

## **Minutes of the Third meeting of the Group legal aspects under Task Force for Interlinking of Rivers held at Sewa Bhawan, New Delhi on 28<sup>th</sup> October 2016.**

Third meeting of the Group on Legal Aspects under Task Force for Interlinking of Rivers was held on 28.10.2016 at 11.00 AM in the Committee Room of CWC, Sewa Bhawan, R.K. Puram, New Delhi. The meeting was chaired by Shri A.D. Mohile, Former Chairman, CWC and Chairman of the Group. He welcomed all the Members, Invitees and other participants. Later, Shri K.P. Gupta, Superintending Engineer-I took up the agenda items. List of participants is enclosed as Annex-I.

### **Item No. 3.3 Confirmation of the Minutes of the 2<sup>nd</sup> meeting of “Group on legal aspects under Task Force for Interlinking of Rivers’ held on 15<sup>th</sup> September, 2016 at New Delhi.**

Director General, NWDA informed that the minutes of the 2<sup>nd</sup> meeting of “Group on legal aspects under Task Force for Interlinking of Rivers” held on 15.09.2016 at New Delhi were circulated to all the members vide letter No. SCILR/Tech/400/11/2016/1377-86 dated 24<sup>th</sup> October, 2016. As no comment has been received from any of the Members, the minutes of the second meeting of the Group on legal aspects under Task Force for ILR may confirmed as circulated. Accordingly, the minutes of the second meeting were confirmed as circulated.

### **Item No. 3.2 : Discussion on Existing Legal provisions.**

Director General, NWDA informed that the note on existing legal provisions was earlier circulated vide email dated 14.9.2016. Later, Shri Virag Gupta, Member submitted his opinion note to the Chairman of the Group with copy to the Chairman, Task Force and D.G., NWDA vide his letter dated 14.10.2016 which was forwarded to all the Members vide email dated 21.10.2016. Shri Mohile, Chairman of the Group appreciated Shri Virag Gupta for submitting his exhaustive note including note on constitutional provisions and requested him to briefly explain his views so that discussion on his note could take place. Further, Shri Mohile told that as all the agenda items are having bearing on each other, note should be discussed in light of all the agenda items together with a view to arrive consensus among the members on the recommendations to be given by Group.

### **Item No. 3.3 : Discussion on Gist of Supreme Court Judgements.**

Accordingly, Shri Virag Gupta told that he had tried to emphasize basically on three points in his opinion note as mentioned below:

1. Since ground water and surface water are inter-related, both the surface and ground waters are required to be seen together whenever we talk of surplus water. Further whenever we go to Parliament or Supreme Court, this aspect should be highlighted. It is seen that Union Government has made certain legislation for ground water which shows that ground water is constitutionally with

them. But, there is lack of proper legislation in respect of surface water for its distribution and regulation.

2. Supreme Court's order is deficient on the issue of nationalization of rivers which was sought in the Writ Petition filed in the Court in the matter of 'Networking of Rivers'. Without giving decision on nationalization of rivers, Supreme Court has mandated to interconnect rivers. For this, the Union Government should approach Parliament to enact suitable legislation or make reference to the Supreme Court.
3. The main hurdle in the implementation of ILR Programme is that of correct assessment of surplus water and later its acceptance particularly by donor States. For this, there should be regular updating of flow data as well as utilization data so that realistic and acceptable assessment of surplus water can be made and all the data should be placed on the website. After this, if any surplus water is found, question of quantum of its use within basin State(s) and quantum of divertible water outside basin will arise. At this stage, Shri Virag Gupta made two suggestions:
  - i. If surplus water is to be diverted to some other basin, some exchange value should be assigned to it so that donor State can demand power, land or some other item in place of water being given by their State.
  - ii. Interlinking of rivers should be called Inter Basin Water Transfer to avoid unnecessary confusion as this nomenclature of 'Inter-linking of rivers' is impacting environmentalists and other social groups.

Shri Mohile congratulated Shri V. Gupta on his brief presentation of important points and told that his opinion note would be useful in preparation of Consensus Note.

### **3.4 Discussions**

The Members discussed Shri Gupta's note and the various issues raising out of this and other notes circulated earlier.

Some of the issues discussed were :

1. Whether the group feels that a Constitutional amendment is necessary or desirable
2. How to decide the "surplus" water of a possible donor basin.
3. Whether the judgment of the Hon'ble Supreme Court (512/2002 dated 27<sup>th</sup> February, 2012) appears in-complete and whether the group feels that a clarification has to be obtained from the Hon'ble Court.

4. Shri V. Gupta told that if any member has any difference of opinion about any of the points given in his note, he is ready to discuss, and either convince, or get convinced. However, he felt that the main operational difficulty faced will be first on estimation of surplus water and then on diversion of surplus water. He, therefore, emphasized the need for fixing parameters for working out surplus water and its distribution. These parameters should include parameters for fixing mandatory uses of water such as drinking water and irrigation and optional uses, e.g., Some State asks surplus water for growing extra paddy. In such case, decision regarding cropping pattern would have to be taken.

Shri Gopal Krishna told that NWDA is taking into consideration present use as well as projected use of surface water. For present use, there is not much of dispute but for projected use, there may be difference of opinion among basin States. Further he told that ground water is not taken into consideration by NWDA while working out total availability of water as it is left for in-situ use by States for irrigation as well as drinking water. Further use of groundwater depends upon its replenishment every year. He told that Cauvery Tribunal has worked out availability of water in the based on 50% dependable flow (in place of 75% dependable flow) and made allocation of water among basin States. As a result it is difficult to implement the award as allocated share of water to States is not really available for 50% of the year. And the award does not indicate a clear formula or estimation about sharing the distress in such years.

Shri V. Gupta mentioned that if any State clandestinely over-exploits groundwater, since groundwater and surface water are inter-related, it would impact surface water. Further regarding uses of water, he expressed apprehension that in absence of fixed parameters for uses, State are likely to inflate their projected use and say that there is no surplus water in the basin in their State. As such, assigning exchange value to surplus water is essential to motivate them for agreeing to diversion of water to other State.

Shri A.B. Pandya told that it would not be realistic to assume that a State may be deficient in say, surface water and may be much better placed in regard to the groundwater. He told that if surface water availability map and groundwater availability map of the same area are compared, it is found that if the area is surplus in surface water then it is surplus in groundwater. Alternatively, if it is short in surface water, it is deficient in groundwater as well. It never happens that if an area is deficient in surface water, it is surplus in groundwater. However, while considering both the sources together in determining the status of the basin, it should be remembered that (i) the actual transfer will have to be from the surface water, and that there are limitations in recharging groundwaters, artificially.

Shri V. Gupta stressed that before proceeding for Interlinking of rivers, we should do two things. Firstly, we should have actual updated data and fixed parameters for uses so that surplus water worked out based on these parameters which are acceptable to States. After doing this, he was of the view that situation will emerge where majority

of the proposed links in which we are having wrong notion of having surplus water will practically have no surplus water. Secondly, we shall have to plan for uses of divertible water in case of basins which will actually be found surplus. He told that cost benefit analysis will be required to see if the future in-basin uses as proposed by the states, as also to see if the 'out of basin' uses as proposed by the planner of the links, make these proposals reasonably feasible. It would also be necessary to decide who will bear the cost, and to what extent. Apart from this, he suggested that parallel action is required on two items, i.e., legal authority for Inter Basin Water Transfer (IBWT) and agency for implementation. For legal authority, we may request Union Government to approach Parliament for suitable legislation for inter basin water transfer. For agency, we may decide which organization will execute what work relating to updating of flow data, collection of data regarding uses, estimating surplus water, etc. He told that these are his final view.

Shri Mohile advised Mr. Gupta not to conclude so early. He mentioned that surplus water is worked out on the basis of basin and not on the basis of States, Citing example of Krishna basin, he told that the basin lies in four States, i.e., Maharashtra, Karnataka, Telangana and Andhra Pradesh. So, KWDT-II has made allocation of Krishna water among these four States only similarly, Cauvery tribunal has allocated its water among basin States of Karnataka, Tamil Nadu, Kerala and Puducherry. However, in case of IBWT, there is need for allocation of water to non-basin States.

Shri V. Gupta emphasized the need of regulatory authority for each defined basin so that dispute over distribution of water is reduced.

Shri Mohile explained the meaning of the terms 'rivers and river vallies' 'basin' used in the Constitution (For example, Entry 56) can be taken to have almost the same meaning as the term 'basin', which is more commonly used now. ISWD Act, 1956 and told that both the terms seem to have same meaning. He also told that in the UN conventions on the non navigational uses of international rivers, another term, 'system of water courses' again having an almost same meaning.

Shri Gopal Krishna, while referring to the Doabia Committee Report, emphasized the need for enactment of new River Board Act. Shri Pandya pointed out that if River Basin Authorities (RBA) are set up in cooperation with the States, and the law requires their approval for taking away the waters of the basin, even though both advocated separate Acts for River Board and Interlinking of Rivers (ILR) and River Board Act should be subject to ILRs.

Shri V. Gupta told about enactment of Regulatory Act should be done as per 1956 ISWD Act, 1956. There may be three approaches- (i) Union Government refers the matter to Parliamentary Committee, (ii) Union Government refers the matter to Law Ministry and (iii) The Union Government makes a Presidential reference in the matter to the Supreme Court. He told that there is need of Secretariat for Special Committee for Interlinking of Rivers for implementation of ILR programme. Later this can be merged with NWDA. DG, NWDA told that NWDA has limited mandate of preparation of

Feasibility Report/Detailed Project Report only and it cannot take implementation of the Programme. He told that Sub Committee for Restructuring of NWDA has given separate recommendation for this.

### **3.5 The general agreement within the Group**

After frank and lengthy discussions, a consensus started emerging. Shri Mohile summarized following points on which consensus seems to have emerged:

- (i) It would not be correct to recommend amendment of constitution, and it may be sufficient to enact a new enabling legislation, facilitating the ILR programme, under the entry 56 of the Union list. There is consensus among the members either on approaching Union Government for initiating action for enactment of suitable legislation for ILRs by Parliament. However, if the Union Government so desires, it may seek a clarification from the Hon'ble Supreme Court on rectifying their judgment for effective implementation of ILR programme in the States.
- (ii) The ILR programme can be named as IBWT programme, for transferring the water to non-basin States.
- (iii) The Entry 56 does not go into the question of whether the Parliament can in public interest, by a legislation enable water transfers to non co basin states. In addition, the language of Hon'ble Supreme Court judgments given on 27.02.2012 mentions use of water among riparian States (which phrase can be taken as basin states). However for ILR Programme involving IBWT, use of water by non-basin States. This point needs careful consideration by the Government, to see if a Presidential reference is necessary, before passing the enabling enactment.

### **3.6 Next Meeting**

Main features of the proposed Act would be discussed in next meeting and based on that consensus note would be drafted.

Next meeting would be held on 4<sup>th</sup> November, 2016, preferably in the afternoon to expedite recommendation of the Group.

## Annex-I

List of Participants of 3<sup>rd</sup> Meeting of Group on Legal Aspects under Task Force for Interlinking of Rivers held on 28<sup>th</sup> October, 2016

1.	Shri A.D. Mohile, Former Chairman, CWC	Chairman
2.	Shri Virag Gupta, Constitutional & Environment Law Expert	Member
3.	Prof. Avdhesh Pratap, Water Law and Management Expert	Member
4.	Shri M. Gopalakrishnan, Former Member, CWC	Member
5.	Shri A.B. Pandya, Former Chairman, CWC	Member-Convener
Officers from NWDA		
6.	Shri S Masood Husain Director General	
7.	Shri R.K. Jain Chief Engineer (HQ)	
8.	Shri K.P. Gupta Superintending Engineer	
9.	Shri M.K. Sinha Sr. Consultant	
10.	Shri Nagesh Mahajan Deputy Director	