

A

Memorandum for

Withdrawal of Gazette Notification

Dated 15th July 2021, requiring handing over of

**Irrigation Projects on Rivers Krishna &
Godavari,**

causing irreparable damage to

Telangana state and its people

By

TELANGANA DEVELOPMENT FORUM

Dated 17.1.2022

Table of Contents

Preface

Part I: The Problem- Page 1

Part II: What led to bifurcation of AP? - Page 2

Part III: Issues after formation of state of Telangana – Page 4

Part IV: Illegal Gazette Notification dated 15 July 2021 – Page 7

Part V: Imminent disaster if Gazette Notification implemented – Page 11

Part VI: How the Gazette notification is unconstitutional? – Page 15

Part VII: The Prayer – Page 22

To

His Excellency the President of India
Union of India
New Delhi.

Respected Sir,

Sub: Representation to withdraw the Gazette Notification dated July 15, taking over the irrigation projects on Krishna and Godavari Rivers.

Ref: Gazette Notification, Dated 15th July, issued by the Union Ministry of Jalasakthi

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Part I: The Problem

We, the people concerned with Telangana Development and on behalf of **Telangana Development Forum**, would like to seek your kind attention to the serious issue of right of the people of Telangana, and the right of new state of Telangana for equitable share in Rivers Krishna and Godavari for irrigation and drinking water, and to take necessary steps urgently to save the thirsty fields and throats of Telangana. The points for your consideration are:

The Union Ministry of Jal Shakti (department of water resources, river development and Ganga rejuvenation) issued a notification from **July 15, 2021** which will have very serious implications for the two Telugu states — Telangana and Andhra Pradesh, (**Gazette Notification, GN**) while Telangana state will be the worst affected. As per the schedule, on January 15, 2022, the State Governments of Telangana and Andhra Pradesh will lose complete control over the irrigation projects on Krishna and Godavari. Summarily, the Centre will take over the valuable assets of all the projects and left the States with all liabilities which include thousands of crores of rupees worth loans taken from different banks. This kind of Centre's taking over all the irrigation projects from the State Governments is unheard of. It is unconstitutional, illegal and unjustifiable. We seek reversal of this Gazette Notification through this Memorandum.

Part II: What led to bifurcation of AP?

Telugu States and their rivers

Two magnificent rivers- Krishna and Godavari, flow into Telangana from upper states, reach Andhra Pradesh and from there merges into Bay of Bengal. Apart from other states, two Telugu states have legitimate right over these two rivers. While there are disputes with neighbouring states, the Telugu people, in addition have internal issues like over exploitation of rivers by Andhra and far less allocation of shares to Telangana region, which formed main reason for agitation for separation Telangana state. Because of denial of due share under the Andhra rulers, mainly, Mahabubnagar, border district of Telangana became most backward and it earned ill reputation of supplying migrant labour to the whole nation – widely known as Palamur labour. The life of Nalgonda district was affected by fluoride filled water. No irrigation projects were built to provide water to Rangareddy and Mahabubnagar Districts. There are several issues of leaving Telangana districts to the mercy of the nature, while waters of Krishna and Godavari were taken away to Andhra Districts. Telangana region is left with a peculiar problem. The rivers flow through it but it could not be used to quench thirst of throats and fields in this region due to selfish rulers from non-Telangana regions.

The Andhra Pradesh Government never took up the cause of deprivation of Telangana by upper riparian states at inter-state forum or Supreme Court. Even when the cases came up, the Andhra rulers did not instruct engineers or experts or lawyers to defend the interests of Telangana. While internally the rivers were taken away from Telangana without catering to that regions irrigation or even drinking needs, which goes unchallengeable at any fora. The hostility against Telangana was aggravated because engineers and Media persons were predominantly belonging to Andhra region who, except a few, were not raising these issues. Those who settled in Telangana were deliberately silent allowing the hijacking of rivers to their ancestral villages. There was no fraternity or equity that resulted in raising of emotional anger and desire to divide. Depicting the language and slant of Telangana in insulting manner in print, tv and film media added fuel to the fire. Deprivation of Telangana of equitable share in waters, jobs and funds was the sole, if not substantial, cause of the agitation which took many human-lives either in police firing or suicides.

Constitutional Need for Separation

A representation from NALSAR University of Law Professor M Sridhar Acharyulu to Justice Srikrishna Committee on the affairs of Andhra Pradesh pointed out a constitutional necessity for creation of Telangana State. It brought out that only a State Government alone can invoke jurisdiction of the Supreme Court on an inter-state river water dispute as per the Constitution. Then the Telangana, being a sub-region, and not a state, it is constitutionally incapacitated from even knocking the doors of Krishna or Godavari Water Dispute Tribunal. Telangana never had a right to question when other states were atrociously depriving these areas of their legitimate share in rivers and the leadership of AP government was silent facilitating such the deprivation of Telangana.

Even when the cases came up, the Government did not instruct engineers or experts or lawyers to defend the interests of Telangana. Internally, within united AP the rivers were taken away from Telangana without catering to that regions irrigation or even drinking needs, which went unchallengeable because the subregion of Telangana has no constitutional power to question it.

Only the State has a locus standi to seek remedies from over-exploitation of rivers by upper riparian States. The Inter-State-River-Water-Disputes Tribunal excludes the jurisdiction of High Courts and the Supreme Court, though they have review power. Regarding water issues, the States and Centre has specified powers, constituting our nation into a 'water federation'. It was sheer exploitation and total lack of fraternity. The prolonged agitation demanding equal share in Krishna & Godavari rivers ended in bifurcation of Andhra Pradesh with passage of AP Reorganization Act, 2014, that came into effect from 2nd June, 2014.

Part III: Issues after formation of state of Telangana

Apex Council under Act of 2014

AP Reorganization Act 2014 (Act of 2014) provided for an Apex Council to deal with the river water disputes between two new states. In the Apex Council for water issues under Act of 2014, the Union Minister will be the chairperson with the CMs of both the states as members. The decision depends upon the contemporary political stand of the three ruling parties- at Centre, two states of AP and Telangana. If NDA

government at centre is friendly with one state, the other state could be pushed to a disadvantageous situation regarding water resources.

Under the Act of 2014 there will be two River Management Boards, and the Chairperson of this Board will be the Secretary rank officer of Union Government while Chief Engineers of two states will be included as the members. An expert member in each board will be appointed by centre while each board will have a member-secretary who normally will be the Chief Engineer cadre officer of the Central Government. The Central Minister will preside the River Management Board where the officers under the Centre cadre will be dominant presence and the political influence of the centre. To that extent the autonomy of the States is reduced or they will have limited or no autonomy either in river boards or apex council.

Though there are several provisions explaining functions of these two boards and the supervising 'powers' of the apex body, all the *de facto* powers get vested in the Union Ministry. It appears as if there is an elaborate mechanism for dispute resolution but, in fact, the entire power is with the centre. This breaches the autonomous rights of the States, and their independence as envisaged by the Constitution of India. Article 1 of the Constitution of India, says that India is Union of States, but with this measure the States irrigation interests will be ruled by the Union Government. Hence the provisions relating to Apex Council in Act of 2014 are against the Federal structure created by the Constitution and facilitates the Centre usurp the powers of States.

The Brijesh Tribunal's unjust rejection

The new state Telangana demanded re-allocation of water in River Krishna for Telangana by the Krishna Water Dispute Tribunal headed by Justice Brijesh Kumar, continuing on extended term. Justice Brijesh Kumar did not agree with the demand for the reallocation of water shares in Krishna among riparian states including Telangana. In October 2016 the Tribunal headed by Justice Brijesh Kumar made certain critical observations:

1. Section 89 of the Reorganisation Act does not lead to any such inference or conclusion for fresh allocation amongst the four riparian States.

2. There was not even a mention of Telangana let alone reallocation of water in the section.
3. Section 89 did not specify allocations to projects, in general, and mentioned allocations only to projects for which allocation were fixed by the earlier tribunals.
4. The allocations made on the basis of water utilisations outside Krishna basin were valid on historic grounds.
5. Rayalaseema, which was outside the basin, was therefore entitled for Krishna water.
6. The two successor States (Andhra Pradesh and Telangana) could only share what was allocated to the undivided Andhra Pradesh, nothing more or nothing less.
7. The claim of Telangana state that erstwhile Andhra Pradesh was divided because of the inequitable and faulty allocation of water is not correct. This reason that was stressed repeatedly by Telangana in its petition to the Supreme Court was not borne out from the statement or Objectives and Reasons and the Salient Features of the Bill.
8. The primary reason for the division of the erstwhile state was to “fulfil the political and democratic aspirations of the people of Telangana region,” and not inequitable sharing of water.

This tribunal is hearing the Krishna River Water dispute for the last 17 years and once has ruled that the project-wise water sharing between Andhra Pradesh and Telangana states would be finalised within the allocations already made for erstwhile pre-divided Andhra Pradesh state by earlier Bachawat tribunal. Hence, there is no possibility of reallocation of shares in Krishna water among five states including the newly formed Telangana state. The tribunal blindly ignored the historical causes for separation of Telangana, which continued to suffer injustice due to far less than due shares being allocated.

River Management Boards

The exploitation of water from these two mega Rivers continued even after Telangana was formed. While carving out Telangana state, the AP Reorganization Act 2014 mandated to constitute two River Management Boards. The Boards were

formally constituted in 2014 itself, but, for more than seven years their jurisdiction was not decided by the Centre. The disputes continued.

Demand for Reallocation

Before 2014 Telangana had no locus standi to raise injustice in water shares. Now what happened? The Telangana being a state since 2014, people legitimately expect it to raise a demand for its due share in proportion to the geographical area of river flowing. When more than sixty per cent of Krishna flows in Telangana, why should it get less than fifty per cent of share, and how Brijesh Tribunal refused to review? It is a common-sense question of equity and the issue of equality as per the Constitution under Articles 14.

The Delhi ordered through the Gazette Notification 15th July 2021, the states to give total control of rivers to Centre and wait with a begging bowl for water. Surprisingly, the Andhra Pradesh agreed to it, while Telangana formally opposed.

Part IV: The Illegal Gazette Notification dated 15 July 2021

Ministry of Jal Shakti (Department of Water Resources, River Development and Ganga Rejuvenation) has issued a NOTIFICATION from New Delhi, on the 15th July, 2021 with number: S.O. 2842 (E) has been issued and the efforts to implement are going on.

The PIB Notification about this notification claimed that it would go a long way in enabling the River Boards to discharge their responsibilities to the fullest as mandated in the APRA and bring about efficiency in management of water resources in the two States. The note also says that the Centre expects the wholehearted cooperation and assistance of both the State Governments in the smooth functioning of the two Boards, to ensure equitable benefit to the people of both the states.

But the Gazette notification imposes many restrictions and is coached in a language of arbitrary instruction, absolute prohibition and above all the warning. It took away all the powers over the rivers from two states. This notification does not have any mechanism to deal with equitable distribution, justice, and undoing the injustice perpetrated to Telangana in terms of its share in the river water. The notification says that more than hundred projects in both the Telugu states should obtain clearances from the centre with six months; if not, all of them will be ceased to

operate, even if some of those projects have been completely constructed. All the projects which are under construction should stop further construction, whatever may be the economic consequences. There are at least 21 projects in Telangana like Sri Shailam Left Canal, Nakkalagandi Reservoir, two phases of Lift Irrigation (LI) at Kalvakurthi, LIs in Palamuru – Rangareddy, LI Dindi, Bhakta Ramadas project, LI Tummilla, Nettempadu LI II phase, LIs in Ramappa-Pakala etc.

Two states were mandated to pay Rs 200 crore to each of the two River Boards (i.e, Rs 400 crore), besides the staff, officers, files and vehicles should be handed over to the Boards. States are warned to pay penalties if they defy the direction of the boards and apex body. Apex council has to do hearing and accord the permissions to the new projects. But it is not known how early they complete hearings.

Besides all the 107 irrigation projects functional in Telangana will be taken over by the Centre through Boards. Now all the canals, barrages, head-regulators, Lift Irrigation units, power generation stations, lock stock barrel will go under the control of Centre.

Thus, the notification in the name of prescribing jurisdiction of the Krishna and Godavari River Management Boards (KRMB and GRMB), relieved the states from all their powers and jurisdiction and handed over them to the Boards. It attracted the criticism that the Centre has usurped all the powers of the State Governments over all the irrigation projects (35 on Krishna basin and 71 on Godavari) with reference to all functions. Strangely, the centre has imposed all liabilities arising out of functions on the States. The notification disqualifies the engineers and personnel of two states from becoming chairman or any functionary in the Boards, and empowers the Centre, to appoint its officers only. The bureaucrats of the centre and its engineers will really own Krishna and Godavari and act according to whims of their political bosses. Thus, it amounts to taking over of the two major rivers depriving the states totally.

Financial burden on States

The states are directed to deposit funds Rs 400 crore each to Boards as seed money to enable them to discharge functions effectively, and the states were told to deposit required funds additionally within 15 days of the demand by the boards. States

have to give their money, staff, assets, projects, operational powers and control over all the projects in which they invested lakhs of crores of rupees since long time. All powers to Centre and all responsibilities or liabilities are thrust on the heads of the states.

The Gazette Notification says that two boards will have power to give any directions to two states for maintenance of projects and states are supposed to obey. The boards were given full authority to get their orders implemented. The notification further mandates: Everything in Plant, machinery equipment and stores, besides vehicles with all assets will go to KRMB and GRMB. If any question arises as to whether the KRMB or GRMB has jurisdiction, the decision of the Centre shall be final (Paragraph (o)); The states should try to get approvals for unapproved projects within six months. Both the state governments shall stop all the ongoing works on unapproved projects as on the date of publication. If approvals are not secured within six months, the projects shall cease to operate. These are absolutely dictatorial orders on two democratic states totally against the constitution.

The gazette also says that all the unapproved projects will have to come to a grinding halt, even if it causes economic disaster to the state. But the centre will not take any responsibility to complete them in a time frame and bring equity among people of two states with reference to water share in proportion to area of flowing of rivers. Paragraph (g) says financial liability of any contract before the date of commencement of this notification, liability arising out of any of the present and future cases filed in the Supreme Court, High Court, any other Court or Tribunal in regard to the projects or components specified in Schedule-2 shall be the responsibility of the respective State Governments. It is common law and knowledge that when assets are transferred along with that the liabilities also get transferred. The liability attaches to the asset is norm world over.

Not only approved projects, either completed or ongoing- they Boards also taking over all other projects and bringing under the 'jurisdiction' of relative River Management Boards to be controlled by the officers of Ministry of Jalasakti of the central government.

Issues in implementation of Gazette Notification

Telangana and Andhra Pradesh Governments asked questions about loans and detailed explanation for demanding Rs 200 crore for managing the water projects on Godavari and Krishna rivers in Telangana. The assets were mortgaged to banks who advanced financial support for completion of projects. How can states retain liability and transfer assets to the Centre?

It expressed inability to hand over water projects to GRMB as ordained by the gazette notification till the issues raised by it were resolved. Why should Telangana government release the seed money of Rs 200 crore to the GRMB when the issues regarding the huge loans on projects are yet to be paid back? Who will be liable to repay the loans? Besides being unconstitutional, the Gazette tramples upon the constitutional rights of two states, and gives power to spend the tax money of Telugu states by the Centre who had no understanding of local needs and problems.

The irrigation officials rightly questioned the GRMB officials for seeking huge money to run the board. As asked by them the board has a duty to answer and be accountable to furnish the details of the expenditure on the paper. The state has to ascertain its sovereign power over the people's money.

The Gazette notification mandates the States have to hand over the projects to the Centre monitored, bureaucrat managed Boards, where the states have no role at all, by 14th October. Since that date, the Boards are convening several meetings to take over the projects.

Media reported that the GRMB held a meeting with the top irrigation officials of the two States and sought their views on handing over the projects to the board. As many as 71 projects were constructed on River Godavari. The board has asked the two States to hand over the joint project – Peddavagu project constructed at Aswaraopet in Bhadradri- Kothagudem district. The project provides irrigation facilities to 13,000 acres in AP and 3,000 acres in Telangana.

A superior officer of irrigation department has reportedly told the Board: "The Telangana officials informed the board that the government was studying legal and political issues if the project was handed over to the GRMB. The officials pointed out that there is no clarity on the maintenance of the project once the board takes over.

The notification did not mention specific responsibilities of the board in the management of the project."

This situation caused by gazette notification is challenging the very purpose of bifurcation of Telangana from Andhra Pradesh. Water, funds and employment were the three issues, where Telangana was deprived of its due share that formed the reason for decades of agitation. Though separate State of Telangana could not address the issue of earlier jobs and diverted funds, it was hoped that at least it would gain a due share in Krishna and Godavari Rivers besides using hundred per cent revenue for the development of Telangana, which did not happen earlier. Jobs position was also not substantially improved, despite some good initiatives to fill up the thousands of vacancies. What left is the due share in Krishna and Godavari based on the length and breadth of flowing of river in Telangana. The disputes over the water sharing were subdued but not resolved. As the two states were issuing hostile statements without any effective increase in the share for Telangana, and the people getting agitated, the center has, instead of offering management or taking initiative to resolve the dispute, preferred to take over the two interstate rivers under its control.

Telangana Government waited for years expecting the Centre to constitute a new tribunal for review and reallocation of shares to three states- Andhra Pradesh, Telangana and Karnataka. But it has to withdraw this petition in October. And the Supreme Court on October 6, 2021 permitted the Telangana government to withdraw the petition filed to set up Krishna tribunal on water sharing between Andhra Pradesh, Telangana and Karnataka. It happened after the Centre has assured to look into the matter of setting the tribunal only if the government withdraws the petition. On the recommendation of the central government, the Telangana government sought the permission of the apex court to withdraw the petition. But now the constitution of a fresh tribunal is being delayed because the Centre is seeking the opinion of the legal experts and department of law, on this issue.

There is no doubt that a serious dispute evolved between Andhra Pradesh and Telangana, but this notification has not addressed it at all. Telangana was demanding the reallocation of states share in two rivers especially because the Telangana gained status of a state in 2014 and first time asking for allocation of its share in rivers. The approval of projects depends upon the allocation of waters. Surprisingly the Central ministers claim that the taking over of rivers is to diffuse the tension created by the

‘dispute’, but, in fact, there is neither intention nor attempt to resolve it. Entire basis of the usurpation is claimed to be the ‘authority’ delegated to Union by the Andhra Pradesh Reorganization Act 2014, dividing the state into two.

Part V: The Imminent disaster if Gazette Notification implemented

We request you to kindly note the possible disastrous consequences of implementation of the Gazette Notification, as explained below.

Apart from illegality and unconstitutional nature, the Gazette Notification requires to be immediately stopped for it can cause irreparable damage to the entire state of Telangana besides resulting in wastage of around Rs 50 thousand crore that was spent on various projects on Krishna and Godavari.

The Gazette Notification imposed a mandatory condition that can practically create a havoc in economy of the newly born State of Telangana. For instance, its insistence that all ongoing projects should be stopped abruptly if the approvals from the Central Government were not obtained within 6 months. Granting of approval totally depends upon the discretion of the various authorities in Delhi, over whom any state could not have any kind of influence or bring pressure to them provide approvals because Gazette wanted it. The projects on Krishna River are being constructed based on the availability of surplus water as per Bachawat Award. But, the approval depends upon the judicious disposal of dispute by the Brijesh Tribunal, which may not do so within six months. This shows that stopping of irrigation projects is imminent, which can cause unwarranted and unnecessary disaster to the agriculture, economy and progress of the State with immediate effect. Thus, the disaster could be damn clear and present, being a serious consequence of this Gazette Notification, which can be fortified with the following baffling facts:

1. Around 8 lakh acres of Ayacut will be deprived of irrigation water.
2. There will be no drinking water to undivided districts of Mahabubnagar, Nalgonda and Ranga Reddy (before they were reorganized into many districts), if the projects are stopped as mandated by Gazette Notification.
3. The Capital City of Hyderabad, which means nearly half of Telangana will not get drinking water.
4. The Government which has spent Rs 37,143 Crore on these projects, had no means of recovering any part of it, or utilizing it for further prospects in agriculture from this huge amount of public money. The Centre has no

authority to deprive 3.5 crore people of Telangana through this kind of authoritarian order.

5. The Government of Telangana will be in a very big crisis for not making use of around 1 lakh acres of land acquired for Canals and Reservoirs, which becomes an unbearable burden on the new State.
6. The Government of Telangana has to pay back loans with interest, without using the water from these projects for productive agricultural purposes, because of usurping of the projects by the Centre through this Gazette Notification.

Following tables present a graphic picture of the disaster and financial crisis that the Gazette notification could inflict on Telangana, which could not be reversed at a later point of time. When such an illegal and unconstitutional order of the Centre as this Gazette Notification could cause unimaginable loss of public money, wastage of projects fully completed and commissioned, or those which could be completed soon, the only possible way to stop these unprecedented losses is to repeal this Gazette Notification or at least suspend immediately to gain time to understand the dangers of this order.

Table 1: The present position of Ongoing & Commissioned Projects

s.no.	Category	Contemplated Ayacut	Created Ayacut	Cost of project	So far Expenditure	Land Acquisition	
						Total	So far acquired
1	Unapproved On-going Projects	26.65 lakh Acres	-	Rs. 58,202 Crores	Rs. 28,409 Crores	69,551 Acres	43,872.1 Acres
2	Unapproved Commissioned Projects	9.88 Lakh Acres	7.53 Lakh Acres	Rs. 10,796 Crores	Rs. 8734 Crores	72,449 Acres	67,588 Acres
	Total	36.53 Lakh Acres	7.53 Lakh Acres	Rs. 68,998 Crores	Rs. 37,143 Crores	1.42 Lakh Acres	1.1146 Lakh Acres

Table 2: The position of Unapproved Commissioned Projects:

S. no	Project	Contemplated Ayacut	Created Ayacut	Cost of project	So far Expenditure	Land Acquisition	
						total	So far Acquired
1	JAWAHAR NETTAMPA DU LIS	2 Lakh Acres	1.42 Lakh Acres	Rs.2548 Crores	Rs. 2306 Crores	24,742 Acres	24,130 Acres
2	KOILSAGAR LIS	0.5 Lakh Acres	0.36 Lakh Acres	Rs.567 Crore	Rs. 460 Crores	3424 Acres	3026 Acres
3	MAHATMA GANDHI KALWAKUR THY LIS	4.38 Lakh Acres	3.1 Lakh Acres	Rs.5181 Crores	Rs. 3568 Crore	22,283 Acres	19,432 Acres
4	AMRP LIS (Including LLC)	3 Lakh Acres	2.65 Lakh Acres	Rs. 2500 Crores	Rs. 2400 Crores	22,000 Acres	21,000 Acres
	Total	9.88 Lakh Acres	7.53 Lakh Acres	Rs. 10,796 Crores	Rs. 8734 Crores	72,449 Acres	67,588 Acres

Table 3: The Position of Unapproved Ongoing projects

S. no	Project	Contemplated Ayacut	Cost of project	So far Expenditure	Land Acquisition	
					Total	So far acquired
1	Palamuru Ranga Reddy lift irrigation scheme	12.3 lakh Acres	Rs. 35,200 Crores	Rs. 17,771 Crores	27,338 Acres	25,981 Acres
2	SRI RAMARAJU VIDYASAGAR RAO DINDI LIFT IRRIGATION PROJECT	3.61 lakh Acres	Rs.6,190 Crores	Rs. 2,100 Crores	16,345 Acres	8841.1 Acres
3	Srisailem Left Bank Canal Tunnel Scheme	3 lakh Acres	Rs..3076 Crores	Rs. 2347 Crores	3500 Acres	3000 Acres
4	Udaya Samudram Lift Irrigation Scheme	1 lakh Acres	Rs.678 Crores	Rs. 410 Crores	3,851 Acres	1,510 Acres
5	SITARAMA LIFT IRRIGATION PROJECT	6.74 lakh Acres	Rs.13,058 Crores	Rs. 5,781 Crores	18,517 Acres	4,540 Acres
	Total	26.65 lakh Acres	Rs. 58,202 Crores	Rs. 28,409 Crores	69,551 Acres	43,872.1 Acres

Part VI: How the Gazette notification is unconstitutional?

The Gazette Notification dated 15th July 2021 is unconstitutional, illegal and unjustified, because:

1. Violation of Right to life of millions of people

The right to life with means to have water under article 21 of millions of people being violated continuously. The argument that ‘you have a right to life and water is essential, but water dispute can be settled only by Tribunal, hence even if equality or living rights are affected the SC cannot look into’ is absurd and absolutely against the rule of law.

2. In complete Breach of Article 14

First of all, it violates the Article 14 as two Telugu States are treated differently from other states where interstate rivers are flowing.

3. Breaches Constitutional power sharing

The **Gazette Notification - GN** goes beyond the Constitutional scheme of distribution of powers over the subject of inter-state rivers, and hence violating the Constitution of India. Under our own Constitution the Legislative and Executive powers are distributed between the Union and the States through three Lists. The use of words '**water**' in Entry 17 of List II and '**interstate rivers**' in Entry 56 of List I distinguishes the powers without much elaboration.

Our Constitution in Article 262(1) empowered Parliament to adopt legislation for the settlement of disputes or complaints concerning the use, distribution or control of transboundary waters in a river or river valley. Article 262(2) says Parliament may impede the jurisdiction of the Supreme Court or of any other court in relation to the dispute/appeal referred to in Article 262 (1).

Entry 17 of List II (States List): Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.

Entry 56 of List I (Union List) under Seventh Schedule of the Constitution: Regulation and development of inter-State rivers and river valleys to the extent **to which such regulation and development under the control of the Union** is declared by Parliament by law to be expedient **in the public interest**.

The State List simply mentions *water*, which means surface water within the geographical boundaries of a particular state. The States can legislate and use executive powers to utilise the water, regardless of whether the source of the river or its tributary is located outside its boundary or the river draining into another state or

ocean. However, this State power is also subject to overall power of the Union's understanding of what is better for nation.

The distribution of legislative powers also means the distribution of executive powers. A state has executive power on which the legislative power is given in the Lists. This means the Union cannot go beyond its powers while dealing with inter-state-river waters. The GN is a clear transgression of these powers.

4. Gives enormous powers to the Union at cost of the States

In this regard the role of Union is crucial which is reinforced by **Entry 20** (economic and social planning) of the Concurrent List. This provision requires States to obtain environmental clearances from the Centre in projects involving major and medium irrigation, hydropower etc., for their inclusion in the national plan. Thus, even without formal legislation, the Union government has the power to exercise significant control.

At the same time, the Parliament has power to make law and formulae mechanisms to regulate interstate rivers. The States will have the authority to devise means to utilisation of Rivers for drinking water supply, irrigation and canals, drainage and embankments, besides using for generating water-power and storage as per **Entry 17** of States List. Most important rider on this limited power is that the State powers are subject to Centre's general power under **Entry 56** of List I. The ambiguity in the origin of power distribution is potential enough to create issues in water distribution. The inter-state river disputes reduced the powers of the States further. But nowhere either the Constitution or other legislations authorise the Centre to take over the irrigation projects built, or being built by the State Governments.

The Inter-State River Water Disputes Act, 1956 provided for the adjudication of disputes relating to waters of interstate rivers and river rallies through Tribunals. It mainly excluded the Supreme Court from hearing the water disputes as special Tribunals with experts will be constituted. It is left to the Supreme Court to decide whether a particular issue raised by State is a water dispute or not. The Union has to constitute a Tribunal whenever a State raises a dispute on the request of the state. Even

after the state raises a dispute, the Union takes years to constitute the Tribunal. Formation of tribunal itself became a huge and complex process, sometimes even after decades passed by the Centre did not constitute a tribunal to hear the dispute. The hearing of that dispute takes some more decades.

In addition to these powers in the hands of the Union, the River Boards Act 1956 essentially gave the Union the control of rivers to regulate and develop in “the public interest”. This law remained dead as no river Board was formed as mandated. Even if such Boards are constituted, they would have seriously reduced the federal rights of States. The Act was inoperative, and its declared aims also remained ineffective. Even according to this Act, taking over rivers is neither in public interest nor within the scope of powers of the Centre.

River Bills

The Centre has already proposed two river Bills which will deprive the states and empowers a few top-level bureaucrats as the ‘owners’ and ‘managers’ of rivers without entrusting any responsibility of protecting, cleansing or rejuvenating the rivers or amicably settling the disputes. Anytime these Bills could be approved by the Parliament. When States have spent huge amount on various projects, how the the Centre could deprive them of their property by this Gazette notification? If there is a dispute between two or three states, it is the duty of the Centre to manage the affairs and see that dispute is settled. But it cannot usurp the whole rivers at the cost of State’s autonomy and sovereignty, besides abdicating prescribed constitutional duty. When Centre was asked to manage, it has chosen to damage.

5. Breach of federal structure prescribed by the Constitution

Whether new laws or old laws, the governance of the interstate rivers became complicated, and the breach of federal norms continued. This was because of perpetuating ambiguity in dispute resolution. This situation has been used to take over the projects, unfortunately. Whatever be the provisions of the Constitution or other Acts, in view of the nature of long rivers spreading over four or five states, the Union is expected to, inevitably, play a conciliatory role. With all these powers, a Constitutional duty is imposed on the Centre to secure integrate ecosystem and rivers

for the welfare of the people. Envisaging an objective, positive and unbiased role for the Centre was the main objective of this Constitutional distribution of the power which cannot be ignored by the Centre. The factors of larger public interest, national economy necessitated giving of more powers to the Union, and that the Constitution authorises, as long as Union deems fit, States can utilise the **water**. To prevent the indiscriminate utilisation by any state, 'a dispute' can warrant intervention by the Centre. But, under any circumstances, the Centre has no power to prohibit the state from using the water from rivers flowing in such state.

The Gazette Notification dated 15th July 2021 violates the federal nature of the distribution of powers between the Centre and States. The water is the state's subject. But Centre misinterpreted its common jurisdiction in Concurrent List and provisions of AP Reorganization Act 2014, which nowhere stated that Centre could take away the rivers. Even under general principles of sharing sovereignty between States and the Centre, Telangana and Andhra Pradesh are entitled to autonomy in managing the water. This federal principle is watered down as the Centre took over the Krishna and Godavari rivers from the Telugu riparian states. It is arbitrary and atrocious to steal the rivers like this, to say the least.

6. Against Recommendation of Sarkaria Commission

The Sarkaria Commission opined that the Parliament must clearly state the extent to which involvement of Parliament and Centre will be limited. The States List brings interstate rivers within the scope of states, which means that union's power is limited. **Inter-State River Water Dispute Act 1956** (ISWD Act) is amended several times, whereas the **River Boards Act, 1956** is neither touched nor implemented. We have two types of interstate river water disputes- sub-national, like Kaveri dispute between Tamil Nadu and Karnataka and international between upper stream countries like China and India. Inter-state river water dispute Act envisages an expert panel heading a tribunal to give an award. But Section 5(3) of the Act provides the power to the States to question or seek the review of the award in Supreme Court. It is not a defective or unnecessary provision. An aggrieved state should have a review mechanism. Tribunal is also an adjudicatory body like a court, which may not provide enough scope for conciliation and direct negotiation. To cut the delays the 2002 amendment to the ISWD Act limited the adjudication by tribunal to one year by the

court and for the tribunals three-year time was given to resolve. It can be extended by two years. But it is not practical to adhere to these time limits for highly contentious and emotional disputes.

7. In violation of the Act 2014?

The Act 2014 enables the Union to constitute two River Management Boards and decide its jurisdiction. Section 84 provides for Apex Council for Godavari and Krishna River Water Resources and their Management Boards. Union Irrigation Minister will be chairperson, while two CMS will be members. This was entrusted with duty to resolve any dispute amicably.

Subsection (3) says: (i) supervision of the functioning of the Godavari River Management Board and Krishna River Management Board; (ii) **planning and approval of proposals for construction of new projects, if any, based on Godavari or Krishna river water, after getting the proposal appraised and recommended by the River Management Boards and by the Central Water Commission, wherever required;** (iii) resolution of any dispute **amicably** arising out of the sharing of river waters through negotiations and mutual agreement between the successor States; (iv) reference of any disputes not covered under Krishna Water Disputes Tribunal, to a **Tribunal to be constituted** under the Inter-State River Water Disputes Act, 1956 (33 of 1956).

When this is the prescription, how can Union take over the complete ownership of two rivers and impose entire liabilities on two states? It is a clear violation of Parliamentary mandate through 2014 Act. Paradox is that the Centre claims that it made these two notifications based on the power given under Section 84, which did not give this power.

As per Section 85 the Boards were constituted in 2014. These boards will be chaired by Secretary or Additional Secretary of Government of India to be appointed by Centre, and two members nominated by two states plus one expert nominated centre. Its member secretary will be Chief Engineer rank officer to be appointed by Centre. Functions include regulation of supply of water from the projects and implementation of awards. They have to make appraisal of proposals of new projects.

Section 87 talks about the Jurisdiction of Board. It says: (1) The Board shall ordinarily exercise jurisdiction on Godavari and Krishna rivers in regard to any of the projects over headworks (barrages, dams, reservoirs, regulating structures), part of canal network and transmission lines necessary to deliver water or power to the States concerned, as may be notified by the Central Government, having regard to the awards, if any, made by the Tribunals constituted under the Inter-State River Water Disputes Act, 1956. (2) If any question arises as to whether the Board has jurisdiction under sub-section (1) over any project referred thereto, the same shall be referred to the Central Government for decision thereon. These are the powers prescribed by Act 2014.

In the name of deciding the jurisdiction of these Boards which was thought about in 2020, that is after 6 years, the Centre has issued taking over notifications on 15th July 2021. Deciding jurisdiction or regulation does not mean taking over the assets and all controls depriving the riparian states of their rights over the rivers running through their states. It's shocking that the Andhra Pradesh welcomed this taking over. It means submitting their sovereignty at the feet of the emperor in Delhi. Telangana Government questioned this saying how can the Centre take over this without reallocating the shares in the water especially after a new state was born and seeking the relook or re-distribution of water.

8. Rights of people left to vagaries of political mood

Now, with taking over, it became absolutely a political issue and changing political motivates influence the genuine rights of the people. The Parties at centre and states may take decisions to increase the prospects of the winning elections. The Government of Telangana led by Telangana Rashtra Samithi which opposed the notifications, should fight for its justifiable share in Rivers and for protection of its autonomy as per the Constitution.

9. Violative of public trust doctrine

This **Gazette Notification** is violative of public trust doctrine. Rivers are our lifeline since we are completely dependent on them for our existence. In our Constitution, water resources are held in **public trust**. We have to use the 'Public Trust Doctrine' to fairly distribute the shares in the water resource from the rivers that

flow through many States. Equity and equality in sharing the river waters is the only way one can resolve the inter-state river water sharing disputes amicably without leading to any other problems. These projects are for the welfare of the people living in riparian states of Krishna and Godavari and each state has a duty to perform as trust which can be done only if the shares in these two rivers are distributed in an equitable manner. The GN by the centre prevents two out of five states from discharging the duty of public trust. Hence violative of the public trust doctrine.

Part VII: The Prayer

For the above reasons of illegality, unconstitutionality and factual possibility of disaster as a consequence of the implementation of this Gazette Notification, it should be immediately put on hold so that it could be permanently removed as soon as possible, to prevent the serious damage to the public economy, agriculture, drinking water sources and welfare of the people in general.

In these circumstances, we request you to direct the Government of India, Ministry of Jalashakthi to withdraw this unconstitutional gazette notification, and to take necessary steps to reallocate the water share in two rivers in favour of two Telugu States. We hope that you will surely take a favourable decision.

Thank you for your kind time and consideration.

Yours faithfully

Telangana Development Forum

The Last Page

Why this Memorandum?

The people of Telangana were shocked to know as the Centre has all of a sudden, without consultation or proper assessment of the pros and cons of the action, has made a Gazette Notification on 15th July 2021, which is a potential cause of irreparable damage to the interests of people of our new state Telangana.

The centre authorised a few Central cadre officers to take over all the irrigation projects over Rivers Krishna and Godavari, which costs several lakhs of crore of Rupees of public money, that was invested over a period of time, leaving all the financial burden on the State and taking all the assets under their control.

It raises a fundamental question in the minds of the people: De we have a Constitutional system of Rule of Law?

The people should understand the seriousness of the Gazette Notification and its impact on the lives of the millions of tax payers, with whose money the projects were being built, besides the illegality, unconstitutionality and unjustifiability of the arbitrary action of the Centre.

This is a sincere attempt of the Telangana Democratic Forum to bring the hard facts of the irreparable damage this Gazette Notification can cause and request the people to join the voices demanding its immediate withdrawal.

It is not an issue of a political party or a Government. It is the life and death problem of people of Telangana who are hoping to get water to flow into their fields. This is an issue of democracy. Tomorrow a Government at Centre may take over all the irrigation projects of another state without any reason of legal basis. We need to prevent such actions which harm the system and the people. Please think and act.

Yours sincerely

Telangana Development Forum