC around 1994 and had been discussed in the National Water Board and also in the National Water Resource Council in around 1996. The NWRC could not approve these but had formulated a committee for finalizing guidelines. These were further discussed in the NWRC meeting in 2002 but there was no consensus. Thus, these guidelines have not yet been approved by the National Water Resources Council, and may have to be either approved by the Council or may have to be included in the Legislation without going through the NWRC route).
 - The Group is of the view that the guidelines for allocation of water amongst States should have a provision for water allocation, in national interest, for National Waterways, demands of large establishments of the Central government such as defence establishments and/or towards the interests of non-basin States through inter-basin transfer.

- b) The legislation may encourage the adoption of a National Water Code/national framework law on water. The group observes that such a water framework law has already been recommended in the National Water Policy 2012. This law would be comprehensive and umbrella legislation dealing with all aspects of water; and would serve as a reference document while interpreting the separate and detailed legislation about the different aspects related to water.
- c) The legislation for establishing River Basin Authorities (RBAs). In this connection the group notes that the RBA Act 1956 had been reviewed critically by a Committee chaired by Justice Doabia in 2013 which had proposed a complete revision and the need for enacting a new River Basin Act. The procedure to follow preceding such an enactment by way of presenting a white paper to Parliament justifying the new Act which empowers the Union to initiate and proceed with several positive actions for water governance. This step of creation of River Basin Authorities with a 2 tier system of governing and managing the Basins could help in the implementation of ILR. The Group recommends that follow up action on Doabia Committee Report be done expeditiously.
- d) It may create an agency (or empower an existing agency) and authorize it to lay down methodologies required for planning such transfers, and in particular, those required for deciding the demands and availability of surplus waters, and their transfer and use by non-basin States.
- e) The agency will further be authorised to work out a plan the transfers and decide on surpluses, deficits, and water to be transferred to and from the basins. The decisions of the said agency regarding demand and availability of surplus water and their transfer and use by non-basin States would be quasi judicial decisions based upon the study as conducted by the agency after considering the views of the concerned States. In view of this, the legislation will provide that the power for such quasi judicial decision will vest with specified senior functionaries of that agency. Further, since the decision may aggrieve one or more State, the legislation may provide for appeals against this decision and such appeals may be heard by further senior functionaries or by the Governing Body of the said agency. If further aggrieved, the States would have an option to appeal to the National Tribunal for River Linking.
- f) It may create a standing National Tribunal for River linking (Inter-basin transfers to non-basin states, under the Article 262 of the Constitution to judiciously decide and approve, with modifications as may be required, the standards and methodologies as prepared by the said agency as also the individual schemes for transfer of waters of interstate rivers and river valleys to non basin states. The matter will go to this tribunal if any State is aggrieved by the decision of the said agency mentioned above. Concerned or interested States, shall be a party to these proceedings. This National Tribunal for River

Linking could be the same as the National Permanent Tribunal for Water Sharing Disputes which is already under consideration of the Union Government.

- g) If any basin is found to have surplus water through the studies of the agency or the appellate decision of the said Tribunal, the River Basin Authority would be bound to allow this surplus to be transferred to Non-basin States. Similarly if required, any existing inter-state agreement or water dispute tribunal award would have to be reworked in light of this finding.
 - h) It may provide that neither the Supreme court nor any other court shall exercise jurisdiction in respect of disputes or complaints of issues arising out of such complaints in regard to the proposals as prepared by the said agency, to the extent they are approved by the said Tribunal.
 - i) It would provide for creation of machinery for execution and subsequent operation of the schemes of inter-basin transfers in consultation with the concerned states, the process of allocation of the cost of the scheme amongst states as also decisions about the recoveries to be made from the states of the users.
3. Issues of surplus water in a river basin
- i. The terms of reference of the Group included “ to look into the issues of surplus water in a river basin in its all dimension and suggest various implementable alternatives”. The Group has not gone in details in regard to this ToR since the issue has separately been discussed while the Task Force dealt with the revision of the Guidelines of the TAC.
 - ii. However, the Group feels that there should be enough flexibility in planning of the links and these need not strictly be from a surplus basin to a deficit basin, both the terms being defined as per the Guidelines of the TAC. The TAC definition is that this term is defined mainly in the context of irrigation; although other uses of water are also estimated. However, there is feeling that the estimate of the water supply and industrial use does not properly reflect the very high rate of rate of industrial growth which will be encountered in the fast economic development. Also in regard to water supply, the rapid coverage of the quality of life between rural and urban areas, the consequent provision of piped water supply and sewerage along with wet latrines in rural areas will increase the demand sharply and this may not be covered in the normal estimates. The Group feels that the transfer necessarily have to be from areas or basins which are comparatively water rich to areas which are comparatively water poor, after considering the demand and supply position, without going into strict definition. For example, a link such as the Damanganga-Pinjal link, where both the basins from which the water is taken and the basins where it is

delivered may both be surplus, but this should not deter the desirability of such a link.

4. The impact of tribunal awards on water transfer

Most of the tribunal awards allocate the water of the inter-state river basin to the basin states fully, thus leaving nothing for possible inter-basin transfer to non-basin states. For example, the Krishna and Godavari Tribunal had fully allocated the water to the basin states. The Narmada Tribunal allocated a small part of the water to Rajasthan, but this was done in concurrence with the basin states. After the KWDT (1) Award, the basin states, on their own, agreed to sacrifice a small part of their allocation for the Chennai city in Tamil Nadu which is a non-basin state. Later on the KWDT (2) has accepted this allocation and included this in its award.

The Godavari Award has mostly made bulk allocation of all waters of sub-basins/basin parts to the State in general as per the various agreements between or amongst the party States. In this process all the downstream water which are not allocated to the other States such as Karnataka, Odisha, Maharashtra, Madhya Pradesh including Chhattisgarh get allocated to Andhra Pradesh including Telangana. Even if Godavari basin is considered to be a surplus basin, the transfer of this water to the other States would not be as per the Award.

The Group has considered this situation. In the Group's view, the possibility and requirement of water transfer should flow from the ground reality in regard to supply available from nature, demands for human and other need after projection of reasonable future aspiration and engineering possibility. This should not be guided by the legal environments; but rather the legal framework has to be adjusted to the ground reality. Therefore, the Group is of the view that the future legal instruments should provide for water transfer from surplus basin even if this involves the review of the tribunal awards. Often the tribunal awards themselves provide for their review after the laps of specified time, and this may provide an automatic opportunity. However, even where such a provision is not there (for example, the Godavari Award) or where the specified time is too distant the law should enable such review.

Apart from above, following decisions were also taken in the meeting:

- (i) Material for new para 1.2 (g) on Environmental Aspects and para 1.2 (h) on Water Jurisprudence and Legislative Efforts for Section-1 (Introduction) would be provided expeditiously by Prof Avadhesh Pratap, as decided in previous meeting.
- (ii) International Experience of Important Inter Basin Water Transfer should be included in draft of Section-3 at appropriate place. Director General NWDA

mentioned that the NPP links having international ramifications have been indicated in para 3.9 of Section3. However this requires to be elaborated considerably.

- (iii) Two paras, i.e., Para 3.9 and Para 3.10 are on International Experience So one of the para may be deleted or alternatively it should be suitably renamed.
- (iv) First Draft of Complete Report consisting of all the 6 (Six) Sections should be prepared by NWDA and circulated among the Members latest by 7th February, 2017.
- (v) Latest copy of River Management Bill, 2012 should be circulated after obtaining its copy from CWC so that correct picture is presented while drafting recommendations of the Group.

Item No. 6.3 Any other item (s) with permission of the chair

Chairman of the Group desired that the next meeting of the Sub Group should be held on 14th February, 2017 where first Draft of the Group's Report would be discussed. All the Members and DG, NWDA agreed with the proposal. Further, it was decided to approach Chairman, Task Force to extend the tenure of the Group upto 31st March, 2017. However efforts would be made to submit the Report earlier.

Meeting ended with a vote of thanks to the Chair.

Annex-I

List of participants of 6th Meeting of the “Group on Legal Aspects under Task Force for Interlinking of Rivers” held on 02.02.2017 at CWC, Sewa Bhawan, R.K. Puram, New Delhi.

1.	Shri A.D. Mohile, Former Chairman, CWC	Chairman
2.	Prof. Avdesh Pratap, Water Law and Management Expert	Member
3.	Shri Navin Kumar, Chief Engineer (IMO), CWC	Special Invitee
4.	Shri B. P. Pandey, Director (ISM), CWC	Special Invitee
	Officers from NWDA	
5.	Shri S. Masood Husain, Director General	
6.	Shri R. K. Jain, Chief Engineer (HQ)	
7.	Shri K. P. Gupta, Director (Tech)	
8.	Shri M.K. Sinha Senior Consultant	
9.	Shri Nagesh Mahajan Deputy Director	