

SUPREME COURT OF INDIA**Bench: Justices Prashant Kumar Mishra and Prasanna
Bhalachandra Varale****Date of Decision: 13 June 2024**

WRIT PETITION (CIVIL) NO. 363 OF 2024

GOVERNMENT OF NCT OF DELHI ...PETITIONER(S)**VERSUS****STATE OF HARYANA & ORS. ...RESPONDENT(S)****Legislation:**

Article 32 of the Constitution of India

Subject: The writ petition seeks the issuance of directions to the State of Haryana and the State of Himachal Pradesh for the release of surplus drinking water from the Hathni Kund Barrage to address the water scarcity in Delhi.

Headnotes:

Water Sharing Dispute – Writ Petition under Article 32 – Petitioner, Government of NCT of Delhi, requested directions for the release of surplus water from Hathni Kund Barrage by Haryana and Himachal Pradesh to alleviate acute water shortage in Delhi – UYRB convened an emergent meeting and discussed the MoU between Delhi and Himachal Pradesh and the additional water required by Delhi – Himachal Pradesh initially agreed to release 137 cusecs of surplus water but later retracted – Haryana contended similar water scarcity and inability to provide additional water – Court acknowledged the complexity of inter-state water sharing and emphasized resolution through UYRB – Directed the Delhi Government to formally request Haryana for 150 cusecs of additional water on humanitarian grounds and UYRB to decide expeditiously [Paras 1-13].

Inter-State Water Dispute – Supreme Court's Jurisdiction – Court expressed limitations in expertise to adjudicate complex inter-state water disputes – Referred the matter to UYRB, emphasizing the necessity for a specialized body to handle such issues – Highlighted

past orders and developments regarding water treatment and distribution in Delhi and Haryana – Recommended Delhi Government to take measures to prevent wastage of water during the crisis period [Paras 11-12].

Decision: Writ Petition disposed of – Directed UYRB to convene a meeting to address Delhi's formal request for additional water and decide by 14th June 2024 – All interim applications disposed of [Paras 12-13].

Referred Cases:

- Delhi Jal Board v. Vijai Vardhan, Contempt Petition (Civil) Nos. 401-402 of 2021
- State of Karnataka v. State of Tamil Nadu, MA No. 3127 of 2018 in C.A. No. 2453 of 2007

Representing Advocates:

For Petitioner(s):

Dr. Abhishek Manu Singhvi, Sr. Adv., Mr. Shadan Farasat, AOR, Mr. Talha Abdul Rehman, Adv, Mr. Abhishek Babbar, Adv., Mr. Harshit Anand, Adv., Ms. Natasha Maheshwari, Adv.

For Respondent(s): Mr. Shyam Divan, Sr. Adv., Mr. Lokesh Sinhal, Sr. A.A.G., Mr. Aditya Sharma, AOR, Mr. Sudipto Sircar, Adv., Mr. Nikunj Gupta, Adv., Mr. Anup Rattan, Advocate General, Ms. Sugandha Anand, AOR, Mr. Puneet Rajta, Adv., Ms. Vineeta Tiwari, Adv., Mr. Vikramjit Banerjee, A.S.G., Mr. Wasim A Qadri, Sr. Adv., Mr. T. Gopal, Adv., Mr. Brajesh Kumar, Adv., Ms. Ruchi Kohli, Adv., Dr. N. Visakamurthy, AOR

ORDER

1. The issue brought before this Court in this Writ Petition under Article 32 of the Constitution of India has almost become a recurring litigation. Prayer in this Writ Petition is for issuance of directions to respondent Nos. 1 and 2 i.e., the State of Haryana and the State of Himachal Pradesh respectively to release surplus drinking water from the Hathni Kund Barrage for use by Delhi.

2. When this matter was taken up on 03.06.2024, all the parties agreed that there should be a non-adversarial approach to the problem of scarcity of water faced by the citizens of Delhi. Such being the situation, this Court directed for convening of an emergent meeting of Upper Yamuna River Board (UYRB) on 05.06.2024 to address the issue so that the problem of scarcity of water can be properly addressed. Thereafter, a meeting was convened on 05.06.2024, the minutes of which were placed before us and has been quoted in our order dated 06.06.2024. For our convenience, we quote our order dated 06.06.2024 as contained in paragraph 3 to paragraph 13:

“3. In compliance of the above order, the Upper Yamuna River Board (for short ‘UYRB’) convened its meeting on 05th June, 2024 and discussed the issues concerning water crisis faced by the State of Delhi.

4. Two pertinent issues discussed in the said Meeting were the one related to the actualization of water sharing MoU between the State of Delhi and the State of Himachal Pradesh and other one related to the additional drinking water required by Delhi for addressing the present drinking water crisis and the way forward.

5. The discussion held in the Meeting is verbatim reproduced for ready reference;

11. Matter related to actualization of MoU between Delhi and Himachal Pradesh The Board observed that Upper Yamuna River Board (UYRB) is already seized of the matter and the same was last discussed in the 61st meeting held on 13.12.2023. The UYRB has sought information regarding utilisation of Yamuna water in Himachal Pradesh (HP). HP had provided part information which was circulated to all the members. However, additional information required to examine the matter was sought from HP, which was received on 3.6.2024. Further clarifications were sought by UYRB Secretariat on 4.6.2024 which were received on the same day. The same has been circulated to all the Members. Haryana has contested the earlier data provided by HP. Haryana and other States sought additional time to examine the data now circulated by UYRB. Accordingly, Board observed that the issue needs detailed discussion after receipt of views from other Member States in the regular meeting of the Board. It was agreed that the bilateral MoU has long term implications, its

impact on present crisis may not be relevant for immediate consideration.

111. Additional water required by Delhi for addressing the present crisis and way forward The Chairman requested Delhi to make submission regarding their additional water requirement for addressing the present crisis. The representative from Delhi Government explained that the seven water treatment plants with installed capacity of 575 MGD (installed capacity of plant – 540 MGD and through additional facility for treatment of plant recycled water – 35 MGD) are dependent on water supplied from Yamuna / Ravi-Beas basins which are received in Delhi through canal system of Haryana and Yamuna river route. The average production of water from these plants was of the order of 568 MGD for the month of May 2024. They indicated that additional water amounting to 150 cusec through DD-8/Yamuna river route for period upto end of June 2024 or onset of monsoon, whichever is earlier, will help them in addressing the present crisis. Representative of Delhi Government thereafter requested Haryana to consider the request on humanitarian ground as Delhi is facing extraordinary and excessive demand of water due to ongoing heat wave condition. They also confirmed that as indicated in the petition, such an arrangement will not be taken as precedence in future.

Haryana indicated that similar extraordinary heat wave conditions are also prevailing in their State leading to excessive demand for water both in rural and urban areas. Therefore, it will be difficult to consider any additional release from Haryana at this juncture. Further that Haryana does not have any surplus water to share with Delhi without compromising on their requirement.

After deliberations, Board recommended that to meet the drinking water requirement during the present summer season before the onset of monsoon or 30th June, 2024, whichever is earlier, Delhi Government may send a formal request to Haryana Government for consideration to release 150 cusec of additional water on humanitarian ground through DD8/CLC/DSB.

6. The above discussion recorded by the Board would clearly reveal that the members/ stake holders who had participated in the Meeting, have not contradicted or disputed the fact that there is an extraordinary heat wave condition in Delhi due to which there is an acute shortage of drinking water.

7. Although, the Board records that the State of Haryana is also facing a similar heat wave condition as in Delhi, but there is no material placed before us to make out that there is an acute drinking water crisis in Haryana.

8. The Board eventually recommended that to meet the additional drinking water requirements during the present Summer Season, 2024 before the onset of Monsoon on 30th June, 2024, whichever is earlier, the Government of Delhi may send a formal

request to the Government of Haryana for consideration to release 150 Cusec of additional drinking water on humanitarian ground through DD8/CLC/DSB. Thus, it can be culled out that the Board itself was of the tentative view that Delhi needs approximately 150 cusecs of additional drinking water to deal with the shortage of drinking water in view of the on going heat wave condition.

9. Mr. Vaibhav Srivastava, learned Additional Advocate General representing the State of Himachal Pradesh, has produced before us a chart showing Yamuna Waters Allocation Consumptive Use and Surplus Available in respect of Himachal Pradesh. The said document was supplied to the learned AAG by Ms. Anju Sharma, Engineer-in-Chief, Jal Shakti Vibhag, Himachal Pradesh, who was one of the members in the Meeting, which was convened by (UYRB) on 05.06.2024, and this document was also produced before the Board. Mr. Vaibhav Srivastava, learned AAG would, on instructions, submit that the State of Himachal Pradesh is ready to release the surplus water.

10. The breakup of the surplus water available with the State of Himachal Pradesh is provided in the said document according to which, between the period from March, 2024 to June, 2024, 137 Cusec of surplus water is available with the State of Himachal Pradesh. Since, the State of Himachal Pradesh has no objection and is ready and willing to release the surplus drinking water available with it, we direct that the State of Himachal Pradesh shall release 137 Cusecs of surplus drinking water available with it from the upstream so that the water reaches Hathnikund Barrage (HKB) and reaches Delhi through Wazirabad.

11. As and when the surplus drinking water is released with prior information/ intimation to the State of Haryana by the State of Himachal Pradesh, the State of Haryana shall facilitate the flow of the surplus drinking water so released by the Himachal Pradesh to Hathnikund Barrage (HKB) and to Wazirabad so that the water reaches Delhi uninterruptedly and is made available to the citizens of Delhi for meeting drinking water requirement..

12. We are conscious of the fact that since there is an acute water crisis in Delhi, there should be no wastage of water by the Delhi Government for which, we record the following suggested measures as has been recommended in the Meeting convened by the Upper Yamuna River Board which are as hereunder;

a. Separating commercial water supply from domestic water supply and curtailing such use during crisis period in particular industrial and recreational uses.

b. Use of recycled water for secondary uses such as gardening, car washing etc.

- c. Improving efficiency in water distribution and uses.
 - d. Lining of raw water conveyance channels for long distance water transfer including use of closed conduit wherever feasible to bring down conveyance losses. In particular, urgent action is needed for the Delhi Branch/ Delhi Sub Branch which will bring down losses substantially (of the order of 25%).
13. Considering the urgency in the matter, we direct the State of Himachal Pradesh to release the surplus drinking water by tomorrow i.e. on 07th June, 2024 with prior intimation to the Haryana Government. The UYRB shall measure the excess water which comes to Hathnikund Barrage (HKB) for its onward supply to Wazirabad and then to Delhi with sincere required assistance by the State of Haryana.”
3. In short, the UYRB considered the matter related to actualization of MoU between Delhi and Himachal Pradesh and the issue concerning additional water required by Delhi for addressing the present drinking water crisis and the way forward. After deliberations, the UYRB recommended that to meet the drinking water requirements during present Summer Season, 2024 before the onset of Monsoon or 30th June, 2024, whichever is earlier, the Delhi Government may send a formal request to the Government of Haryana for consideration to release 150 Cusec of additional drinking water on humanitarian ground through DD8/CLC/DSB. Basing on the statements made by learned Additional Advocate General for the State of Himachal Pradesh to the effect that Himachal Pradesh has surplus water equal to the quantity of 137 Cusec and the same shall be released, we directed that the State of Himachal Pradesh shall release 137 Cusec available with it from the upstream so that the water reaches Hathni Kund Barrage and then reaches Delhi through Wazirabad. However, when the State of Haryana communicated and requested the State of Himachal Pradesh to inform them about the release of additional 137 Cusec of water as per this Court’s order, the Jal Shakti Vibhag of the State of Himachal Pradesh informed the Engineer-in-Chief, Haryana, Irrigation Department vide its letter dated

06.06.2024 that 137 Cusec of unutilised Yamuna water share of Himachal Pradesh is already flowing uninterruptedly from the territory of Himachal Pradesh to Tajewala (Hathni Kund Barrage) in River Yamuna.

4. In course of hearing today, when we made a pointed query to learned Advocate General appearing for the State of Himachal Pradesh as to the manner in which he would reconcile the statement made before this Court by learned Additional Advocate General under instructions of the Engineer-in-Chief and the contents of the communication dated 06.06.2024, the learned Advocate General would submit that the earlier statement made regarding “availability” of surplus/additional water was not correct and he may be permitted to withdraw that statement. He would submit that in view of what is mentioned in the communication dated 06.06.2024, the State of Himachal Pradesh does not have additional 137 Cusec water as on date.
5. In view of the statement made by learned Advocate General for the State of Himachal Pradesh before this Court today, the very basis of our interim order dated 06.06.2024 does not survive and we have reached to the stage where we were placed on the date of filing of the Writ Petition.
6. Consequent to our order dated 06.06.2024, we directed the parties to file status report/affidavits and all the parties have filed their respective affidavits. While Dr. Abhishek Manu Singhvi, learned senior counsel with Mr. Shadan Farasat, learned counsel appearing for the petitioner - Government Of NCT Of Delhi would highlight and try to project before this Court that the water level at Wazirabad is not maintained to its optimum level, Mr. Shyam Divan, learned senior counsel appearing for the State of Haryana would make his own submission to controvert and submit that water level at Wazirabad is maintained all throughout vis-a-vis release of 1050 Cusec water from Munak Head. Mr. Divan would also submit, by referring to the minutes of the meeting

dated 05.06.2024 of UYRB that Haryana does not have excess or surplus water. He would refer to Point No.1 of the Agenda that is delivery of agreed quantity of water by Haryana to Delhi to submit that Haryana is releasing 1050 Cusec of water to Munak in terms of the MoU dated 12.05.1994 and other obligations. Mr. Divan would further submit that maintaining water level at Wazirabad is not relevant after creation of three additional water treatment plants at Bawana, Dwarka and Okhla whereafter Delhi Jal Board is drawing water from the Wazirabad and Chandrawal WTPs before the water falls into the Wazirabad pond, affecting the net quantity of water flowing into the Wazirabad pond and this has been observed by this Court in paragraph 7 of the order dated 23.07.2021 in Contempt Petition (Civil) Nos.401-402 of 2021 between *Delhi Jal Board and Vijai Vardhan and another*. Mr. Vikramjit Banerjee, learned ASG representing the UYRB has reiterated and read over the contents of the minutes of meeting dated 05.06.2024.

7. In the affidavit filed by the petitioner on 12.06.2024, it is stated that the process of measurement of water and the point of measurement cannot be determined by this Court even for supply of water on an emergent/ad hoc basis. The State of Himachal Pradesh has also submitted in its affidavit that the issue involved in this Writ Petition can be resolved by the parties who are signatory to the Mou dated 12.05.1994. Interestingly, the State of Haryana as well as learned ASG has also submitted that the issue can be resolved by the UYRB and not by this Court which does not have necessary expertise in the matter.
8. When this matter earlier come up before this Court in the year 2018, by way of a WP(C) No.537 of 1992, the Government of Delhi withdrew the interim application with liberty to take substantive steps in accordance with law. When similar prayer was made in IA No.34991 of 2021 in SMW(C) No.1 of 2021 with WP(C) No.8 of 2021 for direction to the State of Haryana to ensure

enough water supply to maintain the level of water at Wazirabad pond at 674.50 feet, this Court appointed a Committee which submitted a report, as has been extracted in paragraph 3 of the order, which is reproduced hereunder:

“3. The Committee submitted a report in which the following observations/recommendations are made: 5.1

Observations/Recommendations:

1. Water quality of Yamuna River water at Palla site was good to support aquatic life. Ammoniacal Nitrogen level as 0.6 mg/l at 12:00 hrs. The volume of water flowing per second in the river Yamuna at Palla site of Central Water Commission was 1.075 cumecs (37.96 cusecs).

2. The water level of Wazirabad pond at 14:00 hours was 670.00 feet.

3. At the time of inspection, twin pipe line was discharging some water into the Wazirabad pond and the remaining water of pipe line was being diverted directly to sumps of water treatment plants (WTPs) namely Okhla WTP, Wazirabad 1, 2 WTP and Wazirabad 3 & Chandrawal WTP. Delhi Jal Board has the arrangements for diverting whole discharge of twin pipe line i.e. 370 cusecs directly to sumps of WTPs without releasing water to Wazirabad pond.

4. The writ petition now preferred by DJB before Hon'ble Supreme Court has earlier also been filed before the Hon'ble Court. During the earlier occasion, the petition was withdrawn by DJB in view of observations of Hon'ble River Board under Ministry of Jal Shakti for resolution of such matters at Central level.

5. Haryana is releasing more than 1050 cusecs of water from Munak headworks to Delhi against their share of 719 cusecs, thus providing Yamuna water to Delhi as per UYRB allocation existing on this date.

6. There have been lot of developments post 29.02.1996 order of Hon'ble Supreme Court viz. commissioning of three additional water treatment plants (Bawana- 40 cusec, Dwarka – 80 cusec and Okhla – 40 cusec: commissioning of Carrier Lined Channel (CLC) from Munak head words to Haiderpur Water treatment plant and twin pipelines (370 cusec capacity) from Haiderpur WTP to Wazirabad reservoir) with change in route of transfer of water to Delhi via CLC-twin pipe line instead of earlier route through river Yamuna. In addition, earlier DJB used to lift the water for its Wazirabad and Chandrawal WTPs (120 + 90 MGD capacity) from Wazirabad reservoir. However, after commissioning of CLC twin pipelines, DJB

is drawing water for these plants before the water falls into the Wazirabad pond, thus effecting the net quantity of water being led into the Wazirabad pond for filling upto its designated level (EI. 674.50 ft). By this arrangements, DJB ensures that the raw and fresh water does not gets polluted in the Wazirabad pond before its lifting for Wazirabad and Chandrawal WTPs. These developments require to be taken into consideration while interpreting the operating part under para 10 of orders of Supreme Court in Contempt Petition Nos. 111 and 113 of 1995 in WP (C) No.537 of 1992 dated 29.02.1996.

7. Both the States, Haryana and Delhi need to take action to control pollution in Yamuna River. Haryana need to control pollution from Panipat and Sonapat areas while Delhi need to control pollution from Palla – Wazirabad stretch (separate discharge).

8. The quality of water needs to be monitored regularly at Delhi-Haryana border by a Central agency for which Department of Water Resources, RD & GR, Ministry of Jal Shakti proposes to make the arrangements.”

9. This Court after referring to the arguments raised by the learned counsel for the State of Delhi had observed thus in paragraphs 5 and 6: “5. Mr. Vikas Singh, learned Senior Counsel and Mr. Shadan Farasat, learned counsel appearing for the Petitioner submitted that there is acute shortage of drinking water in Delhi at present in view of the unprecedented surge of Covid-19 pandemic. All the hospitals are full with patients and due to the depletion of the supply of water by the State of Haryana, the water level has come down which will result in shortage of supply of water to the hospitals. The learned counsel for the Petitioner relied upon the objections filed to the report of the Committee and requested this Court to direct the State of Haryana to release sufficient water at least for a period of two months in view of the extraordinary situation of shortage of drinking water in Delhi.

6. We have perused the report of the Committee, according to which State of Haryana is releasing more than 1050 cusec of water from Munak headwork to Delhi at present. We do not propose to go into the correctness of the report submitted by the Committee appointed by this Court. However, we grant liberty to the Petitioner to approach the Upper Yamuna River Board which was constituted for coordination, development and management of Yamuna River to

seek allocation of more water to meet the exigency of acute shortage of drinking water in Delhi. The Upper Yamuna River Board shall consider the representation, if any, made by the Petitioner expeditiously and not later than a period of 10 days from the date of its presentation.”

10. In yet another matter concerning sharing of water between the State of Karnataka and the State of Tamil Nadu in MA No.3127 of 2018 in C.A. No.2453 of 2007, this Court again observed that we do not possess any expertise on the issue concerning sharing of water between the States.
11. Having heard learned counsel for the parties at length, today and on previous dates, we are also of the view that the issue concerning sharing of Yamuna water between the States who are signatories of the MoU dated 12.05.1994 is complex and sensitive issue and this Court does not have the expertise to decide, even on interim basis, which may violate or tinker the MoU settled between the parties. The issue should be left to be considered by the UYRB, a Body constituted with the agreement of parties in the MoU dated 12.05.1994. Since the UYRB has already directed the State of Delhi to submit an application for supply of additional 150 Cusec of water on humanitarian ground, let such application be made, if not already made, by 5 p.m. today and thereafter the UYRB shall convene a meeting tomorrow i.e., 14.06.2024 and take a decision in the matter at the earliest.
12. With the aforesaid, the Writ Petition stands disposed of.
13. All pending applications, if any, shall also stand disposed of.