ORIGINAL SUIT NO. 1 OF 1997 STATE OF KARNATAKA

v.

STATE OF ANDHRA PRADESH AND ORS.

AND

ORIGINAL SUIT NO. 2 OF 1997
STATE OF ANDHRA PRADESH

v.

STATE OF KARNATAKA AND ORS.

APRIL 25, 2000

[S.B. MAJMUDAR, G.B. PATTANAIK, V.N. KHARE, R.P. SETHI AND UMESH C. BANERJEE, JJ.]

Constitution of India, Articles 131, 262 r/w Inter-State Water Disputes Act 1956, Ss. 4, 5(2) and (3), 6, 6-A—Inter-State water dispute—Krishna River Basin—Sharing of Waters between riparian States of Karnataka, Andhra Pradesh and Maharashtra—Disputes referred to Tribunal—Tribunal giving report in December, 1973 incorporating Final Order—Upon references made by the States under S. 5(3) Tribunal giving further report in May, 1976 containing modified Final Order—In both reports two schemes evolved—Scheme A making mass allocation in favour of three states of dependable flow at 75% which was 2060 TMC—Scheme 'B' evolved for giving effect to allocation on percentage basis in surplus and deficit years of flow—Andhra Pradesh not agreeing to constitution of Krishna Valley Authority (KVA) for implementation of Scheme 'B'—Tribunal therefore not making Scheme 'B' part of Final Order—Karnataka filing suit against riparian states and Union of India for a decree that surplus water in excess of 2060 TMC be shared in accordance with Scheme 'B'; a mandatory injunction to Union of India to notify Scheme 'B' and establish the 'KVA' and an injunction restraining Andhra Pradesh from continuing to execute projects till Scheme 'B' was effectively implemented—Held, Scheme 'B' was not a decision of the 'Tribunal and was not capable of being implemented by a mandatory injunction from the Supreme Court.

Andhra Pradesh filing suit claiming that project-wise allocation had to be read into the mass allocation of dependable flow made by Tribunal and for a declaration that Karnataka's construction of the Almatti Dam to a height of

A *524.256 meters constituted an infraction of Tribunal's decision—Andhra Pradesh, inter alia, praying for injunction restraining Karnataka from constructing Almatti Dam up to a height of 524.256 meters—Held, the Tribunal's decision only made mass allocation and not project-wise allocation; further held, as long as total user of water by Karnataka did not exceed mass allocation, Tribunal's decision was not violated and no mandatory injunction could be granted; there was no bar to raising of the height of Almatti Dam up to 519.6 meters subject to clearances by appropriate authority of Central Government.*

Constitution of India, Articles 131, 262(2) r/w Inter-State Water Disputes Act 1956, Ss. 2(c) and 11—Maintainability of Suit—Karnataka filing suit for decree that Scheme 'B' which did not form part of Final Order of the Krishna Water Disputes Tribunal should be notified and given effect to—Defendants Andhra Pradesh and Union of India contending that this was a fresh water dispute within the meaning of S. 2(c) of the Act attracting the bar under Article 262—Held, the assertions in the plaint and the relief sought for did not constitute a dispute under s. 2(c) of the Act and the jurisdiction of the Supreme Court under Article 131 was not ousted.

Constitution of India, Articles 131, 142 and 262(2) r/w Inter-State Water Disputes Act 1956, ss. 2(c), 3(A) and 11—Relief of injunction against plaintiff sought by defendant—Maintainability of—Maharashtra in additional written statement expressing apprehension of submergence of land in Maharashtra on account of raising of height of Almatti Dam by Karnataka up to 524.256 and praying for injunction against it—Held, the dispute raised would be a complaint within the meaning of s. 3(A) and a water dispute under s. 2(c) of the Act; Supreme Court could not entertain it under either Article 131 or 142.

Inter-State Water Disputes Act 1956, s. 6—Tribunal giving report and decision in 1973 and further report and decision in 1976—Andhra Pradesh filing suit with prayer for declaration that both reports and decisions in their entirety were binding on the three riparian states—States agreeing to partial decree in terms of said prayer—Karnataka contending that Scheme 'B' forming part of report, its suit seeking enforcement of Scheme 'B' could not be resisted by Andhra Pradesh in view of partial decree—Andhra Pradesh contending that Tribunal's report was like a judgment and its decision a decree in a suit which had to be read consistent with the report—Held, Tribunal's decision was not a decree and its report not a judgment in a civil suit; further held, prayer

in Andhra Pradesh's plaint had to be understood in the light of its assertion regarding raising of height of Almatti Dam; partial decree could not make the entire report and further report binding on the parties—Law of Pleadings.

Original Suit 1/97

The dispute between the three riparian States of Maharashtra, Karnataka and Andhra Pradesh with respect to use, distribution and control of the water of inter-State river Krishna stood resolved by the decisions of the Krishna Water Dispute Tribunal ('Tribunal'), constituted under s. 4 of the Inter-State Water Disputes Act, 1956 ('Act').

The Tribunal's first report submitted on December 24, 1973 as well the further report dated May 27, 1976 evolved two Schemes. Scheme "A" made the mass allocation in favour of three riparian States of the dependable flow at 75% which had been arrived at 2060 T.M.C., indicating that in any water year Maharashtra shall not use more than 560 T.M.C., Karnataka not more than 700 T.M.C. and Andhra Pradesh not more than 800 T.M.C. It has also indicated that Andhra Pradesh which was the last riparian owner, would be at liberty to use the remaining water that may be flowing in the river Krishna but by such user the State shall not acquire any right whatsoever in respect of the excess quantity, which it would use beyond the allotted quantity of 800 T.M.C.

For giving effect to the allocation on percentage basis in surplus as well as deficit years of flow the Tribunal evolved Scheme "B" and indicated the same in its original report as well as in its further report. For proper implementation of Scheme "B", the constitution of the Krishna Valley Authority (KVA) was absolutely necessary, Andhra Pradesh not having agreed for the constitution of the KVA, the Tribunal did not make Scheme "B" as part of its Final Order and thought it fit to leave the matter either to the good sense of the rival States or for the Parliament to make a legislation to that effect under Entry 56 List I of the Seventh Schedule to the Constitution.

According to Karnataka Scheme "B" being a part of the decision of the Tribunal was also required to be notified by the Central Government under s. 6 of the Act, making it binding on the parties. Andhra Pradesh did not agree. Karnataka then filed this suit in this Court under Article 131 against Andhra Pradesh, Maharashtra and the Union of India

A seeking a decree that the surplus water in river Krishna i.e. in excess of 2060 TMC at 75% dependability be shared in accordance with the determinations and directions of the Tribunal; a declaration that Andhra Pradesh was not entitled to insist on its right to use the surplus water i.e. in excess of 2060 TMC at 75% dependability, so long as Scheme "B" framed by the Tribunal was not fully implemented and a mandatory B injunction to Union of India to notify Scheme "B" framed by the Tribunal and make provisions for establishment of a KVA for implementation of the Tribunal's directions. Karnataka also prayed for an order of injunction, restraining Andhra Pradesh from continuing to execute several projects until Scheme "B" framed by the Tribunal was effectively imple- C mented.

Andhra Pradesh in its written statement took a preliminary objection that the adjudication sought for by Karnataka was itself a water dispute and, therefore, the suit under Article 131 was barred in view of D the mandate under Article 262 of the Constitution read with s. 11 of the Act. Further it was contended that only Scheme "A" could be held to be the decision of the Tribunal. Whatever the Tribunal had observed in relation to framing of Scheme "B" was obiter and not a part of its decision as such was un-enforceable. It was further asserted that Scheme "A" having been acted upon by the parties for over two decades and under E the said Scheme review having been provided for after May 31, 2000, the question of implementation of Scheme "B" at this length of time was not only inequitable but uncalled for.

Maharashtra also took the stand that the suit was not maintainable F inasmuch as the implementation of Scheme "B" depended upon the consent of the States and the Court could not force the States to give consent nor direct the Parliament to enact a legislation for the same. Union of India in its written statement took the stand that the suit as framed was not maintainable by virtue of s. 11 of the Act read with Article 262 of the G Constitution. So far as the user of water by the State of Andhra Pradesh was concerned, it contended that the award having set out in gross the quantity of water which could be used in a given water year by Maharashtra, Karnataka and Andhra Pradesh with the liberty to Andhra Pradesh to use the surplus water, the said liberty did not confer or create any right in Andhra Pradesh and such user would be subject to right of upper riparian H States of Maharashtra and Karnataka. It further asserted that the award

did not give a project-wise allocation but does the gross allocation and each of the States was bound to give effect to the award given by the Tribunal. A

On the basis of the pleadings this court framed 13 issue including the following :

(a) Whether the suit was barred by Article 262(2) of the Constitution read with s. 11 of the Act? B

(b) Whether Scheme "B" was part of the "decision" of the Tribunal under s. 6 of the Act and whether it was capable of or just and equitable to implement Scheme "B" at this stage? C

Original Suit 2/97

Andhra Pradesh filed this suit in this Court under Article 131 against Karnataka, Maharashtra and the Union of India on the basis that though in the Final Order of the Tribunal, there was a mass allocation of water in favour of the three riparian States out of the 2060 TMC of water under 75% of dependability, a closer scrutiny of the report in its entirety revealed that the allocation in respect of different sub-basins had been made on the basis of projects undertaken in those sub-basins and consequently, no State would be entitled to use the entire quantity of water allocated in their favour in any particular sub-basin. In the circumstances the post award constructions undertaken by Karnataka, including its intention to raise the height to Almatti Dam to 524.256 meters, were a gross violation of the decision of the Tribunal. Accordingly, Andhra Pradesh *inter alia* sought a declaration that the Tribunal's report and decision dated December 24, 1973 and further report and decision dated May 27, 1976 in their entirety were binding on the three riparian states; a permanent injunction against Karnataka restraining it from undertaking or continuing with any further constitution with its projects, including Almatti Dam, in the post award phase. D E F G

Karnataka in its written statement took the stand that the Tribunal had not made any project-wise allocation and on the other hand, the allocation was enbloc. As such the question of interpreting the decision of the Tribunal to the effect that there was restriction in the user of water *in* any particular basin was not correct. Karnataka had contemplated the H

A height of the Dam at Almatti as 524.256 meters in the Project Report of 1970 itself. That Report had been filed before the Tribunal and had been marked as document MYPK-3. Neither Andhra Pradesh nor any other State had raised any objection to the said project Report and there was no issue before the Tribunal on that score. In fact the height of Almatti Dam was not a matter of adjudication before the Tribunal. Therefore there was B no question of any violation of the decision of the Tribunal. Further the project at Almatti had been undertaken at huge cost exceeding Rs. 6000 crores and it was not in national interest to stop the project at this advance stage. It was reiterated that the utilisation of water would be entirely within the allocated quantity made by the Tribunal.

C

The stand of the Union of India was that Karnataka was entitled to utilise the gross amount of water for any such projects and so long as it was within 173 MC in the Upper Krishna Project, there was no violation of the Tribunal's decision.

D

In its first written statement Maharashtra supported Karnataka and contended that the relief sought for by Andhra Pradesh in the plaint would tantamount to a complete re-writing of the decision of the Tribunal which would be outside the scope of a suit under Article 131 of the Constitution.

E

However in an additional written statement filed subsequently Maharashtra took a new stand in relation to the alleged construction of Almatti Dam with FRL 524.56 m. by Karnataka. It was now averred that by raising the dam height at Almatti, there was likelihood of enormous damage to private and public properties. Apprehending submergence of F lands within its territory, Maharashtra now supported Andhra Pradesh in praying for an injunction against Karnataka from raising the height of the dam.

This Court framed 33 issues which included the following :

G

(a) Had Karnataka violated the Tribunal's decision by executing the projects in the post-award phase?

(b) Did Andhra Pradesh prove that allocation of waters by the Tribunal were specific for projects and not *en bloc*? H

(c) Was Andhra Pradesh entitled to a declaration that all constructions by Karnataka not in conformity with the Tribunal's decision were illegal? A

(d) Would the construction by Karnataka of the Almatti Dam up to 524.256 m enable it to use more water than its allocated share and should it be permitted to proceed with the construction without the consent of other riparian states or the approval of the Union of India? B

(e) Whether Karnataka could be permitted to raise the storage level at Almatti Dam above RL 5090.16 m in view of the likely submergence of territories in Maharashtra? C

On September 30, 1997, the Supreme Court recorded the statement of the three riparian states that they had no objection to prayer (a) in Andhra Pradesh's suit that the Tribunal's two reports and decisions in their entirety be declared to be binding on them. Accordingly, the Supreme Court directed that a partial decree could be passed to that extent. At the final hearing Karnataka contended that since Scheme 'B' was a part of the report, its suit seeking enforcement of Scheme 'B' could not be resisted by Andhra Pradesh in view of partial decree. Andhra Pradesh contended that the Tribunal's report was like a judgment in a civil suit and its decision like a decree which had to be read consistent with the report. D E

Dismissing Original Suit No. 1/97 and disposing of Original Suit No. 2/97, this Court

Held : Per Pattanaik, J. (For himself and other Judges in the Bench, with separate concurring/supplementing judgments by Majmudar, Sethi and Umesh C. Banerjee, JJ.) : F

1.1. Scheme "B" framed by the Tribunal was not the decision of the Tribunal and as such, was not required to be notified under s. 6 of the Act and consequently could not be enforced at the behest of Karnataka. G

[332-D-E]

1.2. The Tribunal never considered Scheme "B" to form a part of its decision for being implemented even though there could not be any doubt about the efficacy of the Scheme in question. A water dispute having arisen between the three riparian States in relation to sharing of water of river H

A Krishna and the said dispute having been referred to the Tribunal for its adjudication and the Tribunal having investigated the matters referred to it had having submitted its report containing the facts found as well as its decision, it was that decision which conclusively decided the disputes referred and was capable of being implemented which could be said to be the B decision of the Tribunal under s. 5(2). [331-F-H]

Cauvery Water Disputes Tribunal [1993] Supp 1 SCC 96, followed.

1.3. Scheme "B" provided for a fuller and better utilization of the water resources in river Krishna and in future if the question of allocation C of river Krishna was gone into by any authority then the said authority would certainly look to Scheme "B" which had been evolved on the date available then and acceptability of the same would be duly considered. [333-B-C]

2.1. The assertions made in the plaint and the relief sought for D showed it to be a claim on the basis of an adjudicated dispute, the enforcement whereof was sought for by filing a suit under Article 131 of the Constitution. It was not a dispute within the meaning of s. 2(c) of the Act. Such a suit was therefore not barred under Article 262 of the Constitution read with s. 11 of the Act. [339-F-G]

E *State of Rajasthan* v. *Union of India*, [1978] 1 SCR 1 and *State of Karnataka* v. *Union of India*, [1978] 2 SCR 1, referred to.

Constitutional Law of India by H.M. Seervai, referred to.

2.2 Such a suit was also not premature on the ground that a review F had been provided for after May 31, 2000. The review indicated in the Tribunal's order was in relation to the allocation made under Scheme 'A' and had nothing to do with Scheme 'B' which was sought to be implemented through the suit. [348-A-B]

G 3. It was for the Central Government to exercise the discretion while granting any scheme or project of the lowest riparian state so that the latter was not allowed to proceed with large-scale water projects for utilisation of the surplus water in excess of the allocated quantity over which it had no right. The discretion had to be so exercised to allay any apprehension in the minds of the upper States that for all times to come, H their right of sharing the surplus water would in any manner be

endangered. [345-A-C] A

4.1. The relief of permanent mandatory injunction so far as construction of the dam at Almatti was concerned as well as the reliefs sought for in paragraph (b) to (k) of Andhra Pradesh's plaint could not be granted. [403-D]

B

4.2. Under the decision of the Tribunal there was mass allocation and not project-wise excepting those specific projects mentioned in clauses IX and X of the decision. The plaintiff Andhra Pradesh had utterly failed to establish that there was any specific allocation by the Tribunal in respect of Upper Krishna Project or the Almatti Reservoir. [381-D; 396-G-H]

C

4.3. There was no restriction for quantity of user of water in Upper Krishna Project by Karnataka and so long as the total user did not exceed mass allocation, it could not be said that the decision of the Tribunal was being violated infringing the rights of Andhra Pradesh which could be prohibited by issuing any mandatory injunction. The very fact that restrictions had been put by the Tribunal in several sub-basins and no restriction had been put so far as sub-basin K-2 wherein Upper Krishna Project of Karnataka was being carried on clinched the point. [380-D-E]

D

4.4. There was nothing to show that Karnataka had carried out any project in contravention of the provisions of any particular law made by Parliament or in contravention of any direction issued by the Government of India. [399-B]

E

4.5. There existed no materials on the basis of which it was possible for the Court to come to a conclusion that on account of the construction of Almatti Dam within Karnataka the plaintiff had been adversely affected or was likely to be adversely affected. [399-F-G]

F

5.1. There was no bar for raising the height of the Dam at Almatti up to 519.6 meters subject to getting clearance from the Appropriate Authority of the Central Government and any other Statutory Authority, required under law. [403-E]

G

5.2. Though Karnataka could have the dam at Almatti, but the height of the said dam could not be more than 519.6 m, particularly when Karnataka had not been able to indicate as to what the necessity of having a height of Dam at 542.256 meters when Scheme'R' was not going to be

H

A operated upon immediately. The question of further raising its height to 524.256 meters should be gone into by the Tribunal. [385-F; 386-H]

5.3. The Central Government was not duty bound to take the consent of other States while sanctioning any project of any of the riparian States. The project of each State had to be approved by the Central B Government as well as by other statutory authorities and the Planning Commission, but for which a State could not proceed with the construction of such project. [382-B-C; 387-C]

5.4. The question of getting concurrence of other riparian States raised C by Andhra Pradesh was wholly misconceived. Neither there existed by law which compelled any State to get the concurrence of other riparian States whenever it used water in respect of inter-State river nor did the decision of the Tribunal impose any condition in this regard. [397-E]

6.1. The question of submergence of land pursuant to the user of D water in respect of an Inter-State river allocated in favour of a particular State was inextricably connected with the allocation of water itself and the present grievance of Maharashtra would be a complaint on account of an executive action of the State of Karnataka within the meaning of Section 3(A) and also would be a water dispute within the ambit of s. 2(c) E and, therefore, it would not be appropriate for this Court to entertain and examine and answer the same in a suit filed under Article 131 as a part of implementation of an adjudication of a tribunal. [393-A-B; G]

6.2. However wide the power of the Court under Article 142 of the Constitution might be, it would not be proper to entertain the question of F submergence, raised by Maharashtra in its additional written statement and decide the question of injunction, in relation to the height of Almatti Dam on that basis. [394-A-B]

Delhi Judicial Services Assn. v. *State of Gujarat*, [1991] 4 SCC 406 and G *State of Rajasthan* v. *Union of India*, [1978] 1 SCR 1, referred to.

7.1. The decision of the Tribunal was not a decree which has to be understood in the light of the judgment in the suit. The Tribunal's report was also not a judgment and was not required to be notified so as to make it binding on the parties. It was only the decision of the Tribunal which was H required to be published in the Official Gazette and on such publication

that decision became final and was binding on the parties. [370-E-G] A

Kalikrishna Tagore v. *The Secretary of State,* LR 15 Indian Appeals 186; *Law Report 25 Indian Appeals at 107-08 and 1913 Vol. 25 Mad. LJ 24,* referred to.

7.2. The order of this Court dated September 30, 1997 did not mean B that a decree had to be passed making the entire report as well as the further report of the Tribunal binding on the parties. When a prayer was made in a plaint, the said prayer has to be understood in the light of the assertion. [371-B; 370-G]

Per S.B. Majmudar, J. (Supplementing) : C

1. No project-wise allocation of available water was decided upon by the Tribunal while framing Scheme "A" so far as the Upper Krishna Project (UKP) was concerned. [410-H]

2. What height the Almatti dam should be constructed was not on D the anvil of scrutiny of the Tribunal nor was any decision rendered by the Tribunal in that connection which could be made subject matter of the challenge in the present suit of Andhra Pradesh on the ground that any such express direction of the Tribunal in this connection was violated by Karnataka. [410-H; 411-A-B] E

3. If the height of Almatti Dam was fixed at FRL 519.6 m it would meet the requirements not only of Andhra Pradesh but also would not fall foul of the opinion of the Expert Committee as well as the clearance given by the Central Water Commission to Stage II of the UKP. Any increase of the height beyond FRL 519 m. depended upon further allotment of water F to Karnataka by any subsequent decision of the Tribunal, as and when constituted, as that would depend upon the implementation of the proposed Scheme "B" which had not yet been elevated to the status of a binding decision of any Water Disputes Tribunal. [419-E; 420-C]

4. Constitution of Almatti Dam with an FRL 524.256 together with G all other projects executed and in progress and contemplated by Karnataka could not be granted nor could Karnataka be permitted to construct up to that height without the consent of all other riparian States as well as without the approval of the Central Government. However, this would be subject to the rider that there could not be any objection to permitting H

A **Karnataka to construct Almatti Dam up to a height of 519 m. This was further subject to clearance by all other competent authorities functioning under different statutes. Requisite clearance would be required by Karnataka for raising the height of the dam even up to 519 m. [427-D-E]**

B **5. On a conjoint reading of s. 2(c)(i) and 3(a) of the Act, the grievance voiced by Maharashtra against Karnataka would fall within the forecorners of the Act enacted by the Legislature under Article 262 and cannot be adjudicated upon by the Supreme Court under Article 131. [425-D-E]**

Per Banerjee, J. (concurring)

C **1. Scheme B was not a decision of the Tribunal requiring publication or notification by the Central Government in terms of the provisions of the Act. The Krishna Valley Authority being the 'heart of the Scheme' not yet having been created by Central Government, the question of implementation of Scheme B, as a decision of the Tribunal did not and** D **could not arise. [451-E; 453-B]**

State of Wisconsin **v.** *State of Illinois,* **74 L. ed. 799, referred to.**

2. The observations of the Tribunal on the issue of Scheme B were wholly without jurisdiction. A Tribunal could not exhypothesia pronounce E **a decision which required for its implementation, a law to be enacted by Parliament or by consent of the parties. The Union Government would not have any obligation to agree to carry out any such directive. [452-B-C; G]**

3. The suit by Karnataka was maintainable. It pertained to implementation, but did not require any further adjudication of water dispute F **between States within the meaning of s. 2(c) of the Act. [445-H; 446-D]**

In Re Cauvery Water Disputes Tribunal **AIR (1992) SC 522;** *N.P. Ponnuswami* **v.** *Returning Officer, Namakkal Constitutency,* **[1952] SCR 218 and** *Mohinder Singh Gill* **v.** *The Chief Election Commissioner, New Delhi,* **[1978] 2 SCR 272, referred to.**

G **4. The situation was not conducive for the grant of injunction as prayed for by Andhra Pradesh neither was such injunction warranted at this juncture. [465-B]**

H *Colgate Palmolive (India) Ltd.* **v.** *Hindustan Lever Ltd.,* **[1999] 7 SCC 1**

and *State of Karnataka* v. *Union of India*, [1978] 2 SCR 1, referred to. A

By reason of the report to the experts, the Almatti Dam and its upper limit could be placed at FRL 519 subject however, to clearance from appropriate authority or authorities as required under the law. Question of raising the ultimate height at Almatti Dam could be gone into by the Tribunal upon assessment of the situation as placed by the riparian States and upon assessment of the apprehension of submergence and the apprehension of loss of Kharif crop as well. [468-B-C] B

5. The Tribunal is directed to look into the matter if and when occasion arose as regards the allocation of water in River Krishna Basin, totally uninfluenced by the observations made by the earlier Tribunal's view by reason of long lapse of time and the availability of modern technology. [468-D] C

Per Sethi, J. (concurring) D

Right to water is a fundamental right. The disputes relating to water management are to be considered not from rigid technical or legal angle but from humanitarian point of view. [470-E-G]

CIVIL ORIGINAL JURISDICTION : Original Suit No. 1. E

Under Article 131 of the Constitution of India.

Ashok H. Desai, Soli J. Sorabjee, Attorney Generals, Harish N. Salve, Solicitor Generals, M.S. Usgaonkar, R.N. Trivedi, K.N. Rawal, Additional Solicitor General, F.S. Nariman, S.S. Javali, A.K. Ganguli, K. Parasaran, T.R. Andhyarujina, M.S. Nargolkar, G. Raghuram, N.N. Goswami, A.N. Jayaram, (N.V. Ramana), Addl. Advocate General for State of A.P., (A.N. Jayaram) Advocate General for State of Karnataka, S.P. Singh, Subhash Sharma, Mohan V. Katarki, Ms. Poonam Kumar, Sanjay R. Hegde, G. Umapathi, G. Prabhakar, Subrat Birla, D.M. Nargolkar, S. Wasim, A. Quadri, S.K. Dwivedi, A.K. Sharma, B. Krishna Prasad, Ms. Sushma Suri, K.K. Tyagi, Ms. Shalini Bhalla, Vineet Kumar, K.R. Nagaraja, C.V. Subba Rao, Shambhu Pd. Singh, S. Vijayashankar, A. Ram Narayan, Rajeev Sharma, (Nikhil Nayyar) for the State of A.P., Dhruv Mehta, R.N. Verma, Dr. S.C. Jain and Parag Tripathi for the appearing parties. F G H

A The Judgments of the Court were delivered by

PATTANAIK, J. River Krishna originates in the State of Maharashtra and flows down through the State of Karnataka and State of Andhra Pradesh and meets the Bay of Bengal in Andhra Pradesh. It has got several tributaries and in the pre-independence era, there was not much dispute between the then B States for sharing water of any inter-State river. Even then, when large-scale projects were taken up in one State, the other riparian States were apprehensive of getting their share of water from the river and it is in this context, for sharing the water of Tungabhadra, another river in Krishna Basin, there was an agreement in 1944, settling the dispute concerning the share of the water C of the said river Tungabhadra. After the Constitution of India came into force, the Krishna basin fell within the territories of the States of Bombay, Mysore, Hyderabad and Madras. The States went on planning for erection of big projects for proper utilization of the waters of Krishna basin and in July, 1951, a memorandum of agreement had been drawn up for apportionment of the D available supply of Krishna river system among the four riparian States namely, States of Bombay, Hyderabad, Madras and Mysore. It appears that the said memorandum of agreement had been drawn up to remain valid for a period of 25 years and even at that point of time, the State of Mysore refused to ratify the agreement. After implementation of the recommendations of the States Reorganisation Act, in the year 1956, the Krishna basin came to be E controlled by the States of Bombay, Mysore and Andhra Pradesh, which became the riparian States. Each of these States became active for exercising their right share over the water of Krishna valley and the Central Water and Power Commission had drawn up a scheme for re-allocation of the Krishna water. That however was not acceptable to the States and no agreement F between the States could be reached. Whenever any of the riparian State would come up with major projects, the other States would object to the same. By undertaking the construction of large projects by different States, pressure became more on the available supplies and disputes between the riparian States became more and more bitter. Several objections were raised in relation to Nagarjunasagar and Srisailam projects in Andhra Pradesh as well as Koyna G project in Maharashtra. The Central Government, in 1963 had taken a decision to clear up the pending new projects on the basis that the withdrawal of water by the States of Maharashtra, Mysore and Andhra Pradesh should not exceed 400, 600 and 800 T.M.C. respectively. This decision of the Central Government was not acceptable to the State of Maharashtra and in June, 1963, the H Maharashtra Government had requested the Govt. of India for making a

reference of the disputes to a Tribunal. Between the period of 1963 to 1969, the Central Government tried their best to resolve the disputes between the riparian States by negotiations and holding several inter-State Conferences. But it received more number of applications for reference of the dispute in the years 1968 and 1969. Then again, on account of re-organisation of the States and re-distribution of the Tungabhadra Valley itself between the States of Mysore and Andhra Pradesh, disputes also arose concerning the validity of the earlier Tungabhadra agreement and the control and distribution of Tungabhadra water. The State of Karnataka is the successor State of State of Mysore. Finally on 10th of April, 1969, Government of India constituted the Krishna Water Disputes Tribunal and called upon the Tribunal for adjudication of the water disputes regarding the inter-State river Krishna and the river valley thereof. The Tribunal was constituted under Section 4 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as 'the Act'), which Act has been enacted by the Parliament in exercise of powers conferred under Article 262 of the Constitution of India. The said Tribunal on consideration of the materials placed before it, investigated into the matters referred to it and forwarded a report to the Central Government, setting out the facts found by it and giving its decisions of the matters referred to it, on 24th of December, 1973, under Section 5(2) of the Act. On receipt of the said report and the decision, the Government of India as well as the three riparian States namely States of Maharashtra, Karnataka and Andhra Pradesh made references to the tribunal for further consideration under Section 5(3) of the Act and the tribunal on consideration of those references submitted its further report giving such explanations or guidance, as the tribunal deemed fit on the matters referred to it under Section 5(3) on 27th of May, 1976. It may be stated that the original report dated 24th of December, 1973 contained the Final Order of the tribunal and the further report dated 27th of May, 1976 also contained the modified Final Order, which modification was necessary because of explanations given to references made by different States under Section 5(3) of the Act. The Central Government construed the aforesaid Final Order to be the decision of the tribunal and accordingly, published the same in the Extraordinary Gazette dated 31st of May, 1976 and on such publication, the said Final Order has statutorily become final and binding on the parties to the dispute.

In the Report of the tribunal as well as in the further Report, submitted by the tribunal, two Schemes have been evolved – Scheme "A" and Scheme "B". On the basis of agreement between all the States, the availability of water in Krishna basin was found out at 2060 T.M.C. on 75% dependability. The

A tribunal under Scheme "A" made the mass allocation in favour of three riparian States of the dependable flow at 75% which had been arrived at 2060 T.M.C., indicating that the State of Maharashtra shall not use in any water year more than 560 T.M.C., the State of Karnataka shall not use in any water year more than 700 T.M.C. and the State of Andhra Pradesh shall not use more than B 800 T.M.C in any water year. It had also indicated that the State of Andhra Pradesh which is the last riparian owner, will be at liberty to use the remaining water that may be flowing in the river Krishna but by such user the State shall not acquire any right whatsoever in respect of the excess quantity, which it uses beyond the allotted quantity of 800 T.M.C. It is to be stated that in course of the proceedings before the tribunal, several schemes had been submitted by C the States for the examination of the tribunal and the tribunal considered all such schemes and had finally evolved the Scheme "A". On 4th of May, 1973, all the three States submitted their views under the signature of their respective counsel on the method of allocation to be adopted by the tribunal which was marked before the tribunal as Exhibit MRK- 340 and under that document the D parties had called upon the tribunal not only to have mass allocation of utilisable dependable flow at 75% but also for allocation on percentage basis in surplus as well as deficit years of flow and restrictions with regard to the use and the nature of such restrictions was to be decided by the tribunal. It also called upon the tribunal to have a joint control body to monitor the said allocation on percentage basis in surplus as well as deficit years of flow. For E giving effect to the allocation on percentage basis in surplus as well as deficit years of flow, the tribunal evolved the Scheme "B" and indicated the same in its original report as well as in its further report. But for proper implementation of Scheme "B", the constitution of the Krishna Valley Authority was absolutely necessary and the State of Andhra Pradesh not having agreed for F constitution of the controlling authority, the tribunal did not make Scheme "B" as part of its Final Order though the said Scheme "B" was a part of its original report as well as the further report and thought it fit to leave the matter either to the good sense of the rival States or for the Parliament to make a legislation to that effect under Entry 56 of List I of the Seventh Schedule to the Constitution. The State of Karnataka however being of the opinion that G Scheme "B" having formed a part of the decision of the tribunal was also required to be notified by the Central Government under Section 6 of the Act, making it binding on the parties, and the same not having been done, filed the present suit on 1st of March, 1997, impleading the State of Andhra Pradesh, the State of Maharashtra and the Union of India as party defendants, invoking H the jurisdiction of this Court under Article 131 of the Constitution, seeking

relief for a decree that the surplus water in river Krishna i.e., in excess of 2060 TMC at 75% dependability be shared in accordance with the determinations and directions of the tribunal, contained in its report and further report and ; a declaration that defendant No. 1 State of Andhra Pradesh is not entitled to insist on its right to use the surplus water i.e., in excess of 2060 TMC at 75% dependability, so long as Scheme "B" framed by the tribunal is not fully implemented and a mandatory injunction to the defendant No. 3 Union of India to notify Scheme "B" framed by the tribunal and make provisions for establishment of a Krishna Valley Authority for implementation of the directions of the tribunal in its Report and Further Report. The State of Karnataka has also prayed for an order of injunction, restraining defendant No. 1 from continuing to execute several other projects like Telgu Ganga, Srisailam Right Bank Canal, Srisailam Left Bank Canal, Bheema Lift Irrigation and Pulichintala Projects, until Scheme "B" framed by the tribunal is effectively implemented. The cause of action indicated in the plaint is the refusal of defendant Nos. 1 and 2 to consent to the sharing of surplus waters in excess of 2060 TMC and for implementation of Scheme "B".

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According to the assertions made in the plaint, the dispute centres round the interpretation 'scope and extent of the decision of the tribunal, and particularly Clause V (c) thereof" as well as the refusal of the first defendant for implementation of Scheme "B" drawn up by the tribunal and the further claim of the State of Andhra Pradesh to use the surplus water in excess of 2060 T.M.C. by constructing large-scale permanent projects. The plaintiff, State of Karnataka in its plaint, broadly referred to the adjudication made by the tribunal, indicating therein that the tribunal considered the question of allocation of 2060 T.M.C., which in turn was determined on the basis of 75% dependable flow of river Krishna up to Vijaywada and allocated to the three States of Maharashtra, Karnataka and Andhra Pradesh for their beneficial use to the extent provided in Clause V i.e. not more than 560 T.M.C., 700 T.M.C and 800 T.M.C. respectively. It was also averred in the plaint that the tribunal was of the opinion that for fuller utilisation of water of river Krishna, provisions would be made both for surplus and deficit years and accordingly, evolved Scheme "B" but since constitution of the Krishna Valley Authority was the back-bone of the aforesaid Scheme "B" and the State of Andhra Pradesh did not agree for the setting up of the said Krishna Valley Authority, the tribunal left the question of enforcement of such scheme to the good sense of the parties or the wisdom of Parliament. The State of Karnataka has also averred that clarificatory applications were filed before the tribunal under

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A Section 5(3) of the Act in respect of Scheme "B" and the tribunal did entertain the same and did answer the clarifications sought for by giving explanations and/or modifications to the original scheme and, therefore, the tribunal itself accepted the position that Scheme "B" contained in the original report is also a decision of the tribunal which could be clarified or explained on an B application being filed under Section 5(3) of the Act. The plaint then, narrates as to how in the further report dated 27th of May, 1976, the tribunal investigated into and determined the shares of respective States in the surplus flows in excess of 2060 T.M.C. and how ultimately a comprehensive Scheme "B" was drawn up for fuller and better utilisation of all the waters in every water year and yet the same could not be given effect to as the tribunal thought C it improper to constitute an authority in the absence of agreement between all the riparian States. It is in this context the tribunal had observed that it is unwise and impracticable to impose an administrative authority by a judicial decree without the unanimous consent and approval of the parties. According to the plaintiff, since Scheme "B" provided for a fuller and better utilisation D of the water of river Krishna, which the tribunal has itself evolved after deeply pondering over the matter, the same must be held to be a decision of the tribunal, required to be published by the Union Government under Section 6 of the Act and since the parties had not agreed for constitution of an authority when the tribunal gave its further report, it could not be made a part of the Final Order. But according to the plaintiff, Section 6(A) having been inserted E into the Act, enabling the Central Government to frame Scheme or Schemes to give effect to the decision of the tribunal including establishment of an authority, there exists no legal impediment for enforcing the said Scheme "B" and appropriate directions could be given by the Court to the Central Government for constituting the authority and give full effect to the Scheme F "B". The plaintiff also averred in the plaint how from time to time the State of Karnataka had been requesting the State of Andhra Pradesh as well as the Union Government for implementation of Scheme "B" and how the said State of Andhra Pradesh, defendant No. 1 has refused to agree for implementation of Scheme "B".

G The defendant No. 1, State of Andhra Pradesh in the written statement filed, took the preliminary objection that the adjudication sought for by the plaintiff is itself a water dispute and, therefore, the suit under Article 131 is barred in view of the mandate under Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act. The further stand taken by H defendant No. 1 is that it is only the Scheme "A" which can be held to be the

decision of the tribunal which comes into operation on the date of publication of the same under Section 6 of the Act and whatever the tribunal has observed in relation to framing of Scheme "B", the same is merely tentative and obiter observation and cannot be held to be a part of the decision of the tribunal and as such is un-enforceable. It has also been averred that the tribunal itself having indicated that the Scheme "B" could be implemented either by agreement of the parties or by legislation by the Parliament and the parties having not agreed to, the Court would not be competent to direct the Parliament to have a legislation and, therefore, the relief sought for cannot be granted in the suit. It has been further averred that in view of Clause V(c) of the Final Order, which has been notified in the official Gazette, the State of Andhra Pradesh is entitled to use any water, which may be flowing in the river Krishna, so that the same would not be wasted by entering the sea and, therefore, the prayer for injuncting the State of Andhra Pradesh in going ahead with several projects is not entertainable. The defendant No. 1 further asserts that Scheme "A" having been acted upon by the parties for over two decades and under the said Scheme review having been provided for after 31st of May, 2000, the question of implementation of Scheme "B" at this length of time is not only inequitable but also wholly uncalled for. While refuting the assertion made in different paragraphs of the plaint, it has been reiterated that Scheme "B" never formed part of the decision and as such question of its implementation does not arise and further Section 6(A) of the Act not being there on the statute book on the date the report of the tribunal was published, the same is not relevant in the context. According to Defendant No. 1, the plaintiff has attempted to raise an imaginary dispute in an attempt to invoke the jurisdiction of this Hon'ble Court so that the attention of all concerned is diverted from the illegal projects continued to be executed by it contrary to the decision of the tribunal and the suit lacks bona fides. It has also been averred that the so-called Scheme "B" was merely a tentative one and without its back-bone namely the constitution of the Monitoring Authority called Krishna Valley Authority, it cannot be held to be a Final decision of the tribunal having any binding effects. So far as different projects undertaken by the State of Andhra Pradesh, it has been averred that under the tripartite agreement even before the Final decision of the tribunal, the plaintiff voluntarily agreed for supply of 15 TMC of drinking water to Madras, which is the Telgu Ganga Project and, therefore, the plaintiff's objection on this score is baseless and frivolous. In respect of other projects objected to by the plaintiff, it has been averred that the tribunal itself has granted the liberty to the State of Andhra Pradesh to utilise the excess water flowing in river Krishna and, therefore, there has been

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A no infraction of the said liberty granted by the tribunal. It has also been further averred that the tribunal in its further report having adopted Scheme "A" as its Final decision, it is only that Scheme which is binding on the parties and whatever has been stated as Scheme "B" is not the decision of the tribunal.

B The State of Maharashtra, Defendant No. 2 also had taken the stand that the suit for directing implementation of Scheme "B" is not maintainable inasmuch as the implementation of the same depends upon the consent of the States and the Court cannot force the States for giving its consent nor can the Court direct the Parliament to have a legislation for the same. The defendant No. 2 however agreed with the State of Karnataka so far as the allegation of C appropriation of the remaining water of the river Krishna in a permanent way by constructing projects like Telgu Ganga, Srisailam RBC, Srisailam LBC, Bhima Lift and Pulichintala by the State of Andhra Pradesh, Defendant No. 1. The positive stand of the State of Maharashtra is that until and unless a chain of carry over reservoirs in entire Krishna basin are erected, the question of D implementation of Scheme "B" would not arise and since the said carry over reservoir have not been constructed as yet, the prayer for implementation of Scheme "B" is premature. The said defendant also averred that the relief sought for is essentially a review of the Final Order and there were no circumstances justifying the prayer for implementation of Scheme "B", particularly, when a review is provided after 31st of May, 2000, which is quite E near. The State of Maharashtra defendant No. 2 reiterates the stand of the Andhra Pradesh, defendant No. 1 to the effect that it is the tribunal's decision in term of Scheme "A", which is final and binding order on all States and not the framing of Scheme "B" contained in the report of the said tribunal.

F Union of India, defendant No.3, in its written statement took the stand that the suit as framed is not maintainable by virtue of Section 11 of the Act read with Article 262 of the Constitution. So far as the user of water by the State of Andhra Pradesh is concerned, the Union Government contends that the award having set out in gross the quantity of water which could be used in a given water year by Maharashtra and Karnataka and Andhra Pradesh with G the liberty to Andhra Pradesh to use the surplus water, the said liberty does not confer or create any right in the State of Andhra Pradesh and such user would be subject to right of upper riparian States namely Maharashtra and Karnataka. The Union Government further asserts that the award does not give a project-wise allocation but does the gross allocation and each of the State H is bound to give effect to the award given by the tribunal. On the averments

of the other paragraph of the plaint, the Union Government has indicated that the same are all matter of record and do not require any further elucidation. A

On the pleadings of the parties the following issues have been framed:

"1. Whether the suit is barred by Article 262(2) of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956? (A.P.) B

2. Whether the suit is liable to be dismissed as not disclosing cause of Action? (A.P.)

3. Whether the suit is liable to be dismissed as seeking relief which are contrary to the Report and Decision of the KWDT? (A.P.) C

4. What is the "decision" of the KWDT binding on the parties under Section 6 of the Act in relation to:-

(a) Scheme 'B' D

(b) Use of surplus water as contemplated in Clause (V)(c) read with Clause XIV(A) of the Award.

5. Whether reference to Scheme 'B' in the 1st and the further report of the KWDT, disclose a complete scheme, and whether such scheme is capable of implementation at this stage, in view of circumstances referred to in para 11 of the preliminary objections and para 1 of the parawise reply in the written Statement of Andhra Pradesh? (A.P.) E

6. Is it just, fair and equitable to implement Scheme 'B' at this stage? (MAH). F

7. Whether in view of the fact that Scheme 'B' does not form part of the "Final Order" of KWDT in the original report under Section 5(2) and the Further Report under Section 5(3) of the Act, the suit seeking the implementation of Scheme 'B' is maintainable? (A.P.) G

8. Whether insertion of Sec.6A in 1980 in the ISWD Act, 1956, *ipso facto* entitles Karnataka to seek implementation of Scheme 'B' as referred to in the reports of the Tribunal by framing a scheme? (KAR – as modified by A.P.) H

9. Whether the right of Andhra Pradesh to utilise surplus waters in terms of the liberty granted by the decisions of the Tribunal, is reviewable in the present proceedings? (A.P.)

10. Whether the liberty to use surplus water under the decision of the KWDT precludes utilisation of surplus water by A.P., by means of projects of permanent nature? (KAR as modified by A.P.)

11. Whether the decision of the KWDT entitles the State of Andhra Pradesh to execute the following projects :- (KAR – as modified by A.P.)

(a) Telugu Ganga Project

(b) Srisailam Right Bank Canal

(c) Srisailam Left Bank Canal

(d) Bhima Lift Irrigation

(e) Pulichintala Diversion

12. Is not the suit of the Plaintiff unnecessary and premature as there can be review of the orders of the Tribunal after A.D. 2000? (MAH)

13. To what reliefs, if any, the Plaintiff is entitled to? (A.P.)"

ISSUES 4, 5 AND 7.

These three issues are taken up together as they are inter-linked and in fact the fate of the suit largely depends upon the answer to the aforesaid issues. Mr. Nariman, the learned senior counsel, appearing for the plaintiff- State of Karnataka contends that in the context of the water dispute which had been referred to by the Central Government to the tribunal under Section 4 of the Act and the said tribunal having investigated the matters referred to it and framed two schemes for distribution of water in river Krishna amongst the three riparian States, giving immediate effect to Scheme "A" and postponing the date of giving effect to, in respect of Scheme "B" as there was no agreement between the riparian States for the constitution of the Monitoring Authority, the said Scheme "B" cannot, but be held to be the decision of the tribunal and as such was required to be notified by the Union Government under Section 6 of the Act, making the same binding on all the three States.

According to Mr. Nariman, the Act conceives of a report to be given by the tribunal setting out the facts as found by it and giving its decision on the matters referred to it and evolving Scheme "B" being an adjudication of the respective share of States in the waters of river Krishna, both in relation to the surplus water year and the deficit water year, the said adjudication must be held to be the decision of the tribunal and the Final Order containing Scheme "A" alone cannot be held to be the decision of the tribunal. The Central Government, therefore failed to perform its mandatory duties under Section 6 in publishing only the Final Order which is merely a mass allocation in favour of three states at 75% dependability and not the adjudication of the entire dispute which had been referred to the tribunal. Mr. Nariman further contended that the tribunal in its report dated 24.12.73 having reached the conclusion – "After deeply pondering over the matter we have come to the conclusion that it would be better if we devise two schemes for the division of the waters of the river Krishna between the States of Maharashtra, Mysore and Andhra Pradesh. These schemes will be called Scheme "A" and "B". Scheme "A" will come in operation on the date of the publication of the decision of this Tribunal in the Official Gazette under Section 6 of the Inter-State Water Disputes Act. Scheme "B" may be brought into operation in case the States of Maharashtra, Mysore and Andhra Pradesh constitute an inter-State administrative authority which may be called the Krishna Valley Authority by agreement between them or in case such an authority is constituted by legislation made by Parliament." It is difficult to conceive that Scheme "B" was not the decision of the tribunal. In fact the tribunal itself came to the conclusion that Scheme "B" is more comprehensive and provides for more equitable mode of utilisation of the waters of river Krishna and yet refrained from making it a part of the Final Order because a Monitoring Authority could not be constituted due to lack of agreement between the riparian States nor was it wise and practical to impose a Monitoring Authority without the consent of the parties and in this view of the matter Scheme "B" must be held to be a decision of the tribunal adjudicating the shares of each of the States in the water of river Krishna, making the apportionment, both in relation to surplus as well as the deficit. Mr. Nariman, the learned senior counsel, also urged that the three States Maharashtra, the then Mysore (presently Karnataka) and Andhra Pradesh having themselves consented to, and having prayed for the method of allocation to be adopted by the tribunal to the effect : (i) mass allocation of utilisable dependable flow at 75%, (ii) allocation on percentage basis of water in surplus as well as deficit years of flow, (iii) restrictions with regard to use and the nature of restrictions to be decided by the tribunal and

A (iv) constitution of a Joint Control Body to give effect to the decision of the tribunal, and Scheme "A" being an adjudication of item (i) above and Scheme "B" being adjudication of items (ii), (iii) and (iv) above, it is unthinkable that the Scheme "B" is not the decision of the tribunal. Mr. Nariman also contended that under Section 5(3) of the Act after considering the decision of the tribunal if Central Government or any State Government is of the opinion that any explanation or further consideration is needed, then a further reference could be made and such a reference/clarification, having been made by the State of Karnataka in relation to Scheme "B" and the tribunal itself having entertained and answered the same, it is no longer open to hold that Scheme "B" is not a decision of the tribunal. It is in this connection, Mr. Nariman also contended that though the State of Maharashtra and State of Karnataka, also were heard by the tribunal on the further clarifications sought for by the State of Karnataka, at no point of time they had taken the stand that Scheme "B" is not a decision and as such a clarification under Section 5(3) in respect of the same was not entertainable. In this view of the matter, there is no other option than to hold that Scheme "B" is also the decision of the tribunal, providing for a better and fuller equitable distribution of the water in river Krishna and the issue in question must be answered in favour of the State of Karnataka. Mr. Nariman also urged that the Constitution Bench of this Court in *Cauvery Water Disputes Tribunal*, [1993] Supp 1 SCC 96, has held that even the interim order passed by the tribunal must be deemed to be a report and a decision within the meaning of Section 5(2) of the Act and in this view of the matter the final adjudication evolving Scheme "B" must be held to be a decision of the tribunal and as such is required to be published by the Central Government under Section 6 of the Act.

Mr. Parasaran, the learned senior counsel, appearing for Defendant No. 1, State of Andhra Pradesh on the other hand contends that the plaintiff in his plaint also has not averred that Scheme "B" is a decision of the tribunal. According to the learned counsel the plaint read as a whole indicates that the plaintiff wanted enforcement of both Scheme "A" and Scheme "B" and thus the relief sought for is amalgam of both these Schemes favourable to the plaintiff- State and not necessarily the implementation of Scheme "B" and this has purposely been done as the plaintiff was well aware of the fact that the said Scheme "B" does not form a part of the decision. In this connection, the learned counsel relied upon the assertions made in paragraph 2(b) of the plaint, which really deals with Scheme "A" and not Scheme "B". He also relied upon the assertions made in paragraph 6(1) wherein the plaintiff itself has averred

that the tribunal made Scheme "A" as part of its final decision and left the Scheme "B" to the good sense of the parties or to the wisdom of Parliament. Mr. Parasaran also with reference to assertion made in paragraph 21 of the plaint contends that according to the plaintiff the tribunal merely expressed hope for getting the consent of all the States for adoption of Scheme "B" and, therefore, it was not a decision of the tribunal. Mr. Parasaran also strongly relied upon the assertions made in paragraph 23 to the effect "as submitted earlier, the Tribunal, while adjudicating the claims, has declared the rights of basin states in the surplus waters under Scheme "B" *although such scheme was not made part of the decision*" and contends that the aforesaid admission on the part of the plaintiff clinches the matter and Scheme "B" cannot be held to be a decision of the tribunal. In fact Mr. Parasaran submitted that in view of the aforesaid averment in the plaint and in view of the provision contained in Order 12 Rule 6, the suit should be dismissed straight-away. Mr. Parasaran also urged that the plaint itself is merely for sharing excess water as indicated in Scheme "B" having derived the benefits of the mass allocation under Scheme "A" and is thus not a suit for implementation of Scheme "B" as contended by Mr. Nariman, the learned counsel appearing for the plaintiff-State. According to Mr. Parasaran, constitution of a Monitoring Authority like Krishna Valley Authority being the back-bone of Scheme "B" and the tribunal having failed to get the consent of parties to constitute such authority and there being no law by the Parliament under Entry 56 of List I of the Seventh Schedule, at the most it can be said that the tribunal had conceived of a more equitable scheme like Scheme "B" and had given its blue print, but the same cannot partake the character of a decision of the tribunal under Section 5(2) of the Act, so as to make it binding on all parties concerned. According to the learned counsel Mr. Parasaran, it is that adjudication or order made by the tribunal which can be implemented independently of any agreement or law made by Parliament, as in this case the Final Order, containing Scheme "A" which can be held to be the decision of the tribunal and not any observation or order made in the report in course of the proceedings. Mr. Parasaran urged that the tribunal in its Further Report Exhibit PK2 having categorically stated "we do not think it proper that Scheme "B" should be implemented by our order". It is futile to contend that the said Scheme "B" is the decision of the tribunal. Mr. Parasaran further contended that in the report itself, the tribunal having considered the two schemes- Scheme "A" and Scheme "B" and under Scheme "B", the moment the scheme is given effect to, the Scheme "A" ceases to be operative and effective and the tribunal having ultimately opted to make Scheme "A" as Final Order, which could be implemented, it is not possible

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A to contend that Scheme "B" evolved by the tribunal is also a decision of the tribunal.

Mr. Andhyarujina, the learned senior counsel, appearing for the State of Maharashtra, Defendant No. 2 supported the stand of the State of Andhra Pradesh and contended that Scheme "B" cannot be held to be a decision of the tribunal. According to the learned counsel, what can be held to be a decision of the tribunal is what the tribunal himself considered to have binding effect and in this view of the matter, the tribunal having itself said that it is Scheme "A" which formed the part of the Final Order and which can be implemented, immediately on being notified, it is abundantly clear that the tribunal did not think Scheme "B" to be its 'decision' though in course of proceedings, it might have discussed about the feasibility of such a scheme and its efficacy. Mr. Andhyarujina, the learned senior counsel, ultimately urged that it is only the Final Order of the tribunal, containing Scheme "A", which can be held to be the decision of the tribunal.

Mr. Salve, the learned Solicitor General, appearing for the Union Government, reiterated the stand taken by the two other defendant States and submitted that the tribunal itself has never thought Scheme "B" to be its decision and the expression "decision" has to be interpreted with reference to the water dispute defined in Section 2(c), the complaints and reference made under Section 3 and the adjudication provided for in Section 5. A combined reading of the aforesaid provisions of the Act, according to Mr. Salve, indicates that it is that adjudication of the tribunal which is capable of being implemented on its own, which can be held to be the decision of the tribunal, binding on the parties and not observations made or consideration of several proposed schemes by the tribunal itself, in course of the proceedings. According to Mr. Salve, the tribunal was quite conscious of the fact that it is not possible to implement Scheme "B" unless and until a Monitoring Authority could be provided for the same and such authority could be provided for either by the consent of the parties or by legislation made by the Parliament and since both were lacking, the tribunal advisedly, did not make it a part of the Final Order to be its decision and in this view of the matter, Scheme "B" evolved by the tribunal cannot be held to be a decision.

Before examining the rival stand of the parties on this contentious issues in the light of the pleadings as well as the documents referred to, it may be necessary to indicate the scheme of the Act. The Inter-State Water Disputes

Act, 1956, referred to as 'the Act' has been enacted by the Parliament in the seventh year of the republic as the law providing for adjudication of any dispute or complaint with respect to the use, distribution or control of the water in any inter-State river, as envisaged under Article 262(1) of the Constitution. Section 2(c) defines water dispute and Section 3 of the Act provides under what conditions, a State can make a complaint and request to the Central Government for referring a dispute to a tribunal for adjudication. Section 4 provides for constitution of the tribunal by the Central Government and Section 5 provides for adjudication of the dispute by the tribunal. Section 5(2) empowers the tribunal to investigate the matters referred to it and then forward to the Central Government, a report, setting out the facts as found by it and giving its decision of the matters referred to it. Thus the report required to be given by the tribunal after investigation under Section 5(2) of the Act must contain the facts as found by it as well as the decision of the matters referred to the tribunal. A distinction, therefore, has been drawn by the legislature on the two expressions used in Section 5(2) of the Act, namely 'facts as found' and 'decision of the matters referred to'. The crucial question which has to be answered in the aforesaid three issues, which have been taken together is whether Scheme "B" considered and evolved by the tribunal would come within the expression 'facts as found' or the 'decision of tribunal on the matter referred to'. It is in this context, what was the 'matter referred to the tribunal' assumes great significance. The Government of India in its letter dated 10th of April, 1969 made a reference to the tribunal for adjudication of the water dispute regarding the inter-State river Krishna and the river valley thereof emerging from the letters of the Mysore Government dated the 29th January, 1962 and the 8th July, 1968, the letters of the Maharashtra Government dated the 11th June, 1963 and the 26th August, 1968 and the letters of the Andhra Pradesh Government dated the 21st April, 1968 and the 21st January, 1969. The tribunal in Chapter II of its report, summarised the complaints of each of the Governments and formulated the point of dispute for adjudication to the effect "that the parties want an equitable apportionment of the Krishna waters for their beneficial uses, so that they may know the limits within which each can operate and may plan their water resources development accordingly" and it further stated as to how and on what basis the equitable apportionment should be made. On the basis of the rival stand of the parties, the tribunal framed issues and sub-issues on 14th of April, 1971 and for the present discussion, we are concerned with issue No. II, as Issue No. 1 relates to the question whether there was any concluded agreement regarding allocation of the waters of river Krishna and whether such agreement was enforceable and was still subsisting

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A and operative upon the States concerned. Issue No. II framed by the tribunal is to the effect that what directions if any, should be given for the equitable apportionment of the beneficial use of the waters of Krishna river and the river valley. Under the said issue, there are as many as eight sub-issues and sub-issue 8 was to the effect "what machinery if any, should be set up to make available and regulate the allocation of water, if any, to the states concerned or otherwise to implement the decision of the tribunal". This Issue No. II has been discussed in Chapter IX of the Report dated 24th of December, 1973, which has been marked as Exhibit PK1 and one of the sub-issue namely, on what basis should the available water be determined?, the tribunal considered at length the several data and finally an agreement between the parties was arrived at that 75% dependable yield of the river Krishna upto Vijaywada is 2060 TMC, which has been indicated in Chapter IX itself. The tribunal then proceeds with embarking upon the difficult and delicate task of division of waters of river Krishna and what directions ultimately could be given for equitable apportionment of the beneficial use of the waters of Krishna river and the river valley. In Chapter XIV of the report dated 24th of December, 1973, Exh.PK1, the tribunal ultimately summarised as to how each State claimed equitable share in the dependable flow and also in the water in excess over the dependable flow. It also considered the evidence of expert witnesses, adduced by the parties, indicating the advantage that will accrue by carry over storage, made in the Krishna basin. The tribunal also thought over the matter as to whether the scheme for division of water should endure forever or there should be a room for review and ultimately was of the opinion that a review and modification of the allocation may become necessary to keep pace with the changing conditions. It also provided for a review of the order of the tribunal at any time after 31st of May, 2000. After making such general observations, it proceeded to consider the scheme of division of water and it did notice the agreed views of all the three states, submitted on 4th of May, 1973, indicating that there should be a mass allocation of utilisable dependable flow at 75% and there should be allocation on percentage basis of water in surplus as well as deficit years with certain restrictions with regard to the use to be decided by the tribunal and, there should be a joint control Body to give effect to the decision of the tribunal. The tribunal indicated the merits and demerits of the schemes given by each of the states consisted of two parts and part II related to the constitution and powers of the Monitoring Authority, called the Krishna Valley Authority and though initially, the counsel for the parties had agreed upon the constitution of Krishna Valley Authority, but after the matter was heard again, the State of Andhra Pradesh categorically

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indicated that no consent can be given to set up Krishna Valley Authority. After noting the rival contentions of the parties on the question of constituting an authority and the best tradition as to how the Federal Structure functions and how the states are bound to obey the law made by the Parliament, it also came to the finding that the matter of setting up of an authority becomes the back-bone of the decision and an integral part of it and unless that can be given effect to, it will be of no use to have a decision as envisaged under Scheme "B" for equitable allocation of water amongst the three riparian states. The tribunal in no uncertain terms, came to the conclusion that it will not be proper to set up any authority without the consent of the parties, and, therefore, the so-called document Exh.MRK-340 provided no assistance notwithstanding the fact that it was agreed to by the counsel of all the three states on 4th of May, 1973. Having failed in its attempt to reach a decision, containing the principle of allocation, envisaged under the agreed document Exh. MRK 340, the tribunal thought it appropriate to evolve the two schemes called Scheme "A" and Scheme "B" and at Page 166 of Exh. PK1, the tribunal itself made it crystal clear that Scheme "A" will come in operation on the date of publication of the decision of the tribunal in the Official Gazette under Section 6 of the Inter-State Water Disputes Act, 1956, and Scheme "B" may be brought into operation in case the States themselves constitute an Inter-State Administrative Authority, which may be called the Krishna Valley Authority by agreement between them or in case, such an authority is constituted by legislation made by Parliament. The aforesaid conclusion of the tribunal, unequivocally indicates that it is Scheme "A" alone which has been made the decision of the tribunal and the tribunal nomenclatured the same to be the Final Order, which order in its turn has been notified in the Official Gazette by the Central Government under Section 6 of the Act. At Page 182 of the Report Exh. PK1, the tribunal itself has given a complete picture to facilitate further discussion by setting out different clauses of the Final Order which according to the tribunal embodies all the provisions on the subject of apportionment of the water of river Krishna between the states of Maharashtra, Mysore and Andhra Pradesh and then it is stated "*these provisions of the Final Order cover all matters mentioned in Issue No. II and its sub-issues and issue no. II, is, therefore, decided as provided in these clauses of the Final Order.*" After deciding issue no. II, as aforesaid, and thereafter deciding issue IV(B) in the next paragraph, the tribunal then proceeds to examine the efficacy of Scheme "B". It is no doubt true that Scheme "B" is more beneficial and provides for more beneficial and fuller utilisation of waters of river Krishna but the tribunal itself has not considered the same to be a part of its decision, which could be

A implemented by a notification under Section 6 of the Act. It may be noticed at this stage that in Cauvery Water Dispute Case (1993 (Suppl.) 1 SCC 96) while considering the question as to what formed the decision of the Tribunal under Section 5(2) of the Act this Court examined the interim order which had been passed by the Tribunal and came to the conclusion that if the order is not meant to be merely declaratory in nature but is meant to be implemented B and given effect to by the parties, then it would constitute a decision within a meaning of Section 5(2) and is required to be published by the Central government under Section 6 of the Act. Applying the aforesaid ratio to the case in hand and in view of the unequivocal statement made by the Tribunal while deciding Issue No.II to the effect that Issue No. II and its sub-issues are C decided as per the clauses of the final order which contains Scheme 'A', it is difficult to sustain the argument of Mr. Nariman, appearing for the plaintiff-State that Scheme 'B' also is a decision of the Tribunal. As has been indicated earlier that in course of the proceedings before the Tribunal all the party States, no doubt, have consented to the points of dispute to be resolved by the D Tribunal as per Exhibit MRK 340. But the Tribunal itself records the finding that on account of non-agreement between the parties it has not been possible to reach a decision on the principle of allocation agreed to under MRK 340 and, therefore, the Tribunal thought it fit to evolve Scheme 'A' which could be implemented on its own, the same being notified under Section 6 of the Act. In terms of the judgment of this Court in Cauvery Water Disputes case, E Scheme 'B' had not been meant to be implemented and given effect to by the parties to the dispute and as such cannot be a decision of the Tribunal under Section 5(2) of the Act. It can be held to be *'facts found'* in the report submitted. The Tribunal in considering different proposals submitted by the States came to hold "unless a joint control body or inter State authority was F established, it would be difficult to divide the waters of river Krishna between the parties in every water year on the lines suggested by the parties." (at page 161 Ex.PK-1).

The Tribunal also recorded a finding:

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"It is not possible for us to take the view that we can infer the consent of the parties from Ex.MRK-340 filed on 4th May, 1973."

In its further Report after answering the references made to it under Section 5(3) of the Act, in Exhibit PK-2 the Tribunal negatived the contentions H of the State of Karnataka that allocation of water under Scheme "A" is not the

Scheme for the division of water in accordance with the provisions of the Act. In said PK-2 at page 24 the Tribunal did observe:

> "The apportionment of water of the inter-State river Krishna must be adapted to the peculiar characteristics of the river system. We may also point out that until 1971-72 less than 1000 T.M.C. was utilised in the entire Krishna basin, and until the entire dependable supply of 2060 TMC is fully utilised, the complaint regarding the apportionment of the remaining water is unrealistic."

In answering Clarification No.III filed by the State of Karnataka, requiring the Tribunal to give direction for implementation of Scheme "B" the Tribunal, no doubt, drew up a complete Scheme "B' and came to the conclusion that Scheme "B' provides for a fuller and better utilisation of the Waters of river Krishna, but hasten to add "We cannot make Scheme "B" part of our final order as requested by the learned counsel for the Government of India because the final order should contain only such provisions as may be implemented independently of any agreement or law made by Parliament." (see Ex.PK 2 at page 26)

In its further report Ex.. PK-2 after considering the question of abolition of Tungbhadra Board the Tribunal held :

> "In these circumstances we do not think it proper that Scheme 'B' should be implemented by our order."

The aforesaid findings of the Tribunal both in the Original report as well as the further report unequivocally indicate that the Tribunal never considered Scheme 'B' to form a part of its decision for being implemented even though there cannot be any doubt about the efficacy of the Scheme in question. A water dispute having arisen between the three riparian States in relation to sharing of water of river Krishna and the said dispute having been referred to the Tribunal for its adjudication and the Tribunal having investigated the matters referred to it and having submitted its report containing the facts found as well as its decision, it is that decision which conclusively decides the dispute referred and is capable of being implemented on its own can be said to be the decision of the Tribunal under Section 5(2). In the case in hand the Tribunal itself being of the opinion that it is unable to implement Scheme 'B' by its own order and having apportioned the water of river Krishna as per

A Scheme 'A', the said Scheme 'B' cannot be held to be a decision of the Tribunal.

It is also true, as contended by Mr. Nariman that the Tribunal did entertain clarification sought for by the State of Karnataka under Section 5(3) of the Act to some of the clauses in Scheme 'B' and a party is entitled to B invoke the jurisdiction of the Tribunal under Section 5(3) only in respect of a decision but that by itself, in our opinion, will not clothe Scheme 'B' with the character of a decision of the Tribunal. Mr. Nariman may be right in his submission that there has been an adjudication by the Tribunal in evolving Scheme 'B' indicating the manner in which the water of said river Krishna C could be shared by three States in surplus and deficit water year, but every adjudication made by the Tribunal cannot be held to be a decision within the meaning of Section 5(2) unless such adjudication is capable of being implemented on its own and applying the aforesaid test Scheme 'B' not being capable of being implemented on its own so long as the back bone of the D Scheme, namely, the constitution of Monitoring Authority is not agreed to, the said Scheme cannot be held to be a decision within the meaning of Section 5(2) of the Act. In the aforesaid premises, we answer aforesaid three issues by holding that the Scheme 'B' framed by the Tribunal is not the decision of the Tribunal and as such, was not required to be notified under Section 6 and, consequently cannot be enforced at the behest of the plaintiff. The issues are E accordingly answered against the plaintiff.

Though we have come to the aforesaid conclusion yet we think it appropriate to notice that the disputes for sharing waters of an inter-State river are not easy to be solved. A Tribunal presided over by a judge of this Court F took several years in formulating its conclusion. For arriving at its conclusion the Tribunal has attempted several negotiations between the rival States and also has taken into account the experts' evidence adduced by the parties. In evolving the two Schemes – Scheme 'A' and Scheme 'B' it has also taken into account several schemes produced by each of the State. The Tribunal also thought while evolving Scheme 'B' that though it cannot be implemented as G it was unable to constitute the Monitoring Authority on account of lack of consent between the parties yet it placed on record the said Scheme 'B' which according to the Tribunal is a better one for fuller utilisation of water resources of Krishna basin amongst the three States. While placing Scheme 'B' in its Report the idea was that the labour of the Tribunal in evolving the Scheme H would not be totally lost and that is why it hoped that the parties may agree

for constituting an authority or if they fail to agree the Parliament also could make a law but unfortunately, neither of the two contingencies has happened. Though Scheme 'B' has been held by us not to be a decision of the Tribunal and as such, is not capable of being implemented by a mandatory injunction from this Court yet we have least hesitation to agree with the findings of the Tribunal itself that said Scheme 'B' provides for a fuller and better utilization of the water resources in river Krishna and in future if the question of allocation of river Krishna is gone into by any authority then the said authority will certainly look to the Scheme 'B' which had been evolved on the data available then and acceptability of the same will be duly considered.

We may, however, hasten to add that it will be for the appropriate authority to be entrusted with the task of resolving the long simmering water dispute in Krishna basin between the three riparian States to come to its own decision on the basis of the data placed before it by the contesting States. Scheme-B formulated by the earlier Tribunal can only serve as a useful blueprint to this authority, though it may not strictly be binding on it. Our aforesaid observations on Scheme-B be understood in that light. Needless to mention that in course of proceedings before the Tribunal not only the three riparian States had requested the Tribunal by submitting a document Ex. MRK – 340 on 4th May, 1973, indicating the principles of allocation signed by three counsel appearing for the three States which, however, was not agreed to later on, but also the learned counsel appearing for the Union of India had submitted before the Tribunal when the Tribunal was considering the clarificatory applications filed by different States on 8th May, 1975, to the effect :-

> "The Government of India have examined both Schemes 'B' and 'A'. They feel that Scheme 'B' is better and easier to implement than Scheme 'A'. If Scheme 'B' comes as part of the final order of this Hon'ble Tribunal, the Government of India will take necessary steps for putting it into operation. Scheme 'B' may be put as part of the final order in the manner as the Hon'ble Tribunal feels fit. We would like to have a complete scheme formulated by this Hon'ble Tribunal."

This really indicates how the Union Govenment was anxious to have an order of the Tribunal to make Scheme 'B', a part of its decision though ultimately for the reasons already indicated the Tribunal did not accede to the same.

A *Issue No. 1.*

The next important issue is Issue No.1 which raises the question as to the maintainability of the suit in view of the bar provided under Article 262 (2) of the Constitution read with Section 11 of Inter-State Water Disputes Act. Learned Solicitor General Mr. Salve, appearing for the Union of India in fact
B piloted this issue which was, of course, supported by Mr. Parasaran appearing for the State of Andhra Pradesh. According to Mr. Salve the relief sought for by the plaintiff-State is itself a water dispute under the Act, and therefore, the suit is not maintainable in view of Section 11 of the Act. Referring to different averments made in the plaint learned Solicitor General contends that under the
C plaint the plaintiff really ask for implementation of the allocation already made under Scheme 'A' in respect of 2060 TMC at 75% dependability and the sharing of surplus as evolved under Scheme 'B' and as such the prayer tantamounts to have a new Scheme altogether not evolved by the Tribunal itself and, consequently, a fresh water dispute and therefore, such a dispute
D cannot be entertained by this Court under Article 131 of the Constitution, the same being barred under Section 11 of the Act. Learned Solicitor General elaborated his argument with reference to the constitutional scheme and even went to the extent of contending that in a given case even the prayer for implementation of an Award of the Tribunal may become a water dispute under Section 2(c) of the Act and the moment it becomes a water dispute this
E Court will have no jurisdiction to entertain a suit under Article 131 of the Constitution. Learned Solicitor General also referred to issues 4 and 5 formulated in this proceeding and contended that the very issues indicate a water dispute has arisen and consequently suit will not lie. According to Mr. Salve, even in a suit for implementation of the decision of a tribunal, if issues
F arise, which would be a water dispute under Section 2(c)(i) of the Act or fall under Section 3(b) or 3(c) of the Act, then the jurisdiction of the Court under Article 131 must be held to be barred and in the case in hand, in fact, the relief sought for by the plaintiff-State tantamounts to a fresh water dispute. Learned Solicitor General contends that the language of Section 2(c) read with Section 3 is wide enough to enable any riparian State to raise a dispute in relation to
G the use, control or distribution of the waters of an Inter-State river and the machinery for resolution of such a dispute is referable to Article 262 of the Constitution, which provision manifests an intent to insulate the Courts from disputes which may assume political overtones and applying the test to the case in hand, the conclusion is irresistible that this Court will not be entitled
H to entertain a suit under Article 131 of the Constitution.

Mr. Parasaran appearing for the State of Andhra Pradesh supported the argument advanced by Mr. Salve, the learned Solicitor General and contended, that the suit being one not merely for implementation of Scheme 'B', as contended by the plaintiff, but an amalgam of both the Schemes, sharing of 2060 TMC under Scheme 'A' and sharing of surplus above 2060 TMC as per Scheme 'B' it is obviously an innovation which the Tribunal has itself not thought of and more appropriately a fresh water dispute within the meaning of Section 2(c) of the Act and consequently a suit under Article 131 would not lie. Mr. Nariman appearing for the plaintiff-State on the other hand contended, that a suit filed under Article 131 is not exactly a suit filed in ordinary Civil Court. The pleadings of the parties cannot be construed in a pedantic manner and reading the plaint as a whole the conclusion is irresistible that the plaintiff has made out a case to the effect that Scheme 'B' evolved by the Tribunal is also the decision of the Tribunal, though it could not be implemented in the absence of Constitution of Monitoring Authority and taking into account the time and energy spent by the Tribunal in evolving such a beneficial Scheme for better and fuller utilisation of the water resources of River Krishna, this Court should issue appropriate direction for implementation of the said Scheme 'B'. According to the learned counsel the dispute relating to sharing of water of River Krishna having been adjudicated by the Tribunal and two Schemes having been evolved for that purpose and the relief being for implementation of Scheme 'B', it is essentially a suit for implementation of an adjudicated dispute and no longer forms a dispute under Section 2(c) of the Act, as contended by the learned Solicitor General. In this view of the matter the bar under Section 11 of the Act cannot be attracted. Before examining the rival stand of the parties it may be stated at the outset that the question of maintainability has to be decided upon the averments made by the plaintiffs and the relief sought for and taking the totality of the same and not by spinning up one paragraph of the plaint and then deciding the matter. In interpreting the scope of Article 131 of the Constitution, in the case of *State of Rajasthan* v. *Union of India*, [1978] 1 SCR 1 Chandrachud, J., as he then was, held that the requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within Article 131. The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. In the very same decision Bhagwati, J., as he then was, analysing the provisions of Article 131 of the Constitution came to hold that there are two limitations in regard to the

A nature of the suit whether can be entertained by the Supreme Court under the Article. One is in regard to parties and the other is in regard to the subject matter. In the present case, so far as parties are concerned, it is covered by clauses (a) and (c), inasmuch as the grievances of the plaintiff is that an adjudicated decision of the Tribunal in evolving Scheme 'B' was not notified by the Government of India under Section 6 of the Act and, as such, a dispute between the plaintiff and the defendant no. 3 – the Union of India and further it is a dispute between the State of Karnataka and the State of Andhra Pradesh under Clause (c) of Article 131 as the said State of Andhra Pradesh did not agree to the constitution of a Monitoring Authority for implementation of an adjudicated decision of the Tribunal by evolving Scheme 'B'. In the very same decision Bhagwati, J., also further indicated that the Supreme Court would have the power to give whatever reliefs are necessary for enforcement of legal right claimed in the suit if such legal right is established. In *State of Karnataka* v. *Union of India & Anr.*, [1978] 2 SCR 1 this Court again considered the scope of Article 131 of the Constitution. Chandhrachud, J., as he then was, held thus :

> "The jurisdiction conferred on the Supreme Court by Aritcle 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the Code of Civil Procedure for determining whether a suit is maintainable. Article 131 undoubtedly confers 'original jurisdiction' on the Supreme Court and the commonest form of a legal proceeding which is tried by a court in the exercise of its original jurisdiction is a suit. But a constitutional provision, which confers exclusive jurisdiction on this Court to entertain disputes of a certain nature in the exercise of its original jurisdiction, cannot be equated with a provision conferring a right on a civil court to entertain a common suit so as to apply to an original proceeding under Article 131 the canons of a suit which is ordinarily triable under section 15 of the Code of Civil Procedure by a court of the lowest grade competent to try it. Advisedly, the Constitution does not describe the proceeding which may be brought under Article 131 as a 'suit' and significantly, article 131 uses words and phrases not commonly employed for determining the jurisdiction of a court of first instance to entertain and try a suit. It does not speak of a 'cause of action', an expression of known and definite legal import in the world of witness actions. Instead, it employs the word 'dispute', which is no part of the elliptical jargon of law. But above all, Article 131 which

in a manner of speaking is a self-contained code on matters falling within its purview, provides expressly for the condition subject to which an action can lie under it. That condition is expressed by the clause : "if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". By the very terms of the article, therefore, the sole condition which is required to be satisfied for invoking the original jurisdiction of this Court is that the dispute between the parties referred to in clauses (a) to (c) must involve a question on which the existence or extent of a legal right depends.

The quintessence of Article 131 is that there has to be a dispute between the parties regarding a question on which the existence or extent of a legal right depends. A challenge by the State Government to the authority of the Central Government to appoint a Commission of Inquiry clearly involves a question on which the existence or extent of the legal right of the Central Government to appoint the Commission of Inquiry depends and that is enough to sustain the proceeding brought by the State under Article 131 of the Constitution. Far from its being a case of the "omission of the obvious". Justifying the reading of words into Article 131 which are not there, I consider that the Constitution has purposefully conferred on this Court a jurisdiction which is untrammelled by considerations which fetter the jurisdiction of a court of first instance, which entertains and tries suits of a civil nature. The very nature of the disputes arising under Article 131 is different, both in form and substance, from the nature of claims which require adjudication in ordinary suits."

The learned judge had also further observed :

"A proceeding under Article 131 stands in sharp contrast with an ordinary civil suit. The competition in such a proceeding is between two or more governments – either the one or the other possesses the constitution power to act."

Bhagwati, J. agreeing with Chandrachud, J. had also observed thus :

"The only requirement necessary for attracting the applicability of Article 131 is that the dispute must be one involving any question "on which the existence or extent of a legal right" depends, irrespective

A whether the legal right is claimed by one party or the other and it is not necessary that some legal right of the plaintiff should be infringed before a suit can be brought under that article."

Kailasam, J. and Beg, J. agreed with the conclusions arrived at by Chandrachud, J. and Bhagwati, J.

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The eminent Jurist Shri H.M. Seervai, in his book on "Constitutional Law of India", dealing with the scope of Article 131 of the Constitution states : "when a Court is given exclusive jurisdiction in respect of a dispute between parties, it is reasonable to hold that the Court has power to resolve the whole dispute, including the enforcement of its decrees or orders, especially when provision has been made for such enforcement. The words 'if and in so far as the dispute involves any question (whether of law or fact) on which the existence of a legal right depends' are meant to emphasize the fact that the dispute must be one relating to legal rights, and not a dispute on the political plane not based on a legal right".

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Article 131 of the Constitution subject to the other provisions of the Constitution confers Original Jurisdiction on the Supreme Court over a dispute between the Central Government and one or more States or between two or more States subject to the condition that dispute involves any question whether of law or fact on which the existence or extent of a legal right depends. Article 262(1) of the Constitution authorises the Parliament to make law for adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley. Sub-Article 2 of Article 262 also authorises the Parliament to provide by law excluding the jurisdiction of the Supreme Court or any other Court in respect of a dispute or complaint as is referred to in Clause (1). Thus Article 131 being subject to the other provisions of the Constitution including Article 262, if Parliament has made any law for adjudication of any water dispute or a dispute relating to distribution or control of water in any inter-State river or river valley, then such a dispute cannot be raised before the Supreme Court under Article 131, even if the dispute be one between the Centre or the State or between the two States. In exercise of Constitutional power under Article 262(1), the Parliament, in fact has enacted the law called the Inter-State Water Disputes Act, 1956 and Section 11 of the said Act provides that neither the Supreme Court nor any other Court shall have jurisdiction in respect of any water dispute which could be referred to a tribunal under the Act. This being the position, what is necessary to be found out is whether the assertions made in the plaint

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filed by the State of Karnataka and the relief sought for, by any stretch of imagination can be held to be a water dispute, which could be referred to the tribunal, so as to oust the jurisdiction of the Supreme Court under Article 131. On examining the averments made in the plaint and the relief sought for, by the plaintiff-State, we are of the considered opinion that what really the State of Karnataka wants is a direction from the Supreme Court to the Union Government to notify the Scheme "B" evolved by the tribunal and for a direction to the Union Government to constitute an authority under Section 6-A of the Act, which was inserted into the Act by amendment, though the said provision was not there on the date, the tribunal submitted its report and the decision. The plaintiff asserts in the plaint, that the dispute between all the three riparian States in relation to sharing of the water of river Krishna was finally adjudicated upon by the tribunal by evolving the two schemes and under Scheme "A", mass allocation in favour of three States being made in respect of the availability of water in the river basin at 75% dependability, under Scheme "B" allocation has been made both in respect of surplus as well as water in the deficit water year and according to the plaintiff, the entire water dispute which had been referred to the tribunal can be said to have been resolved only when Scheme "B" comes into operation. The said Scheme "B" not having been treated as the decision of the tribunal by the Union Government, and therefore, not being notified under Section 6 of the Act, the rights of the State of Karnataka flowing from implementation of said Scheme "B" is being infringed and the State is not in a position to have its future plan for utilisation of any surplus water in the river basin, and therefore, the appropriate authorities should be mandatorily called upon for notifying the said scheme and for constitution of the Monitoring Authority. This being the nature of the assertions made in the plaint and the relief sought for, it is difficult for us to hold that it constitutes a dispute within the meaning of Section 2(c) of the Act, and therefore, the jurisdiction of this Court gets barred under Article 262 read with Section 11 of the Act. In fact, the assertions made in the plaint and the relief sought for can be held to be a claim on the basis of an adjudicated dispute, the enforcement whereof is sought for by filing a suit under Article 131 of the Constitution. Such a suit cannot be held to be barred under Article 262 of the Constitution read with Section 11 of the Act. It is true, we have held while deciding issues 4, 5 and 7 that Scheme " B" evolved by the tribunal is not the decision of the tribunal under Section 5(2) of the Act but such conclusion of ours, would not necessarily lead to the conclusion that the suit itself gets barred under Section 11 of the Act, as contended by the learned Solicitor General. The question whether the jurisdic-

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A tion of this Court gets barred in view of Section 11 of the Act has to be answered by examining the assertions in the plaint and the relief sought for and by doing so, we are not in a position to hold that the assertions in the plaint together with the relief sought for, constitute a dispute under Section 2(c) of the Act, thereby ousting the jurisdiction of this Court under Section 11. We, therefore, hold this issue of maintainability in favour of the plaintiff and against the defendants.

ISSUE NO. 6

The aforesaid issue has been struck on the assertions made in the written statement of the State of Maharashtra. It has been averred in the written statement of the State of Maharashtra that Scheme "A" having been implemented from the date of its notification in the Official Gazette under Section 6 and being in operation for 21 years and parties having worked out their equities on the basis of said scheme on the mass allocation of water in river Krishna, the question of implementing Scheme "B" at this stage does not arise even assuming that Scheme "B" is held to be a decision of the tribunal. According to the State of Maharashtra to make Scheme "B" effective, it is necessary that all the States should have their reservoirs in the basin at the places to be indicated by the so-called Monitoring Authority, supposed to have control under the very scheme. The same not having been possible, any direction after a lapse of 21 years to implement Scheme "B" would be grossly prejudicial to the State of Maharashtra. The further stand taken in the written statement is that Scheme "A" itself having been implemented all the years and having provided for a review after 31st of May, 2000, which is fast approaching and the State of Karnataka also at one point of time having taken the stand that the Scheme "B" should not be implemented, it would not be appropriate for this Court to issue any direction for implementation of the said Scheme "B". In course of arguments, Mr. Andhyarujina, the learned senior counsel, appearing for the State of Maharashtra, emphasised the fact that even as late as 30th of August, 1993, the Secretary to the Government, Irrigation Department, Karnataka, had intimated to the Secretary to the Government, Ministry of Water Resources, Government of India as per Exh. PK-94 that the Karnataka Government is of the firm opinion that establishment of Krishna Valley Authority is not called for, since even without reference to Scheme "B", the surplus water can be shared by the parties by mutual agreement. This indicates the stand of the Karnataka Government with regard to the implementation of the so-called Scheme "B" evolved by the tribunal.

Mr. Nariman, appearing for the plaintiff on the other hand contended that the State of Karnataka has all along been keen in requesting for implementation of Scheme "B", though in that letter PK 94, referred to by Mr. Andhyarujina, it has been merely stated that at that point of time it may not be necessary to have the Krishna Valley Authority. According to Mr. Nariman, rights in relation to sharing of water of river Krishna having been crystalised by formulation of both the schemes, that right cannot be negatived merely because it has not been operated for this length of time. Having considered several correspondence between the parties, we find that though initially the State of Karnataka had requested the Union Government for implementation of Scheme "B", thinking the same to be the decision of the tribunal and even though at one point of time the Union itself through its counsel Mr. Seyid Muhammad, had requested the tribunal itself to make Scheme "B" operative but later on each of the states began their water management projects on the basis of the mass allocation made under Scheme "A". Mr. Nariman is right in his submission that the states had no other alternative inasmuch as it was only Scheme "A" which was notified and was made binding between the parties but the fact remains that having planned their respective projects on the basis of mass allocation made by the tribunal, the State of Karnataka did think in the year 1993 in response to the letter from the Union Government for constitution of the Krishna Valley Authority that the State does not think it proper to have the Authority at that point of time. Thus all the three states have made their respective planning for utilisation of the allocated water in their respective share by the tribunal under Scheme "A" which as until today continues to be effective but for the apprehension and dispute between the State of Andhra Pradesh and Karnataka, when Karnataka started construction of dam at Almatti and Andhra Pradesh went on with large projects like Telugu Ganga, Nagarjunasagar and others. In the matter of sharing of waters of inter-State river when the tribunal constituted under the Inter-State Water Disputes Act, evolved a scheme of mass allocation as under Scheme "A" and that scheme has remained operative for all these years and could be reviewed at any time after 31st of May, 2000 even as per the decision of the tribunal itself, the contention of the State of Maharashtra that direction to implement scheme "B" at this length of time should not be given effect to is of considerable substance. In a dispute of the present nature when the Court is in cession of the matter before issuing any direction, the Court is not examining merely the rights of the parties, if any, flowing from any earlier order of tribunal but also the question of the equitability and the question of the efficaciousness of any such direction. It is in this context, the submission of Mr. Parasaran, the

learned senior counsel, appearing for the State of Andhra Pradesh to the effect that a tested scheme like Scheme "A" which has remained operative for all these years should not be given a go-bye, abruptly by directly implementation of Scheme "B", particularly, when it is an admitted fact that not only the back-bone of said Scheme "B", the Krishna Valley Authority, has not been constituted but also the States themselves have not been able to build-up their reservoirs for storage of surplus water, which is also a part of Scheme "B" itself. We, however need not further delve into this matter in view of our conclusion earlier that Scheme "B" is not a decision of the tribunal and as such the Court will not be justified in issuing any direction in implementation of the said scheme. This issue is answered accordingly.

ISSUE NOS. 10 AND 11.

These two issues are inter-linked and, therefore are taken up together for consideration. The plaintiff's stand in this respect is that while making mass allocation in favour of three States in respect of 2060 TMC of Krishna river, which was found at 75% of dependability and while allocating specified quantity of water in a water year in respect of the three states, the tribunal has also observed that Andhra Pradesh will be at liberty to use in any water year, the remaining water that may be flowing in river Krishna but such liberty will not confer any right whatsoever nor can the State claim any right in respect of any water in excess of the quantity specified namely 800 TMC. The relevant Clause of the Final Order as notified in the Gazette by the Government of India is extracted hereto:

> "(C) The State of Andhra Pradesh will be at liberty to use in any water year the remaining water that may be flowing in the river Krishna but thereby it shall not acquire any right whatsoever to use in any water year nor be deemed to have been allocated in any water year, water of the river Krishna in excess of the quantity specified hereunder:-
>
> (i) as from the water year commencing on the 1st June next after the date of the publication of the decision of the Tribunal in the Official Gazette up to the water year 1982-83.
>
> 800 T.M.C.
>
> (ii) as from the water year 1983-84 up to the water year 1989-90.
>
> 800 T.M.C. plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 T.M.C. or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

(iii) as from the water year 990-91 up to the water year 1997-98
800 T.M.C. plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1982-83, 1983-84 and 1984-85 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water 1968-69 from such projects.

(iv) as from the water year 1998-99 onwards
800 T.M.C. plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 T.M.C. or more annually over the utilisation for such irrigation in the water year 1968-69 from such projects."

But notwithstanding the aforesaid observations made by the tribunal, the State of Andhra Pradesh is going ahead with large-scale water projects for utilisation of all the surplus water, flowing in river basin to pre-empt the upper riparian States like Maharashtra and Karnataka from claiming their share in surplus water in excess of 2060 T.M.C., allocated under Scheme "A". The State of Maharashtra as well as the Union Government also support the aforesaid stand of the State of Karnataka but the State of Andhra Pradesh on the other hand takes the stand that Andhra Pradesh being the lowest riparian State in the river basin and the tribunal having granted the liberty to use the remaining water which may be flowing in river Krishna, there should not be any fetter in exercise of that liberty by the State and the apprehension of the State of Karnataka as well as the State of Maharashtra is unfounded. In the context of the rival stand of the parties, the question that arises for consideration is whether the liberty granted by the tribunal in favour of the lowest riparian State, namely the State of Andhra Pradesh to use the excess water is unfettered and the State can use the same in any manner it likes, or there

A should be some restrictions in such use. At the outset, it may be noticed that in the very clause, while giving liberty to State of Andhra Pradesh to use the remaining water, the tribunal itself has hastened to hold – "but thereby it shall not acquire any right whatsoever to use in any water year nor be deemed to have been allocated in any water year, water of the river Krishna in excess of the quantity specified." The aforesaid direction of the tribunal itself curtails B the so-called liberty granted to the State of Andhra Pradesh but since the tribunal was giving a mass allocation in respect of the three States and unless such liberty is granted in favour of the lowest riparian State, the water would have otherwise entered into the Bay of Bengal and, therefore, it was thought fit that the lowest riparian State could utilise the same, but can never claim C a right by using the excess water. In the context of the expenses involved for such major projects and the national loss, which the country cannot afford to sustain in a Federal Structure like our country, it is the duty of the Central Government to bear this in mind while sanctioning any such major project of the lowest riparian State like Andhra Pradesh. A bare reading of the report of D the tribunal and its decision in the form of a Final Order, which has been notified by the Central Government, unequivocally indicates that the so-called liberty granted to the lowest riparian state does not confer any right beyond the allocable share, in other words, what the lowest riparian state has been granted under the decision of the tribunal is a liberty to utilise the surplus water flowing without creating any right in favour of the State concerned. E Such a liberty, therefore would mean that so long as the mass allocation is in force, the lowest riparian State can certainly utilise any excess water, flowing in the river basin, before it merges into the sea but such user should not be, by way of permanent construction of large-scale projects and water reservoirs, particularly, when the so-called mass allocation under Scheme "A" itself is F liable to be reviewed after 31st of May, 2000, which is fast approaching. The contention of Mr. Parasaran, appearing for the State of Andhra Pradesh, in this regard to the effect that there is no fetter on the manner of user of the surplus water, the liberty having been given, cannot be accepted in such broad basis though it cannot be denied that so long as Scheme "A" is under operation and so long as the two upper riparian States get their share of allocation of water, G the lowest riparian State of Andhra Pradesh can use the excess water flowing down in the river basin. It is true that while granting such liberty, the tribunal has not indicated as to the manner of its user but the same must be read into the moment the other part of the Order is read namely such user will neither confer a right nor can be deemed to have been allocated in favour of the said H lowest riparian State. This being the nature of direction of the tribunal, it is

appropriate for the Central Government to exercise the discretion while granting any scheme or project of the lowest riparian state and bearing in mind, what is really meant by the liberty granted, so that the lowest riparian state should not be allowed to proceed ahead with large-scale water projects for utilisation of the surplus water in excess of the allocated quantity over which, the State has no right. It is the Central Government which has to exercise this discretion while clearing projects of the lowest riparian State and it should be so exercised that there should not be any apprehension in the minds of the upper States that for all times to come, their right of sharing the surplus water would in any manner be endangered. These two issues are answered accordingly.

ISSUE NO. 9

In view of what has been stated by us while answering Issues 10 and 11, this issue, no longer survives for any further consideration and this issue is accordingly answered against the defendant State of Andhra Pradesh.

ISSUE NO. 2

This issue has to be answered on the basis of the assertions made in the plaint as well as the cause of action for filing of the suit. As has been stated earlier, the State of Karnataka being of the opinion that Scheme "B" evolved by the tribunal is also a decision of the tribunal, which unfortunately could not be given effect to, on account of lack of consent of all the States for constituting a Monitoring Authority and having failed in its attempt to get the said scheme implemented by getting a Monitoring Authority constituted, the said state filed the present suit. It is the refusal of the State of Andhra Pradesh to agree to the constitution of an authority, thereby making the scheme un-implementable, which gave the cause of action to file the present suit on the basis of which the suit has been filed and taking into account the fact that the State of Andhra Pradesh has never agreed to the constitution of the Krishna Valley Authority, which was thought to be the back-bone of Scheme "B", it cannot be said that the plaintiff-State has no cause of action for filing the suit. This issue is answered in favour of the plaintiff and against the defendants.

ISSUE NO. 3

The aforesaid issue really does not arise for any further elucidation and discussion inasmuch as it has been held by us that Scheme "B" is not the decision of the tribunal, though the same is mentioned in the report. The relief

A sought for, therefore, in the plaint cannot be held to be contrary to the report as the report submitted by the tribunal did contain both the schemes- Scheme "A" and Scheme "B" but it is certainly contrary to the decision of the tribunal inasmuch as tribunal itself resolved the dispute referred to it by formulating Scheme "A" for distribution of the water on mass allocation basis and which
B according to the tribunal itself is contained in the Final Order of the tribunal. This issue is answered accordingly.

ISSUE NO. 8

The aforesaid issue arises in view of Prayer (c) of the plaint, where-
C under, the plaintiff has prayed that Defendant No. 3 be directed by mandatory order to notify Scheme "B" and make provisions for establishment of Krishna Valley Authority, as contemplated under Section 6(A) of the Inter-State Water Disputes Act. It is the contention of the plaintiff that constitution of the Monitoring Authority under Scheme "B" being the back-bone of the scheme and Section 6(A) having been brought on the Statute book by amendment,
D such authority could be constituted by the Central Government in exercise of powers under Section 6(A) and, therefore, though on the date, the further report of the tribunal was submitted, it would not have been possible for the Union Government to constitute the Monitoring Authority but now after insertion of Section 6(A) of the Act, there is no impediment for exercise of
E that power and, therefore, this Court should issue appropriate directions in that regard. According to Mr. Nariman, the very object of insertion of Section 6(A) of the Act, being the implementation of the decision of the tribunal under the Act, which decision may involve of setting up of a machinery for the purpose, as is indicated in the Statement of Objects and Reasons and in the case in hand, setting up of such authority, not having been agreed to by the parties, nor the
F Parliament having come forward with any legislation under Entry 56 of List I of the Seventh Schedule and at the same time the said Scheme "B" having been evolved for better and fuller utilisation of the water of river Krishna by all the riparian States, this Court should issue necessary mandatory orders, calling upon the Union Government to constitute the authority. According to
G Mr. Nariman, the learned senior counsel for the State of Karnataka, Section 6(A) confers power upon the Central Government and correspondingly, casts a duty on the said Government and if the Statute confers a power coupled with duty, the Court can always compel the authority concerned to perform the said duty, if the same is not performed at all. Mr. Nariman contends that though the tribunal devoted a good deal of its time in evolving Scheme "B" for better
H

and fuller utilisation of the water of river Krishna amongst the three riparian States, but could not make it a part of the Final Order as one of the States did not give consent to the tribunal for constituting the Monitoring Authority, which in fact is said to be the back-bone of the scheme. But to obviate such difficulties when the Parliament itself has come forward, engrafting Section 6(A) on the Statute Book, which confers ample powers on the Central Government to form the authority for implementation of the decision of the tribunal, the Court, if it comes to the conclusion that Scheme "B" is the decision and should be implemented, can issue appropriate directions to the Central Government for constituting the Monitoring Authority. According to Mr. Nariman, Section 6(A)(1) is purely an executive function and does not contain an iota of flavour of subordinate legislation and, therefore, there should be no difficulty for the Court in issuing mandatory injunction. Mr. Parasaran, appearing for the State of Andhra Pradesh, on the other hand contended that the power under Section 6(A) is not executive, but legislative in nature and, therefore, Court would not be justified in issuing a mandamus or mandatory injunction for performance of a legislative function in the same way as the Court cannot call upon the legislature to frame a law. Mr. Parasaran also further argued that sub-section (7) of Section 6(A) contemplates that the scheme framed under Section 6(A) has to be laid before each House of Parliament and it is only after the Parliament ratifies the scheme, will have effect and in the event, the Parliament does not agree for the framing of the Scheme, the same shall not have any effect. This being the position, the Court will not pass a decree which ultimately is capable of being nullified by the Parliament. Mr. Parasaran further argues that Section 6(A) having come into existence in 1980, long after the decision of the tribunal, even if it is held that Scheme "B" is a decision of the tribunal and the performance of duty by the Central Government under Section 6(A) is executive in nature, yet the power cannot be exercised vis-a-vis the decision of the tribunal except those subject matter which would fall within the power related to Entry 56 of List I. According to the learned counsel, the Central Government can establish an authority only if Parliament makes law under Entry 56 of List I and also makes a further declaration as required. Mr. Andhyarujina, the learned senior counsel for the State of Maharashtra, also supported the contention of Mr. Parasaran and submitted that the power under Section 6(A) is essentially a delegated legislative power and, therefore, no court would be justified in issuing mandamus for exercise of such power. This issue really does not require to be answered since question of direction to constitute an authority like Krishna Valley Authority would crop up, only if it is held that Scheme "B" evolved

A by the tribunal is the decision of the tribunal and for its implementation an Authority is required to be constituted. We have already held that Scheme "B" cannot be held to be the decision of the tribunal, while deciding issue Nos. 4, 5 and 7 and in that view of the matter, we are not inclined to examine the contentious issues as to whether the exercise of power by the Central B Government under Section 6(A) is an executive one, as contended by Mr. Nariman or is legislative in nature, as contended by Mr. Parasaran. We, therefore, leave this issue open, not deciding the same.

ISSUE NO. 12

C This issue has been framed at the instance of the State of Maharashtra, in view of the stand taken by the said State that a review having been provided for, in 2000 A.D., the suit filed by the plaintiff is pre-mature. While providing mass allocation in favour of three riparian States on the basis of 2060 T.M.C. of water at 75% dependable flow, the tribunal itself has observed in its D Original Report, which has been marked as Exhibit PK1 that the Order of the tribunal could be reviewed at any time after 31st of May, 2000 and this period is considered reasonable in view of the fact that during the intervening period there will be increasing demands for water for irrigation and other purposes in the Krishna basin which may have to be examined in the light of the fresh data that may be available and further in view of the stupendous advance in E the technology in the matter of conservation of water and its uses and also for other reasons. But the aforesaid review which has been indicated in the Order of the tribunal is in relation to the allocation made under Scheme "A" and has nothing to do with Scheme "B". Since plaintiff-State has filed the suit on the assumption that Scheme "B" is the decision of the tribunal and should be F implemented by a mandatory order of the Court, such a suit cannot be held to be pre-mature on the ground that a review has been provided for after 2000A.D. This issue is, therefore, answered in favour of the plaintiff and against the defendants.

G *ISSUE NO. 13*

In the context of the prayer made in the plaint as well as the basis of the said prayer and in view of our findings on Issues 3, 4 and 7, question of granting relief sought for by the plaintiff State does not arise. But at the same time this being a suit under Article 131 of the Constitution, and in view of the H nature of disputes raised by the parties and in view of our discussion in the

judgment relating to Scheme 'B' evolved by the Tribunal, we think it appropriate to observe that in the event any of the riparian State approaches the Central Government, the Central Government would do well in constituting a Tribunal which Tribunal can go into the entire gamut of disputes and in the said proceedings the parties can certainly place the datas and materials on the basis of which Bacchawat Tribunal had evolved the two Schemes for efficacious allocation of water in river Krishna. It will also be open for the parties to place fresh datas on the basis of improved method of gauging even for finding out the availability of water in Krishna basin. In fact the learned Solicitor General, fairly stated that in the event any of the riparian States approaches the Central Government, it would not hesitate to discharge its statutory obligation for constitution of a Tribunal and that is the only solution at this juncture.

The suit is accordingly dismissed with these observations. There would, however, be no order as to costs.

PATTANAIK, J. The State of Andhra Pradesh has filed the suit under Article 131 of the Constitution of India, impleading the State of Karnataka, Union of India and State of Maharashtra as party defendants, seeking relief of declaration and mandatory injunction on the allegation that the State of Karnataka, in particular has made gross violations of the decision of Krishna Water Disputes Tribunal and such violations have adversely affected the residents of the State of Andhra Pradesh. The relief sought for in the suit are as under:

> "(a) declare that the report /decision dated 24.12.1973 and the further report/decision dated 27.5.1976 of the Krishna Water Disputes Tribunal (KWDT) in their entirety are binding upon the three riparian States of Maharashtra, Karnataka and Andhra Pradesh and also the Union of India; (b) declare that the riparian States are duty bound to fully disclose to each other and also to the Union of India all particulars of all projects undertaken or proposed after December, 1973 and May, 1976 and to direct the defendants to ensure that execution thereof are in conformity with and do not conflict with or violate the decisions of the KWDT and they do not adversely affect the rights of the other riparian States; (c) declare that the party States are entitled to utilise not more than the quantity of water which is allocated or permitted by the decisions of the KWDT for the

respective projects of the respective party States before the Tribunal; and that any variation in either storage or utilisation of the waters by each such state in respect of each of such projects could only be with the prior consent or concurrence of the other riparian States; (d) declare that all the projects executed and/or which are in the process of execution by the State of Karnataka which are not in conformity with and conflict with or violate the decisions of the KWDT, as illegal and unauthorised.

(e) declare that approvals / sanctions / clearances / in-principle clearances granted by the Union of India on or after KWDT decisions on 24.12.1973 and on 27.5.1976 in respect of schemes / projects / undertaken by the Government of Karnataka are invalid and direct the Union Government to review / reconsider all such schemes / projects proposed / undertaken by Karnataka, afresh, after obtaining the views thereon of the other riparian States;

(f) declare that the State of Karnataka and Maharashtra shall not be entitled to claim any rights preferential or otherwise in respect of storage, control and use of waters of the inter- State river Krishna in respect of the schemes /projects not authorised by the decision of the KWDT; (g) declare that the Union Government is duty bound to consult all the riparian States of Maharashtra, Karnataka and Andhra Pradesh before according any approvals / sanctions / clearances / in-principle clearances to any schemes / projects proposed / undertaken by any of the riparian States on the inter-State river Krishna and direct the Union Government to act in terms of the said declaration; (h) grant a mandatory injunction directing the State of Karnataka to undo all its illegal, unauthorised actions regarding projects/ schemes and in particular the following projects executed by it contrary to the decisions of KWDT so as to bring them in conformity with the said decisions :

Almatti Dam under UKP

Construction of Canals/Lifts Schemes on Almatti Reservoir.

Upper Krishna Projects in K-2 Sub-basin.

Hippargi Weir/Irrigation Schemes.

Construction of Indi and Rampur lift schemes on Narayanpur reservoir and the canals. A

(i) grant a permanent injunction restraining the State of Karnataka from undertaking, continuing or proceeding with any further construction in respect of the following projects: Almatti Dam under UKP Construction of Canals/Lifts Schemes on Almatti Reservoir B

Upper Krishna Projects in K-2 Sub-basin.

Hippargi Weir/Irrigation Schemes.

Construction of Indi and Rampur lift Schemes on Narayanpur reservoir and the canals. C

(j) appoint a team of experts for making a comprehensive techno-economic evaluation and environmental impact analysis in respect of the following projects and, pending orders of this Hon'ble Court on the report of the team of experts, grant an order of injunction D restraining the Defendant No. 1 - State of Karnataka from proceeding with any further construction in any of the following projects/ schemes: Almatti Dam under UKP Construction of Canals/ Lifts Schemes on Almatti Reservoir.

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Upper Krishna Projects in K-2 Sub-basin.

Hippargi Weir/Irrigation Scheme.

Construction of Indi and Rampur lift schemes on Narayanpur Reservoir and the canals.

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(k) to issue a permanent injunction restraining the Defendant No. 1 State of Karnataka from growing or allowing to grow sugarcane or raising other wet crops in the command areas falling under the projects/schemes within the Upper Krishna Project; (l) pass a decree in terms of prayers (a) to (k); and (m) award costs of the present G proceeding in favour of the Plaintiff;

(n) pass such further decree or decrees or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."

Though there are as many as 14 reliefs sought for as stated above, but H

A essentially the reliefs relate to the construction of Almatti Dam under Upper Krishna Project by the State of Karnataka to a height of 524.256 M. Though the averments of facts in the plaint have been made in 71 paragraphs, shorn of minute details, the same may be stated as under:

B That the dispute between the three riparian States namely Maharashtra, Karnataka and Andhra Pradesh with respect to use, distribution and control of the water of inter-State river Krishna stood resolved by the decisions of the tribunal, constituted under Section 4 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as 'the Act') by the decision rendered in 1973 and the Further decision rendered in 1976. The said decision having been C notified by the Central Government under Section 6, became binding on all parties. All the parties-States being constituents of the Federation of Republic of India, the plaintiff expected that each State, while undertaking their projects for utilisation of the quantity of water allocated in their favour by the tribunal would consult with the other concerned States and would so use, which will D not be against the decision of the tribunal in any manner. But the State of Karnataka has not been acting in accordance with the letter and spirit of the decision of the tribunal and on the other hand has violated the expressed terms and conditions of the tribunal, which compelled the State of Andhra Pradesh to invoke the jurisdiction of the Supreme Court under Article 131 of the Constitution. After indicating the topography of the river as well as the three E riparian States and the disputes which arose between the States that lead the Central Government to constitute the Krishna Water Disputes Tribunal, the plaintiff has stated that the tribunal framed seven main issues and under issue No. II with its eight sub-issues, decided the question of equitable apportionment of the beneficial use of the waters of the river Krishna and the river F Valley by evolving Scheme "A" and making the same as its Final Order or decision, which became binding on all the parties, after the same was notified by the Union Government under Section 6 of the Act. It is not necessary for us to reiterate all the facts leading to the raising of disputes and constitution of the tribunal, which we have already narrated in judgment in O.S.1 of 1997, filed by the State of Karnataka. The plaintiff then has averred as to how on G the basis of agreement between the parties, the 75% dependable flow at Vijayawada was found to be 2060 TMC and while considering the case of each State for allocation of their respective share of water in respect of the aforesaid 75% of dependable flow, several projects in the river basin, already undertaken by the States as well as the quantity of water required for the projects were H considered by the tribunal on the basis of which the ultimate figure of

allocation were arrived at. According to the plaint, the tribunal, while restraining the States of Maharashtra and Mysore from using more water than allocated in their favour, granted liberty to the plaintiff-State of Andhra Pradesh to use the remaining water with the rider that the State of Andhra Pradesh will not acquire any right to the user of such water except to the extent allocated to it. The plaintiff also averred that while making allocation to the three States, no express provisions were made for sharing of any deficiency and further the tribunal took note of the fact that out of 100 years, deficiency may occur in 25 years. It was also averred that to relieve the State of Andhra Pradesh from the aforesaid difficulty, the tribunal permitted the State of Andhra Pradesh to store water in the Nagarjunasagar Dam and in Srisailam Dam and held that for such storage, there would not be any deduction from its share out of the dependable flow on the ground that if the water is not allowed to be stored by the plaintiff-State, then it would flow down and get submerged in the sea. According to the plaint, the tribunal did consider the different project reports which had been produced before it, in relation to the Upper Krishna Project and allowing the protected utilisation of 103 TMC, it came to the conclusion that the demand of State of Karnataka to the extent of 52 TMC to be utilised by Narayanpur Right Bank Canal is worth consideration. After enumerating the different clauses of the Final Order of the tribunal in its original report of 1973, the plaintiff has averred that though the tribunal has made allocation enbloc in a negative form namely that the State cannot utilise more than the allocable quantity of water in its share in any water year but the said enbloc allocation has to be read in the light of the relevant stand of the parties before the tribunal, the facts and figures produced before the tribunal and the ultimate basis on which the conclusion was arrived at. According to the plaintiff, by taking recourse to the aforesaid method, it would be crystal clear that party- States were restrained from utilising in different sub-basins of river Krishna within their respective territory, beyond what was considered as the protective use and the additional quantity allocated to their share. It has been averred in the plaint that so far as Upper Krishna Project is concerned within the State of Karnataka, the tribunal has allocated only 160 TMC of water for being used and the construction of Almatti Dam to the height of 524 Meters, as indicated by the State of Karnataka, would, therefore, on the face of it, is in violation of the decision of the tribunal. After referring to the different applications for clarifications sought for by different States under Section 5(3) of the Act and the answer of the tribunal on the same, the plaintiff has also averred as to how the tribunal dealt with the contentions raised by the State of Maharashtra before it, in relation to the allocation of 52

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A TMC of water from Narayanpur Right Bank Canal. According to the plaintiff, though, no doubt in the Final Order of the tribunal, there has been a mass allocation of water in favour of the three riparian States out of the 2060 TMC of water under 75% of dependability at Vijayawada, which figure was arrived at by consent of the parties, but a closer scrutiny of the report in its entirety being examined, it would be apparent that the allocation in respect of different B sub-basins had been made on the basis of projects undertaken in those sub-basins and consequently, no State would be entitled to use the entire quantity of water allocated in their favour in any particular sub-basin. The plaintiff, then has averred that the post award developments undertaken by the State of Karnataka, intending to raise the height of Almatti Dam to 524 Meters is C nothing but a gross violation of the decision of the tribunal and, therefore, this Court should injunct the State of Karnataka in going ahead with the Almatti Dam upto the height of 524 Meters, as indicated in its project. The plaintiff then referred to several correspondence made between the State of Karnataka and State of Andhra Pradesh *inter se*, as well as correspondence between these D States and Union Government and Central Water Commission. It has also been averred that allowing the State of Karnataka to construct the dam at Almatti up to a height of 524 Metres would be grossly detrimental to the lower riparian state of Andhra Pradesh inasmuch as for three months in a year from July to September, the State of Andhra Pradesh may go dry and the entire crop in the State would get damaged for paucity of water. The plaintiff also has averred E in several paragraphs of the plaint, as to how the plaintiff-State has been demanding from the State of Karnataka to have suitable information in relation to the construction of the dam at Almatti and how the plaintiff-State has been prevented from being favoured with any such information. In paragraph 34 of the plaint, the plaintiff refers to the letter addressed to the Chief Minister of F Andhra Pradesh by the then Union Minister for Water Resources, proposing to convene a meeting of Chief Ministers of the Krishna Basin States for discussing Upper Krishna Project Stage-II and along with the said letter, the observation of Central Water Commission, indicating how the project at Almatti creates a physical capability of water utilisation in excess of 173 TMC, which would be possible in view of the proposed top of the radial gate at FRL G 521 meters against the required level of 518.7 meters for utilisation of 173 TMC of water. In the subsequent paragraph of the plaint, it has also been indicated as to how the State of Andhra Pradesh has been objecting to the proposals of the State of Karnataka to have the height of Almatti dam at 524 meters under the guise of flood protection measure and then how the plaintiff H State requested the Prime Minister of India to intervene in the matter to avoid

violation of the award of the Krishna Water Disputes Tribunal. In paragraph 39 of the plaint, it has been averred that the Union Government as well as the Central Water Commission which are responsible for clearance of inter-State Projects, bent upon clearing the Almatti Project up to a dam height of 524 meters without even consulting the State of Andhra Pradesh, though, according to the plaintiff in a Federal Structure of the Government, each constituent State would be entitled to know the progress of any project in relation to inter-State river, since it may have several adverse effects on the other States. The plaintiff also averred that at the behest of the State of Andhra Pradesh, the United Front Government, which was at the Centre, constituted a Committee of four Chief Ministers to examine the issues relating to the construction of Almatti Dam, which committee in turn, decided to constitute an Expert Committee with a representative of the Central Water Commission and Planning Commission, who, however, did not ultimately participate in the proceedings. The said Expert Committee has found that the proposal of the Upper Krishna Project with FRL of 524.256 meters for Almatti Dam is under consideration and has not been approved by the Government of India, though many canals have been designed and constructed for larger capacity meant for future uses and it is not necessary to build a bigger storage of 227 TMC at Almatti dam with top of shutter at 524.256 meters. The said Committee had also observed that the FRL on the top of the shutter be fixed for the present at 519 .6 meters and the gates be manufactured and erected accordingly and this will be adequate to take care of the annual requirements of 173 TMC presently envisaged under the Upper Krishna Project. The said Committee, therefore, suggested the restriction of the height of the dam at 519.6 meters. The plaintiff however does not accept of the entitlement of the first defendant to use 173 TMC under UKP and the height of the dam at 519.6 meters. From paragraph 52 onwards, the plaintiff then has made averments indicating the negotiations and further developments in the matter and then states that the Ministry of Power, Government of India having indicated that 'in principle' clearance of construction of Upper Krishna Hydro- electric power project at Almatti, contemplating the height of the dam at 524.256 meters was contrary to the award of the tribunal, and therefore, the plaintiff-State lodged its objections by letter dated 18th of October, 1996, to which the reply came that 'in principle' clearance is not a techno- economic clearance and it is purely an administrative action to facilitate developmental activities. The plaintiff, thereafter by its letter dated 18th of December, 1996, requested the Secretary, Ministry of Water Resources, Govt. of India to ensure forthwith the publication in the Gazette of India the decision of the Krishna Water Disputes

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A Tribunal i.e. the report dated 24.12.1973 and the further report dated 27.5.1976 in its entirety. But since it became apparent that the Defendant No. 1 State of Karnataka was not at all inclined to resolve the problem by any amicable discussion nor did it desire any effort for mediation being undertaken by anyone whatsoever,the plaintiff had no other alternative but to approach this B Court under Article 131 of the Constitution for declarations and injunctions against the Defendants for protection of the rights of the plaintiff State as well as the rights of its inhabitants flowing from the decision of the Krishna Water Disputes Tribunal. From paragraph 65 onwards, the plaintiff has narrated several facts constituting violations of the decision of the tribunal by the State of Karnataka and from paragraph 69 onwards, the plaintiff has indicated the C role played by the Central Government in the matter of allowing the State of Karnataka to raise the height of the dam, which would ultimately lead to violation of the terms and conditions as well as the restrictions in the award of the tribunal and which would infringe the rights of the State of Andhra Pradesh and its inhabitants. The cause of action for filing the suit has been D indicated in paragraph 73 of the plaint, namely indulgence of the State of Karnataka in going ahead with the Upper Krishna Project Stage I and II with the construction of the Almatti Dam which is in violation of the decision of the tribunal in letter and spirit.

Defendant No. 1- State of Karnataka in its written statement, took the E stand that the tribunal had not made any project-wise allocation and on the other hand, the allocation is enbloc and as such the question of interpreting the decision of the tribunal to the effect that there is restriction in the user of water in any particular Basin is not correct. It has been further averred that the State of Karnataka had contemplated the height of the Dam at Almatti as F 524.256 m in the Project Report of 1970 itself and that Report had been filed before the tribunal and had been marked as document MYPK-3. Neither the State of Andhra Pradesh nor any other State had raised any objection to the said Project Report and there was no issue before the tribunal on that score and in fact the height of the Almatti Dam was not a matter of adjudication before the tribunal. In this view of the matter, the plaintiff-State is not entitled G to raise that issue on the purported allegation that it amounts to violation of the decision of the tribunal. It is also contented that an identical issue having been raised by an individual by filing a writ petition in the Andhra Pradesh and after dismissal of the same, the matter having been brought to this Court and the order of the Andhra Pradesh High Court has been affirmed, the same H question cannot be re-agitated by filing a suit by the State under Article 131

of the Constitution of India. In respect of the decision of the Committee, which stated about the FRL 519.6 m, it has been averred in the written statement that the said Committee considered the height at 519.6 meters to be sufficient, taking into account the storage capacity of the dam which will take care of the annual requirement of 173 TMC in a water year but it did not take into account the further water that may be needed for generation of power and the project at Almatti with the height of the dam beyond 519.6 meters and up to 524.256 meters being only for power generation and the water thus used for power generation being non-consumptive, there is no question of violation of any direction of the tribunal when the State of Karnataka has decided to have the height of the dam at Almatti at 524.256 meters. It has been specifically averred in the written statement that the decision of the tribunal which has been Gazetted under Section 6 of the Act has not imposed any restriction on any State for construction of any Project and on the other hand Clause XV expressly mentioned that : "Nothing in the order of the tribunal shall impair the right or power or authority of any State to regulate within its boundaries the use of water, or to enjoy the benefit of water within that State in a manner not inconsistent with the order of this tribunal" and in view of such specific provision, it is futile for the State of Andhra Pradesh to contend that the height of the dam at Almatti should not be raised to 524.256 meters. The defendant has further averred that the Project at Almatti has been undertaken at huge cost exceeding Rs.6000 crores and it is not in national interest to stop the project at this advance stage and the suit has been filed with the design to cause delay in the completion of the projects undertaken by the State of Karnataka. It has been reiterated that the utilisation of water would be entirely within the allocated quantity made by the tribunal. According to Defendant No. 1, the plaintiff has not made out any case of breach of its legal rights and, therefore the suit under Article 131 of the Constitution is not maintainable. The defendant also narrated the background under which the Central Government set up the tribunal for adjudication of the disputes between the riparian States and how ultimately the tribunal gave its report, stating therein the facts found as well as the decision thereon. The defendant State has also stated in the written statement that the Almatti Dam has been designed for utilisation of 173 TMC for Upper Krishna Project in two stages and the State had indicated that height, right from the inception before the tribunal itself, though neither any party raised any objection nor any issue was struck, nor any decision thereon has been given by the tribunal itself and in this view of the matter any grievance with regard to the height of the dam at Almatti would be a fresh water dispute and would not come within the adjudicated dispute and decision

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A thereon by the tribunal itself and, therefore, the suit filed under Article 131 is not maintainable. It has been specifically averred that the storage level at Almatti Dam from 519.6 meters to 524.256 meters is not at all an increase, particularly, when the tribunal itself expressly noted the contemplated completion of the Almatti Dam to the full height that is the height in Exhibit MYPK-
B 3. The defendant also referred to the report of the Central Water Commission dated January 30, 1994, whereunder it has been indicated that since the power generation is contemplated under the project at Almatti by way of utilising the extra storage of water between 519.60 meters and 521 meters, the project may be treated as a multi-purpose project (the level required to utilise 173 TMC of water for irrigation is 519.60 meters). The Defendant-State of Karnataka has
C specifically averred that even though the dam height is raised to this final level of 524.256 meters, the quantity of water that could be utilised for irrigation is only 173 TMC as per allocation made in the Award and any additional quantity over and above 173 TMC will be let out into the river after generating power. It has also been contended that the dispute raised being a water dispute
D in respect of an inter-State river, the same is governed by Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act, and therefore, suit under Article 131 is not maintainable. All allegations made by the plaintiff about the misuse of position have been denied. It has also been denied that neither there is any requirement of the decision of the tribunal nor any liability which compels any State to consult another State in the matter
E of planning of the projects for utilisation of its water resources and the contention raised by the State of Andhra Pradesh in this regard is wholly misconceived. The defendant further contends that the State of Andhra Pradesh not having utilised the opportunity to seek clarification under Section 5(3) of the Act with regard to the height of or any other specification of the Almatti
F Dam is not entitled to raise this dispute in this Court by filing a suit under Article 131 of the Constitution. The defendant-State of Karnataka reiterated that the utilisation of water under the U.K.P. first at Almatti and later at Narayanpur downstream, is entirely within the scope of 173 TMC and in any event within the aggregate share of 734 TMC allocated to the defendant
G Karnataka and the construction of the Upper Krishna Project at Almatti and at Narayanpur is all consistent with the work specifications prescribed by the Expert technical bodies in all respect including the provision for river sluices. In respect of Clause XV of the Final Order of the tribunal, the defendant averred that the quantity of 155 TMC considered in respect of Upper Krishna Project does not restrict the defendant Karnataka from planning increased
H utilisations by taking into account quantities of 34 TMC regeneration, 23 TMC

of water by diversion of Godavari waters and of 50% of the surplus flows becoming available after the adoption of Scheme "B" devised by the tribunal. It is contended that the tribunal having not provided for allocation or utilisation project-wise, so long as there has been no contravention of the mass allocation made, the plaintiff has no grievance and is not entitled to file the suit. It has been stated in the written statement that in the re- submitted modified proposal dated 21st of April, 1996 for Upper Krishna Project Stage II as multi-purpose project, incorporating compliance of the various comments of CWC and also then again proposing a FRL of 524.256 meters, clearly stating that even though the dam was to be raised to its final level of 524.256 m, the utilisation for irrigation would be only 173 TMC as per the readjustment of the project-wise allocations in the Master Plan within the scope of the Scheme "A" allocation of 729 TMC and as such, there has been no deviation, so far as the height of the dam at Almatti is concerned. With regard to the allegations made in the plaint, concerning development seeking a political solution to the dispute, the defendant-Karnataka denies all the averments made in that respect and asserts that execution of projects is within its entitlement and limits permitted by the decision of the tribunal. With regard to the initiative taken by the Prime Minister of India by holding a meeting on 10.8.1996, it has been stated that such initiative was frustrated by the uncompromising and unreasonable attitude of political leaders of Andhra Pradesh. So far as the Committee of four Chief Ministers are concerned, it has been averred that the Committee of Experts, constituted by the four Chief Ministers even did not frame any terms of reference for consideration, though requested by the State of Karnataka and it conducted the proceedings in a summary manner. The Chief Minister of Karnataka in fact had apprised the Chief Minister of West Bengal about the same by letter dated 19.12.1996 and after receipt of the so-called report of the Expert Committee, the Chief Minister of Karnataka had conveyed its reaction to the findings by his letter dated 25.2.1997 to which the Chief Minister of West Bengal had replied that the points are being examined and according to the State of Karnataka, the matter remained inconclusive and as such cannot have any binding effect. In the written statement, the defendant No. 1 also averred that the findings of the said Expert Committee are erroneous. With regard to the allegations in the plaint that storage of huge quantity of water by construction of Almatti Dam would affect the interest of Andhra Pradesh and its inhabitants, the defendant Karnataka denies the same and also stated that the dam is intended to utilise about 173 TMC of water for irrigation and the remaining storage water will be used for non-consumptive purpose i.e., production of power and, therefore,

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A the water will flow down to Andhra Pradesh and the said State will not be affected in any manner. With respect to allegations in the plaint regarding incorporation of Chamundi Power Corporation Ltd., the State of Karnataka has averred that the State is pursuing the matter before the Central Electricity Authority in accordance with law and the question of getting the consent of the plaintiff does not arise. So far as the assertions made in the plaint about the cascading and far-reaching effect on the environment is concerned, the State of Karnataka denies the same. On the question of alleged submergence, it has been averred that the State of Karnataka would take all adequate steps to provide compensation in accordance with law and rehabilitate the displaced population, if any. The assertions that Almatti Dam would render the major projects in Andhra Pradesh redundant, has been denied. So far as the allegation regarding violation of environmental law is concerned, it has been averred in the written statement that the applications for environmental clearance are under process by the Government of India and the State of Karnataka has not done anything without the appropriate clearance from the Appropriate Authorities. According to the defendant-State of Karnataka, the averments in the plaint are mis-leading and lacking of bona fides and all allegations and insinuations against the Chief Minister of Karnataka are denied. All other allegations of illegality being perpetuated by the State of Karnataka have been denied. So far as creation of Jal Nigam is concerned for effective execution of the Upper Krishna Project, the State of Karnataka contends that the said Nigam is wholly Government owned company and all its activities are controlled by the Department of Irrigation, Govt. of Karnataka and, therefore, the allegation of the plaintiff that the State is abdicating its responsibility for the execution of the project is incorrect and is denied. It has been categorically averred that the Karnataka State would be subjected to irreparable loss if the works at Almatti are stopped and the State of Andhra Pradesh wants to reap the benefit of the liberty to use the surplus water flowing in the river in view of the mass allocation made in favour of the three States. It has been specifically averred that the storage of additional water between the height of 519.6 to 524.256 meters will be used for power production only and not for irrigation till the augmentation of waters by Godavari diversion and surplus waters under Scheme "B" is made available. It has been specifically averred as to how the Government of Karnataka has sought for approval for taking up the cluster of hydel projects at Upper Krishna Project in phases and how the Central Electricity Authority has accorded "in-principle" clearance. At the cost of repetition, the State of Karnataka has averred that there has been no deviation of the decision of the tribunal and the Almatti Dam has been planned

for utilisation of the allocated water by the tribunal in favour of the State of Karnataka. According to this defendant, the State of Andhra Pradesh being the last riparian State is receipient of abundant waters comprising the un-utilised share of upper riparian States in addition to its allocations made in its own favour and, therefore, no case has been made out establishing any injurious hardships so as to entitle the State to get a discretionary relief of injunction. The defendant also averred that the plaintiff has not placed an iota of evidence based on any acceptable material establishing the alleged loss of drinking water, food grains or unemployment and all such allegations are falacious. According to the State of Karnataka, all the revised schemes at all relevant times had been submitted before the Appropriate Authorities of the Central Government and projects are being taken up only after getting clearance from the competent authorities. It has been averred at the end that the basis of the suit being that the allocation made by the tribunal is project-wise and the said basis being in-correct, the plaintiff is not entitled to the reliefs prayed for by filing the suit under Article 131 of the Constitution.

Union of India - defendant no. 2 in its written statement raised the preliminary objection about the maintainability of the suit on the ground that the suit as framed is not maintainable in view of Article 262 of the Constitution of India read with Section 11 of Inter-State Water Disputes Act, 1956. Generally denying the allegations made in the plaint the Union of India took the positive stand that Karnataka multipurpose project Stage II which envisages generation of Hydropower is still under examination and the project report provides for Hydropower generation by storing water at the addition of storage space from 519.6 M to 524.256 M and it has been indicated that after generating the Hydropower the tail race water after power generation will be let into the river Krishna and the utilisation of river Krishna water under UKP will be within 173 TMC. With regard to the plaint allegation that under the Award Tribunal has allocated water projectwise, the Union of India submitted that the allocation of water is gross allocation and not the project wise allocation. It has been further stated that the State is entitled to utilise the gross amount of water for any such projects and so long as utilisation by Karnataka is within 173TMC in upper Krishna project, there is no violation of Krishna Water Disputes Tribunal Award. It has also been indicated that Stage I of UKP has been approved and Stage II is under various examination and not yet been approved. So far as the plaint case that Central Government is required to consult other States while clearing projects of one State, it has been averred that there is no obligation on the Central Government to consult said party

A State while clearing projects of other party State of Krishna basin when they are within the framework of KWDT Award. The financial assistance by Central Government is being given to the State in the shape of grants and loans. So far as Almatti project in particular is concerned the stand of the Union Government in its written statement is that UKP stage I has already been approved and it was approved by the Planning Commission on 22nd April, 1978 under which the construction of Almatti Dam to a partial height corresponding to FRL 512.2 m with solid spillway crest level at EL 500 m and with 12.2 m high gates. But in view of the technical difficulty of dismentaling and reerecting the radial gates of such height in Stage II, the Government of Karnataka desired to do construction of Almatti dam with full section as required for ultimate stage and solid crest upto 512 m in UKP Stage I itself. The revised proposal of Government of Karnataka was examined by the Central Water Commission and considered by Technical Appraisal Committee in its 20th Meeting held on 12.5.1982. The TAC recommended that the clearance of the Government of India for raising Almatti Dam in full width upto EL 500 m may be accorded subject to the observation that revised estimate be submitted by the State Government. Subsequently, the State Government came up with modified proposals with Almatti spillway crest at EL 509 m and 15.2 high radial gates with a view to reduce submergence under Stage I of the project. This revised stage I estimate got the approval of the Planning Commission on 24.4.1990. According to the written statement of the Central Government, Stage I of UKP was duly approved by the Central Water Commission as well as by the Planning Commission with certain modifications enabling the State Government to take upto Stage II at later stage. It has further been averred that the Karnataka Government has revised Upper Krishna Project Stage II (1993) as UKP Stage II Multipurpose project (1996) and that project is under examination. The State of Andhra Pradesh has sent their comments to the said project and various appraising agencies are checking the design of gates from the structural aspect. But no final approval has been given. The allegation of State of Andhra Pradesh that Central Government adopted partisan attitude has been denied and on the other hand it has been stated that the State of Andhra Pradesh has not been able to prove that by constructing Almatti Dam the State of Karnataka will be utilising more water than allocated by KWDT. It is in this context the Central Government has also averred that the State of Andhra Pradesh is constructing Telugu Ganga Project which is an unapproved Project. So far as the allegation in the plaint that State of Andhra Pradesh had not been consulted before the Department of Environment and Forest cleared the Upper Krishna Project, it has been

averred that there is no obligation on the part of Department of Environment and Forest, Government of India to obtain the views of State of Andhra Pradesh while clearing of the Upper Krishna Project of State of Karnataka. According to the Central Government the Award of the Tribunal is binding on the parties and the plaintiff has not been able to show any violation of the decision of the Tribunal.

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On behalf of Ministry of Power who is Defendant No. 2 (C) a separate written statement has been filed giving reply to the averments made in paragraphs 56 and 57 of the plaint and it has been indicated that the expression "In Principle" clearance given by the Central Electricity Authority to Upper Krishna Project at Almatti does not tantamount to sanction of the project by the competent authority. According to the said defendant while appraising various proposals for power project received from the States due care is taken by the Ministry of Power for proper evaluation.

C

The State of Maharashtra - Defendant No.3 filed a written statement fully supporting the stand taken by the State of Karnataka and it has been averred in the written statement that the complaint of State of A.P. proceeds on certain assumptions which are not correct. With regard to the main question, namely, whether there was enbloc allocation or project wise allocation the defendant State of Maharashtra categorically avers that the Tribunal equitably allocated the waters of the river Krishna by allocating the quantities enbloc or in mass quantities. Though it has discussed individual projects of each State only for the limited purpose of assessing the needs of each State in accordance with the principles of equitable distribution. It has further been stated in the said written statement that apart from the restrictions expressly stated in the final order of the Tribunal which has been notified by the Central Government no other restrictions have been imposed on the method of use by each State within the allocated share of the State concerned and Tribunal has not put any restriction on the storage by each State and according to Clause VII of the final order the storage of water by each State would not be considered as use of water by the State concerned. In the very written statement several paragraphs of the Report of the Tribunal have been quoted to indicate that the ultimate allocation was enbloc and not projectwise and further there has been no restriction or restraint placed by the Tribunal with regard to storage, size and height of dams in the Krishna Basin. The State has also referred to the subsequent conduct, that after the submission of original report and the decision of the Tribunal the State of Andhra Pradesh infact filed

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A clarification note 9 and 10 on 7.5.1975 and 8.5.1975 raising objection to the storage but ultimately withdrew those notes and did not want any clarification on the subject of storage which fortifies stand of the State of Maharashtra that there is no restriction on any State in respect of storage of water within the Krishna Basin so long as it does not exceed the enbloc allocation given by the Tribunal. According to this defendant the relief sought for in the plaint would tantamount to a complete re-writing of the decision of the Tribunal which would be outside the scope of a suit under Article 131 of the Constitution. After refuting the stand taken by the State of Andhra Pradesh in the plaint in paragraph 16 of the written statement the State of Maharashtra submitted , "that the plaintiff does not deserve to be granted any of the prayers prayed for in this para and the Suit should be dismissed with costs". Having filed the aforesaid written statement on 7th July, 1997 fully supporting the stand taken by the State of Karnataka and seeking relief of the dismissal of the suit filed by the State of Andhra Pradesh an additional written statement was filed by the said State on 9th April, 1999 giving a clear go bye to the earlier written statement and taking a new stand in relation to the alleged construction of Almatti Dam with FRL RL 524.56 m. by the State of Karnataka. In this additional written statement it has been averred that by raising the dam height at Almatti, there is likelihood of enormous damage to private and public properties and works and structures including archeological structures and pilgrimage places in the State of Maharashtra. There would also be disruption of communications, enhanced distress and damages during floods each year due to sedimentation. It has been further averred that the details of the magnitude, duration and extent of submergence were not clear to the State of Maharashtra as the said submergence has not been discussed by the Tribunal itself but on getting subsequent documents from the State of Karnataka and on ascertaining the effect of the proposed Almatti Dam at 524.256 m it appears that there would be large scale submergence of area in the State of Maharashtra and no State should be allowed to have its project which will have deleterious and adverse effect on the other State. It is in this connection in the additional written statement it has been further averred that the said State of Karnataka has not obtained the relevant clearance from different environment authorities and forest authorities and even the Central Water Commission has not given the clearance and, therefore, the State of Karnataka should be injuncted from raising the dam height from 519.00 m. to 524.256 m. until and unless the actual area likely to be submerged is made known after due survey. In the written statement the adverse effect of submergence have been indicated in different paragraphs and ultimately it has been prayed that the prayer h, i &

j sought for by the plaintiff so far as it relates to Almatti Dam under UKP should be allowed, namely, the State of Karnataka should be injuncted. Though the State of Maharashtra filed the aforesaid additional written statement taking the stand totally contrary to the stand taken earlier but no order had been passed on the same and it is only when the hearing of this suit began the Court passed an order that without prejudice to the contention of the State of Karnataka the said additional written statement be taken into consideration on the basis of which an additional issue is also required to be framed.

On the pleadings of the parties, 22 issues were framed which are extracted hereinbelow:-

1. Whether the State of Karnataka has violated the binding decisions dated 24.12.1973 and 27.05.1976 rendered by the KWDT by executing the projects mentioned in para 66, 68n & 69 of the Plaint? (A.P./ KAR)

2. Has this Hon'ble Court jurisdiction to entertain and try this suit? (MAH.)

3. Does the Plaintiff prove that the allocation of Krishna Waters by the KWDT in its Final Order are specific for projects and not enbloc as contended by the Defendant? (MAH.)

4. Does the Plaintiff prove that the upper States are not entitled to construct project without reference to and consent of the other States? (MAH.)

5. Whether the Plaintiff is entitled to a declaration that all the projects executed and/or which are in the process of execution by the State of Karnataka, and not in conformity with or in conflict with the Decisions of the KWDT are illegal and unauthorised? (A.P.)

6. Is not the Union Government duty bound to consult all the riparian States before according any approval/sanction/clearance in principle clearances to any schemes, projects proposed/undertaken, by any of the riparian States on the Inter-State river Krishna? (A.P.)

7. Whether the sanctions and the approvals granted by the 2nd Defendant to the State of Karnataka for the projects referred to in

A Issue I, without the prior concurrence of State of Andhra Pradesh are valid and binding upon the Plaintiff? (A.P.)

8. Whether sanctions and the approvals granted by the 2nd defendant are liable to be reviewed, reconsidered afresh, after obtaining the views thereon of the other riparian States? (A.P.).

B

9. (a) Whether the construction of the Almatti dam with a FRL of 524.256 m together with all other projects executed, in progress and contemplated by Karnataka would enable it to utilise more water than allocated by the Tribunal? (A.P.)

C

(b) Whether Karnataka could be permitted to proceed with construction of such a dam without the consent of other riparian States, and without the approval of the Central Government? (A.P.)

D 10. Whether the Plaintiff proves that the reservoir and irrigation canals as alleged in paragraph 68 of the Plaint are oversized. If so, are they contrary to the Decision of the Tribunal? (A.P.)

11. Whether the Plaintiff State of Andhra Pradesh proves specific E allocation/utilisation for UKP and canals as alleged? (A.P.)

12.Whether State of Karnataka is entitled to provide for any irrigation under Almatti canals and other new projects, when no allocation is made under the decisions of the KWDT? (A.P.)

F 13. Whether the Defendant State of Karnataka is entitled unilaterally to reallocate/readjust the allocation/utilisation under the UKP or any other project? Is concurrence of other riparian States necessary? (A.P.)

G 14. Whether the Union of India can permit and/or is justified in permitting the State of Karnataka to proceed with various projects which are in violation of the decisions rendered by KWDT? (A.P.)

15. Whether Upper Krishna Stage-II Multipurpose Project could be executed without the environmental clearance under the Environment H (Protection) Act, 1986 and the Notification issued by the Central

Government in 1994 in exercise of its power under the said Act and the Rules made thereunder which mandatorily requires various analysis including dam break analysis?(A.P.)

16. Whether the acts of the State of Karnataka adversely effect or would adversely effect the State of Andhra Pradesh, and if so, with what consequences? (KAR)

17. Whether Hippargi was always part of the UKP and on that basis the KWDT awarded 5 TMC utilisation thereunder? (A.P.)

18. Whether the utilisation of water under Chikkapada Salagi, Heggur and 5 other barrages is not 33 TMC as assessed by the Plaintiff State? (A.P.)

19.Whether the cumulative utilisations in the K2 sub-basin is 173 TMC as claimed by the State of Karnataka or 428.75 TMC as assessed by the Plaintiff State? (A.P.)

20.Whether the State of Karnataka has violated the KWDT award by proceeding with several new projects in the sub-basin such as K-6, K-8 and K- 9 in respect of which restrictions in quantum of utilisation have been imposed in the final decision of the Tribunal? (A.P.)

21.Whether utilisation under Almatti would be of the order of 91 TMC as claimed in para 66(iii) of the plaint? (A.P.)

22.To what reliefs if any, the plaintiff is entitled to? (A.P.)

The additional issue framed as 9(C), because of the additional written statement filed on behalf of defendant no.3 is to the effect, "Whether Karnataka can be permitted to raise the storage level at Almatti dam, above RL 509.16 meters in view of the likely submergence of territories in Maharashtra."

Before we take up the different issues framed by the Court and answer the same in the light of the contentions raised as well as with reference to the documents filed in support of the same it would be appropriate for us to notice the order of this Court dated 30th September, 1997 and its effect on the

A ultimate decision of the suit itself.

On 30th of September, 1997, this Court passed the following Order:

> "Sh. F.S. Nariman, learned Senior counsel for the State of Karnataka-defendant No. 1 and Sh. T.R. Andhyarjuna, learned Solicitor General appearing for the State of Maharashtra- defendant No. 3 referred to the prayer (a) (at page 72 of the Paper book) and submits that both these States namely, Karnataka and Maharashtra accept this claim of the plaint of the State of Andhra Pradesh and agree to the grant of relief in the suit in terms of prayer in clause (a) as under:
>
> "(a) declare that the report/decision dated 24.12.1973 and the further report/decision dated 27.5.1976 of the Krishna Waters Dispute Tribunal (KWDT) in their entirety are binding upon the three riparian States of Maharashtra, Karnataka and Andhra Pradesh and also the Union of India.
>
> In other words, there is no controversy in the Suit between the plaintiff and Defendants 1 and 3 i.e. Andhra Pradesh, Karnataka and Maharashtra and that the report/decision dated 24.12.1973 and the further report/decision dated 27.5.1976 of the Krishna Water Disputes Tribunal (KWDT) in their entirety are binding upon the three riparian States of Maharashtra, Karnataka and Andhra Pradesh. There is thus no controversy between the three riparian States to this extent. The learned Attorney General appearing for the Union of India submits that he is unable to make any statement today in this behalf as he has to seek instructions in the matter. This statement made by the learned counsel for the three riparian States is placed on record to indicate that a partial decree to this extent on the basis of admission of the defendants (1 and 3, Karnataka and Maharashtra) can be passed and therefore, there is no need to frame any issue to cover this aspect of the Suit."

In course of hearing of the suit arguments had been advanced on behalf of the State of Karnataka by Mr. Nariman that the aforesaid partial decree in terms of prayer 'a' of OS No. 2 of 1997 unequivocally indicates that the entire report i.e. 24.12.1973 and the further report dated 27.5.1976 in entirety must be held to be binding upon three riparian States, and that being the position, there is

no logic on the part of the State of Andhra Pradesh to resist the prayer of Plaintiff No. 1 in OS No. 1 of 1997 to make Scheme 'B' binding on parties which Scheme obviously form a part of the report and the further report. Mr. Ganguli, learned senior counsel appearing for the State of Andhra Pradesh on the other hand contended, that a prayer made by the plaintiff has to be understood in the context of the averments made in the plaint itself and not bereft of the same. According to Mr. Ganguli prayer 'a' in the case in hand, if read in the light of the averments made in the plaint itself it would only mean that the plaintiff State having averred in the plaint that the Tribunal had made projectwise allocation which should be read into the final decision of the Tribunal which has been notified in the Official Gazette by the Government of India and, therefore, the State of Karnataka is not entitled to raise the height of the Dam at Almatti to 524.256 meters whereby it would be able to store more than 200 TMC of water with the utilisation capacity of about 400 TMC. It is in this context Mr. Ganguli placed before us paragraphs 3.1, 3.2 and 3.3 of the written statement to indicate to us as to how the said defendant understood the prayer 'a' in the plaint. Mr. Ganguli ultimately urged that the final order of the Tribunal can be equated with a decree in a civil suit and decree must be consistent with the judgment and, therefore, applying the said analogy the final order requires to be read in the light of the adjudication made by the Tribunal in the final report. The learned counsel placed reliance on the following decisions in support of the aforesaid contentions:-

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(i) *Kalikrishna Tagore* v. *The Secretary of State,* LR 15 Indian Appeals 186 at 192.3

(ii) Law Report 25 Indian Appeals at 107-08

(iii) 1913 Vol. 25 Madras Law Journal 24.

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At the outset we are unable to accept the contention of Mr. Ganguli that the decision of the Tribunal which is ultimately notified under Section 6 of the Act can be held to be a decree of a suit and the report being the judgment and, therefore, the decided case laws on which reliance has been placed has no application at all. The inter-State Water Disputes Act having been framed by the Parliament under Article 262 of the Constitution is a complete Act by itself and the nature and character of a decision made thereunder has to be understood in the light of the provisions of the very Act itself. A dispute or difference between two or more State Governments having arisen which is a water dispute under Section 2(C) of the Act and complaint to that effect being

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A made to the Union Government under Section 3 of the said Act the Central Government constitutes a Water Disputes Tribunal for the adjudication of the dispute in question, once it forms the opinion that the dispute cannot be settled by negotiations. The Tribunal thus constituted, is required to investigate the matters referred to it and then forward to the Central Government a report setting out the facts as found by him and giving its decision on it as provided under Sub-Section (2) of Section 5 of the Act. On consideration of such decision of the Tribunal if the Central Government or any State Government is of the opinion that the decision in question requires explanation or that guidance is needed upon any point not originally referred to the Tribunal then within three months from the date of the decision, reference can be made to the Tribunal for further consideration and the said Tribunal then forwards to the Central Government a further report giving such explanation or guidance as it deems fit. Thereby the original decision of the Tribunal is modified to the extent indicated in the further decision as provided under Section 5(3) of the Act. Under Section 6 of the Act the Central Government is duty bound to publish the decision of the Tribunal in the Official Gazette whereafter the said decision becomes final and binding on the parties to the dispute and has to be given effect to, by them. The language of the provisions of Section 6 is clear and unambiguous and unequivocally indicates that it is only the decision of the Tribunal which is required to be published in the Official Gazette and on such publication that decision becomes final and binding on the parties. It is not required that the report containing the arguments or basis for the ultimate decision is also required to be notified so as to make that binding on the parties. This being the position, it is difficult to appreciate the contention of Mr. Ganguli that the decision of the Tribunal as notified, is in fact a decree of a civil suit and that decree has to be understood in the light of the judgment of the suit. We accordingly are not persuaded to accept the submission of Mr. Ganguli on this point but, at the same time we cannot accept the argument of Mr. Nariman that the order of this Court dated 30th September, 1997 passed in the suit in terms of prayer 'a' must be held to mean that a decree is to be drawn up in OS 2 of 1997 making the entire report and the further report binding on the parties. When a prayer is made in the plaint the said prayer has to be understood in the light of the assertion of facts on which the prayer has been made. The defendant State of Karnataka understood the prayer on that basis as would appear from the averments made in the written statement of defendant no. 1 in paragraphs 3.1, 3.2 and 3.3. The aforesaid prayer had been made for the relief that notwithstanding enbloc allocation made in the final order of the Tribunal which is the decision of the Tribunal but the very basis

B C D E F G H

to arrive at that decision being the projectwise allocation contained in the report the said projectwise allocation must be read into the enbloc allocation and, therefore, there must be restriction on the part of the State of Karnataka not to use more water in Upper Krishna Project than the allocated quantity of 160 TMC. Thus read the order of this Court dated 30th September, 1997, cannot be construed to mean that a decree has to be passed making the entire report as well as the further report of the Tribunal binding on the parties. So far as the question whether allocation made enbloc or projectwise the same has been answered while discussing issue nos. 1, 3 and 5 and in this view of the matter the earlier order dated 30th September, 1997 is of no consequence in disposing of the suit in question.

ISSUE Nos. 1, 3 and 5:

Though, there are as many as 22 issues, which have been framed and necessarily to be answered in the suit, but in course of arguments advanced by Mr. Ganguli, the learned senior counsel, appearing for the State of Andhra Pradesh, the entire emphasis was on the height of Almatti Dam Stage-II at 524.256 meters, as proposed by the State of Karnataka and as it appears from various project reports. In view of the arguments advanced by the counsel for the parties, these three issues essentially form the bone of contention. It is necessary to be stated that too many issues have been framed by the three different States and Court has also permitted such issues to be struck and most of the issues over-lap one another and in fact have no bearing in relation to the prayer made by the plaintiff. But instead of re-framing the issues, arguments having been advanced by the counsel for the parties, we would deal with each of them, but with specific emphasis on the vital issues. So far as the three issues with which we are concerned at the moment, when read with the paragraphs of the plaint, dealing with the same, it appears that the plaintiff Andhra Pradesh has made out a case in the plaint that under Scheme "A" which is the decision of the tribunal and which has been notified by the Central Government under Section 6 of the Inter-State Water Disputes Act, though there has been allocation of water enbloc but on going through the report itself and the very basis on which the mass allocation has been quantified, it would indicate that project-wise allocation must be read into the so-called mass allocation. This being the position, in Upper Krishna Project, the tribunal having allocated only 160 TMC of water, construction of Almatti Dam to a height of 524.256 meters itself constitutes an infraction of the decision of the tribunal, and, therefore, the Court should injunct the State of Karnataka from

A constructing a dam at Almatti up to the height of 524.256 meters. The stand of the State of Karnataka in the written statement filed as well as the stand of Union Government and State of Maharashtra in its original written statement filed however is that, there has been an enbloc allocation by the tribunal and consequently, there has been no fetter on any State to utilise water up to a limited quantity in any of its project, except those mentioned in the order of the tribunal itself and that being the position, the plaintiff would not be entitled to an order of injunction in relation to the construction of Almatti Dam to a height of 524.256 meters. Before we focus our attention to the evidence on record in answering these three issues, in the light of arguments advanced by the counsel for the parties, it must be borne in mind that injunction being a discretionary remedy, a Court may not grant an order of injunction, even if all the three necessary ingredients are established and those ingredients are prima facie case of infraction of legal rights, such infraction causes irreparable loss and injury to the plaintiff and the injury is of such nature that it cannot be compensated by way of damages. In the case in hand, when the plaintiff has prayed for an order of mandatory injunction to injunct the State of Karnataka from constructing the dam at Almatti to a height of 524.256 meters and makes out a case of infringement of legal rights of the State of Andhra Pradesh, flowing from the decision of the Krishna Water Disputes Tribunal, which decision has become final and binding on being notified by the Union Government under Section 6, what is required to be established is that in fact in the said decision of the tribunal, there has been a project-wise allocation in respect of Upper Krishna Project and if this is established, then the further fact required to be established is whether by construction of Almatti Dam up to a height of 524.256 meters, there has been any infraction of the said decision of the tribunal which has caused irreparable injury and damage to the lower riparian State of Andhra Pradesh and the said damage cannot be compensated by way of damages. Since the plaintiff-State has to establish all the aforesaid requirements, so that an order of injunction, as prayed for, can be granted, let us examine the very first ingredient namely whether under the decision of the tribunal, there has at all been a project-wise allocation as contended by Mr. Ganguli, appearing for the State of Andhra Pradesh or the allocation was enbloc, as contended by Mr. Nariman, appearing for the State of Karnataka and reiterated by Mr. Salve, the learned Solicitor General and Mr. Andhyarujina, appearing for the State of Maharashtra. While deciding the Original Suit No. 1 of 1997, filed by the State of Karnataka, negativing the contention of the said State to the effect that Scheme "B" evolved by the tribunal, whether forms

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a decision of the tribunal or not, we have already recorded the finding that Scheme "B" cannot be held to be the decision of the tribunal inasmuch as it is only that order of the tribunal which conclusively decides the dispute referred to, and is capable of being implemented on its own, can be held to be a decision of the tribunal under Section 5(2) of the Act. In fact the plaintiff in the present suit also bases its case on the Scheme "A" and contends that there has been an infraction of the said Scheme "A" by the defendant-State of Karnataka. If we examine the Final Order of the tribunal contained in Chapter XVI of the Original Report Exhibit PK1 as well as the modified order after answering the application for clarifications made by different States, in the Further Report of December, 1976 in Chapter VII of Exh. PK2, which has been notified by the Central Government under Section 6 of the Act in the Gazette of India dated 31st of May, 1976, it is crystal clear that the allocation made, has been enbloc and not project-wise and, therefore, there is no fetter on any of the States in utilising water in any project to a limited extent, excepting those contained in Clause (IX) of the decision. The allocation made to the three States of Maharashtra, Karnataka and Andhra Pradesh for their beneficial use has been provided in Clause (V) and subject to such conditions and restrictions as are mentioned in the subsequent clauses. Clause (V) of the decision which in fact makes the allocation, may be quoted herein below in extenso:

> "*Clause V* (A) The State of Maharashtra shall not use in any water year more than the quantity of water of the river Krishna specified hereunder:- (i) as from the water year commencing on the 1st June next after the date of the publication of the decision of the Tribunal in the Official Gazette upto the water year 1982-83
>
> 560 TMC.
>
> (ii) as from the water year 1983-84 up to the water year 1989-90
>
> 560 TMC plus
>
> a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1975-76, 1976-77 and 1977-78 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.
>
> (iii) as from the water year 1990-91 up to the water year 1997-98
>
> 560 TMC plus

A a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1982-83, 1983-84 and 1984-85 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

B (iv) as from the water year 1998-99 onwards

560 TMC plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river C basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

(B) The State of Karanataka shall not use in any water year more than the quantity of water of the river Krishna specified hereunder:- D

(i) as from the water year commencing on the 1st June next after the date of the publication of the decision of the Tribunal in the Official Gazette up to the water year 1982-83

700 TMC plus

E (ii) as from the water year 1983-84 up to the water year 1989-90

700 TMC plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river F basin during the water years 1975-76, 1976-77 and 1977-78 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

(iii) as from the water year 1990-91 up to the water year 1997-98

700 TMC plus G

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1982-83, 1983-84 and 1984-85 from its own projects using 3 TMC or more annually over the utilisations for H such irrigation in the water year 1968-69 from such projects.

(iv)as from the water year 1998-99 onwards 700 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

(C) The State of Andhra Pradesh will be at liberty to use in any water year the remaining water that may be flowing in the river Krishna but thereby it shall not acquire any right whatsoever to use in any water year nor be deemed to have been allocated in any water year water of the river Krishna in excess of the quantity specified hereunder:-

(i) as from the water year commencing on the 1st June next after the date of the publication of the decision of the Tribunal in the Official Gazette up to the water year 1982-83.

800 TMC

(ii) as from the water year 1983-84 up to the water year 1989-90.

800 TMC plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

(iii) as from the water year 1990-91 up to the water year 1997-98

800 TMC plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1982-83, 1983-84 and 1984-85 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

(iv) as from the water year 1998-99 onwards

800 TMC plus

a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river

basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects.

(D) For the limited purpose of this Clause, it is declared that :-

(i) the utilisations for irrigation in the Krishna river basin in the water year 1968-69 from projects using 3 TMC or more annually were as follows:-

From projects of the State of Maharashtra	61.45 TMC
From projects of the State of Karnataka	176.05 TMC
From projects of the State of Andhra Pradesh	170.00 TMC

(ii) annual utilisations for irrigation in the Krishna river basin in each water year after this Order comes into operation from the project of any State using 3 TMC or more annually shall be computed on the basis of the records prepared and maintained by that State under Clause XIII.

(iii) evaporation losses from reservoirs of projects using 3 TMC or more annually shall be excluded in computing the 10 per cent figure of the average annual utilisations mentioned in sub-Clauses A(ii), A(iii), A(iv), B(ii), B(iii), B(iv), C(ii), C(iii) and C(iv) of this clause."

The aforesaid Clause V, no doubt is in a negative form, prohibiting the State of Maharashtra and State of Karnataka from using in any water year more than the water that has been allotted in their favour respectively but by no stretch of imagination, any restriction can be said to have been put on any of the States in the aforesaid Clause V, so long as they do not use more than the quantity allotted in their favour in any water year. In other words under Clause V of the decision, the State of Maharashtra is entitled to use up to 560 TMC in any water year and the State of Karnataka similarly is entitled to use up to 700 TMC in any water year. The language used by the tribunal in formulating Clause V of the decision is clear and unambiguous and as such it is difficult for the Court to read into it any restrictions as submitted by the learned senior counsel, appearing for the State of Andhra Pradesh. We may

mention at this stage, that the original report and the decision of 1973 was marked as Exhibit PK-1 in OS 1/97 and the further repot and the decision of 1976 was marked as Exhibit PK-2 in OS 1/97, and those two documents having been referred to by the parties in course of arguments as PK- 1 and PK-2. We have also in judgment referred as PK-1 and PK-2 which were exhibited as such in OS 1/97.

Mr. Ganguli, the learned senior counsel however contended before us that before the tribunal, each of the three riparian States claimed water for their various projects, covering utilisation to the order of 4269.33 TMC, as is apparent from Exhibit PKI itself and then at a subsequent stage of the proceedings before the tribunal, all the party States agreed that 75% dependable flow up to Vijayawada in the river Krishna is 2060 TMC, which is, therefore much less than the total demand made by each of the States, amounting to 4269.33 TMC. The learned counsel further urged that all the three States entered into an agreement on 7.5.1971, indicating therein that 20 of the projects in Maharashtra, 13 projects in Karnataka and 17 projects in Andhra Pradesh should be protected and the parties also agreed to the specified quantity of utilisation of water in respect of each of the projects which could be treated as protected utilisation and total of such protected utilisation came to 751.20 TMC, as is apparent from the Original Report Exhibit PKI. It is the further contention that since in respect of one project in Maharashtra, five projects in Karnataka and five projects in Andhra Pradesh, the parties could not agree to the quantity of utilisation which should be protected and all the States invited the tribunal to decide the extent of utilisation to be protected in respect of those 11 projects and the tribunal adjudicated the additional utilisation to the extent of 714.91 TMC in respect of 9 out of the 11 projects and thus the total protected utilisation out of the dependable flow at 75% dependability worked out at 1693.36 TMC , which of course includes 227.25 TMC on minor irrigations. Having thus arrived at the figure of 1693.36 TMC for protected utilisation, the balance quantity out of the dependable flow to the extent of 366.64 TMC was further distributed by the tribunal to the extent of 50.84 TMC to Andhra Pradesh for Srisailam reservoir and Jurala Project. Out of the remaining 315.80 TMC, taking into consideration all germane factors, the tribunal allocated 125.35 TMC to Maharashtra and 190.45 TMC to Karnataka. Mr. Ganguli contends that while making these allocations, so far as Upper Krishna Project in the State of Karnataka is concerned, the tribunal merely permitted utilisation of only 52 TMC in the Right Bank Canal of Narayanpur in addition to the protected

A utilisation of 103 TMC already granted in respect of the Left Bank Canal under the Narayanpur Canal and, therefore, the total worked out at 155 TMC and there had been no allocation made by the tribunal so far as Almatti Dam is concerned. At a later stage when in its Further Report Exhibit PK2, the tribunal allocated additional 5 TMC for utilisation under Hippargi Project, the conclusion is irresistible that in Upper Krishna Projects in Hippargi, Almatti and Narayanpur, a total quantity of 160 TMC was allocated and this must be read into the Final Order in Clause (V), though not specifically mentioned therein. It is in this connection, Mr. Ganguli took us through the different pages of Exhibit PKI as well as the plaint and the written statement of the State of Karnataka. But as has been stated earlier, if the decision of the tribunal is its Final Order, as notified by the Central Government in exercise of power under Section 6 of the Act, we really fail to understand, how the aforesaid limitations can be read into the said decision, particularly, when Clause (V) of the decision is clear and there is no ambiguity in the same. It is undoubtedly true that while considering the question of extent of allocation of water in favour of the three riparian States out of 2060 TMC of water at 75% dependability, the tribunal did take into account the different projects already undertaken by different States but consideration of those projects is only for the purpose of arriving at the quantity of water to be allocated and not for making any project-wise allocation, as contended by Mr. Ganguli. In Exhibit PKI itself, the tribunal records to the following effect :

> "Our examination of the project reports and other relevant documents *has a very limited purpose and it is to determine what are the reasonable needs of the two States* so that an equitable way may be found out for distributing the remaining water between the two States. It is of course, always to be borne in mind that the allocation of waters though based on consideration of certain projects being found to be worth consideration are not on that account to be restricted and confined to those projects alone. Indeed the States (and this applies to all the States) would be entitled to use the waters for irrigation in such manner as they find proper subject always to the restrictions and conditions which are placed on them."

This unequivocally indicates the purpose for which the projects of different States were being examined and it is explicitly made clear that the States should be entitled to use the waters for irrigation in such manner as they

find proper, subject, always to the restrictions and conditions which are placed on them. Unless, therefore, any restriction or conditions in the decision of the tribunal can be found out for utilisation of a specific quantity of water out of the total allocated share in the Upper Krishna Project, there cannot be any fetter on the part of the State of Karnataka to make such user. In the decision of the tribunal, there does not appear to be an iota of restrictions or conditions, which even can be inferred and, therefore, the submission of Mr. Ganguli, appearing for the State of Andhra Pradesh on this score cannot be accepted.

In the report of the Krishna Water Disputes Tribunal Exhibit PK-1 for the purpose of allocation of water in the Krishna Basin the Tribunal has examined each project of each of the three States and then recorded its conclusion as to whether the project is worth consideration. The Tribunal expressed the meaning of the expression "worth consideration" by saying that the expression is used in the sense that it means the requirements of an area in the State concerned. It would be appropriate at this stage to quote the exact findings of the Tribunal in this regard:-

> "In saying that the project is worth consideration we do not wish to be understood to say that the project, if feasible, should be adopted. Likewise when we say that the project is not worth consideration we do not say that no water should ever be allowed for it. If at some future date more water becomes available it is possible that more projects may come upto the worth consideration standard. In assessing whether the project is worth consideration or not we have taken into account the physical characteristics of the area like rainfall etc., the catchment area, the commanded area, the ayacut of the project, the fact whether the project is meant for irrigating the scarcity area or not and such other facts. In other words we determine on pragmatic considerations what needs of the States of Maharashtra and Mysore can be satisfied so that an equitable way may be found out for distributing the balance of the dependable flows between the two States. It should not be taken our observations relating to the projects which we have noted as worth consideration are to be accepted in any way as final and binding by the Planning Commission or any other authority."

The aforesaid finding fully negatives the contention of Mr. Ganguli, appearing for the State of A.P., that the allocation was projectwise which can be read into

A the final order. Clause IX of the final order has placed restriction on the use of water in the Krishna Basin by the three States. The reasons for putting such restrictions appears to be that on the main stream there has been only restriction on river Bhima whereas on the side streams there has been restriction in case of Tungbhadra and Vedavathi sub-basin. Even in case of sub-basin K-3 there has been restriction on the State of Maharashtra from B using more than 7 TMC in any water year from Ghataprabha and the reason for such restriction is that the requirements of the State of Mysore for the projects in that sub-basin may suffer. Similarly restriction has been placed on the State of Andhra Pradesh not to use more than 6 TMC from the catchment of the river Koyna, the idea being that the waters of that river would reach C the main streams of river Bhima. Even while placing such restriction the Tribunal has placed the upper limit slightly above the total requirements of that State as assessed from the demands made which had been either protected or which have held as worth consideration. The very fact that restrictions have been put by the Tribunal in several sub-basins and no restriction has been put D so far as sub-basin K-2 wherein Upper Krishna Project of the State of Karnataka is being carried on clinches the point raised by the State of Andhra Pradesh and discussed in these three issues, namely, it is not possible to read any restriction for quantity of user of water in Upper Krishna Project by the State of Karnataka and so long as the total user does not exceed mass allocation, it cannot be said that the decision of the Tribunal is being violated E infringing the rights of the State of Andhra Pradesh which can be prohibited by issuing any mandatory injunction. After receiving the copy of the report and the decision of the Tribunal under Exhibit PK-1 the State of Andhra Pradesh filed application for clarification, being clarification No.4 under Section 5(3) of the Act, requesting reduction of 1.865 TMC from the Koyna F Project of State of Maharashtra. Having filed such application on 5th March, 1976, the learned Advocate General of the State of Andhra Pradesh did not press the said clarification No.4 on the ground that the allocations are enbloc which is apparent from Exhibit PK-2 dealing with clarification no.4. Having made an unequivocal statement before the Tribunal itself that the allocations are enbloc we fail to understand how the State of Andhra Pradesh has filed G the suit making out a case that there has been any project-wise allocation by the Krishna Water Disputes Tribunal. The aforesaid statement of the learned Advocate General made before the Tribunal has not been explained either in the plaint filed by the State nor even in course of hearing of the suit, and in our view, the State of Andhra Pradesh also fully understood that the allocations H made under Scheme 'A' was enbloc. It further appears from Exhibit PK-2 that

the State of Andhra Pradesh did file a clarification no. 5 under Section 5(3) of the Act praying that the maximum quantity which could be utilised in K-5 and K- 6 sub-basin of the State of Maharashtra and Karnataka should be specified and ultimately on 23rd August, 1974, the learned Advocate General for the said State did not press the clarification as it had no materials on record on which he could substantiate it. The very fact that State had not filed any clarification application so far as K-2 sub-basin is concerned, though it did file such application in respect of sub-basin K-5 and K-6 as well as in case of Quana Krishna Lift Irrigation Scheme unequivocally indicates that the State had no grievance so far as the allocation enbloc made by the Tribunal and not putting any restriction of the user in K-2 sub-basin which consists of the Upper Krishna Project. This in our view, fully clinches the matter and the conclusion is irresistible that under the decision of the Tribunal there has been mass allocation and no project-wise allocation as contended by the State of Andhra Pradesh in the suit. In the aforesaid premises, we answer the three issues against the plaintiff and in favour of the defendants and hold that under the decision of the Tribunal the allocation of water in river Krishna was enbloc and not project-wise excepting those specific projects mentioned in clauses IX and X of the decision.

ISSUE NO. 2

Though this issue has been raised at the behest of the State of Maharashtra but in view of the stand taken by the said State in the additional written statement and the additional issues framed thereon, the learned counsel appearing for the State of Maharashtra did not argue the question of jurisdiction, and on the other hand contended, that the jurisdiction of this Court in a suit under Article 131 of the Constitution should not be restricted or narrowed down and on the other hand the Court should be capable of granting all necessary reliefs in adjudicating the dispute raised. That apart on the basis on which the plaintiff State filed the suit and the relief sought for it cannot be said that the suit is not maintainable. We, therefore, answer this issue in favour of the plaintiff.

ISSUE NOS. 4, 6, 7 and 8

These four issues are inter-linked and have been framed in view of the positive stand taken by the State of Andhra Pradesh that in case of an inter State river when any project of one State is considered by the Government of

A India or any other appropriate authority the other State should also be made aware of and their consent should also be taken. Though this stand had been taken by the plaintiff-State of Andhra Pradesh but all the three defendants refuted the same. In course of hearing of the suit the learned counsel Mr. Ganguli has not placed before us any material or any law which compels the
B concerned authority to consult all the riparian States before sanctioning a project of one State. In the absence of any legal basis for such stand we are not able to agree with the stand taken by the State of Andhra Pradesh that the Central Government was duty bound to take the consent of other States while sanctioning any project of any of the riparian States. That apart, these issues are academic in the context of the Upper Krishna Project of the State of
C Karnataka and,in particular, the construction of the Almatti Dam. Before the Tribunal the State of Karnataka had submitted the report of Upper Krishna Project of July 1970 which was exhibited before the Tribunal as MYPK-3 and the said document has been marked as Exhibit PAP-42 in the present suit. The salient features of the said project, so far as Almatti Dam height is concerned,
D was shown as FRL 524.256 m and top of the Dam at 528.786 m. The entire project itself being there before the Tribunal, though the Tribunal did not consider it necessary to discuss the project in particular in view of enbloc allocation made by it, the grievance of the State of Andhra Pradesh that the project was being surreptitiously constructed is devoid of any substance. We, therefore, answer the aforesaid issues against the plaintiff.

E

ISSUE NO. 9 (a) (b)

This issue is an important issue in the present suit and the relief sought for essentially depends upon the findings arrived at on this issue. The entire
F issue has to be decided on the basis as to whether there exists any prohibition in the decision of the Tribunal from constructing Dam at Almatti upto 524.256 meter or from storing any particular quantity of water therein. And if the answer is in the negative then the prayer for injuncting the State of Karnataka to raise the Dam height upto 524.256 has to be rejected. If the decision of the Tribunal is examined from the aforesaid stand point and in view of our
G conclusion that it is that final order which has been notified in the Official Gazette by the Central Government under Section 6 of the Act which is the decision of the Tribunal, we find nothing stated therein which even can be held to be a prohibition or restriction on the power of the State of Karnataka to have the height of Dam upto a particular height. In this view of the matter the
H plaintiff's prayer to injunct the State of Karnataka from constructing the Dam

height at Almatti upto 524.256 meter cannot be granted. The issue has two sub-issues ; Sub-issue 'a' relates to the height of Almatti Dam ;and sub-issue 'b' being on the question whether State of Karnataka could be permitted to proceed with the construction without the consent of the other riparian States and without the approval of the Central Government? At the outset it may be stated that though the State of Karnataka had produced its project report relating to the construction of the Almatti Dam as per Exhibit PAP-42 but neither the Tribunal had considered the same nor any decision has been arrived at on the question of height of the said Dam. Even after the original report and the decision being made known under Section 5(2) of the Act as per Exhibit PK-1 the State of Andhra Pradesh also did not raise any dispute or clarificatory application objecting to the construction of the Almatti Dam or even to the height of such Dam under Section 5(3) of the Act. In the absence of a decision of the Tribunal on the question of construction of Dam at Almatti or its height and mass allocation made, being binding upon all parties after being notified under Section 6 of the Act, the grievance relating to the construction of Dam at Almatti or to its height would be a matter of water dispute within the meaning of Section 2(C), in as much as it would be a matter concerning use of water of river Krishna and, therefore, cannot be a matter for adjudication in a suit under Article 131 of the Constitution of India. If the complaint of the State of Andhra Pradesh is that by construction of Almatti Dam which is an executive action of the State of Karnataka the State of Andhra Pradesh is likely to be prejudicially affected then also on such complaint being made to the Union Government under Section 3(a) the matter could be referred to a Tribunal for adjudication. But, we fail to understand how this Court could entertain the aforesaid lis and decide the same, particularly when the Tribunal has not focussed its attention on the same nor has made any adjudication in respect to the construction of Dam at Almatti or its height. Needless to mention that otwithstanding the allocation of water in river Krishna being made enbloc no State can construct any project for use of water within the State unless such project is approved by the Planning Commission, the Central Water Commission and all other Competent Authorities who might have different roles to play under different specific statutes. Under the federal structure, like ours, the Central Government possesses enormous power and authority and no State can on its own carry on the affairs within its territory, particulary when such projects may have adverse effect on other States, particularly in respect of an inter State river where each riparian State and its inhabitants through which the river flows has its right. From the averments made in the plaint it is crystal clear that the State of Andhra Pradesh feels aggrieved by the proposal of the

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A State of Karnataka to have the Dam height at Almatti FRL 524.256 m. In the plaint itself in paragraph 51 the plaintiff has referred to the observation of the Committee to the effect:

> "For required utilisation of 173 TMC at UKP the height of the Dam at FRL 519.6 m would be adequate."

B

The Committee referred to in the said paragraph is Expert Committee which the four Chief Ministers had appointed, which Committee had examined the pros and cons of the Almatti Dam and the aforesaid views of the Expert Committee was approved by the four Chief Ministers who had been C requested by the Prime Minister of India to intervene and find out the efficacy or otherwise of the stand of Karnataka to have Almatti Dam upto the height of FRL 524.256 m. The said Expert Committee had observed that the proposal of the State of Karnataka of having Upper Krishna Project with FRL 524.256 m in Stage II at Almatti has not been approved by the Government of India. D And it has been further observed that it would be desirable to proceed with utmost caution in the larger interest of the Nation to wait and watch operation of various Krishna system upstream and down stream before embarking on creating larger storage at Almatti Dam than what is needed to suit the prevailing conditions. We are taking note of the observations made by the Expert Committee for the purpose that the plaintiff having failed to establish E its case for getting an injuction, would it be appropriate for this Court to allow the State of Karnataka to have the height of the Dam at Almatti at 524.256 m or it would be obviously in the larger interest of the country and all the States concerned to allow the Dam upto the height of 519.6 m and then leave it open to the States concerned to put forth their grievances before the Tribunal F to be appointed by the Central Government for resolving the disputes relating to sharing of water in river Krishna. Reading the plaint as a whole it appears to us that the plaintiff State had not made any grievance for having a Dam at Almatti upto a height of FRL 519.6 m and on the other hand, the entire grievance centers round the proposal of the State of Karnataka to have the height at 524.256 m. The report of the Expert Committee referred to in the G plaint has been exhibited as Exhibit PAP-212 and even that report indicates that the complaint of Andhra Pradesh was that the height of Almatti Dam at FRL 524.256m which has not been approved as yet by the Government of India, would adversely affect the lower riparian State of Andhra Pradesh both in the matter of irrigation as well as generation of power. The said report H further reveals that the State of Karnataka is desirous of having the Dam height

at FRL 524.256 m so that it can store its share of water available to it under Scheme 'B' when it comes. It is only on fructification of Scheme 'B' the need for a larger storage at Almatti would arise, and therefore, the State is planning ahead to have the height of the Dam at 524.256m. According to the report of the said Expert Committee even if the height is allowed not upto 524.256 m it can be allowed later only when the necessity arises and technically it is feasible. The report also records that for utilisation of 173 TMC at Almatti and Narainpur the height of the Dam required would be 519 m and not 524.256 m. Thus an expert body appointed by the four Chief Ministers of 4 different States who are not in any way connected with the inter-State river Krishna taking into account the present need envisaged by the State of Karnataka for utilisation of 173 TMC at Upper Krishna project and taking into account the report submitted by Indian Institute of Science at Bangalore did record a finding that the top of the shutters at Almatti should be fixed at 519.6 m which will provide a storage of about 173TMC which along with storage of 37.8 TMC at Narainpur will be adequate to take care of annual requirement of 173 TMC envisaged under Upper Krishna Project. In view of our conclusion in O.S. 1 of 1997 holding that Scheme 'B' is not a decision of the Tribunal, and as such, cannot be implemented by a mandatory order from this Court and the stand of the State of Karnataka before the so called Expert Committee being that they have designed the height of Almatti Dam at 524.256 m keeping in view that in the event Scheme 'B' fructifies the State will be able to get the surplus water and store it as a carry over reservoir, as observed by the Tribunal itself, notwithstanding the fact that the plaintiff has failed to establish a case on its own for getting the relief of injunction in relation to the construction of Almatti Dam by the State of Karnataka, it would be reasonable to hold that though the State can have the Dam at Almatti but the height of the said Dam should not be more than 519.6 m, particularly when the State of Karnataka has not been able to indicate as what is the necessity of having a height of Dam at 524.256 m when Scheme 'B' is not going to be operated upon immediately. The Upper Krishna Project Stage II, detailed project report of October 1993 which has been exhibited in the present case as PAP 45 also indicates that minimum FRL required to get 173 TMC utilisation is found to be 518.7 m. It is in that report it has been indicated that it is because of probable maximum flood of 31000 qmx., the water level is expected to go upto 521 m and, therefore, the proposal is to keep the height of the gate to 521 from the crest level with 2 mts. as the gate height. It may be stated at this stage that the height of the Almatti as approved by the Competent Authority is crest level 509 meter and it is in this context to have the height at FRL 524.256 m the State of

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A Karnataka has proposed to have the gate height of 15 meters. But as has been indicated earlier, since the entire basis of the State of Karnataka to have the height of the Dam at 524.256 m is contingent upon implementation of Scheme 'B' of the Tribunal thereby entitling the State of Karnataka to get its share in excess water and continue the Almatti Dam as a carry over reservoir and since we have decided against the State of Karnataka in O.S. 1 of 1997 which the State had filed for implementation of Scheme 'B', there is absolutely no justification for the said State to have the Dam height at Almatti of 524.256 m. We hasten to add that at the same time there cannot be any injunction or prohibition to the said State of Karnataka for having the Dam height at Almatti upto 519.6m which would be in the interest of all concerned.

Mr. Ganguli, the learned senior counsel, appearing for the State of Andhra Pradesh submitted that the State of Karnataka in the Project Report filed before the Central Water Commission in respect of UKP Stage II, itself indicated that the minimum FRL required at Almatti Reservoir is 519.60 M as per Exhibit PAP 46. In the written statement also, the State of Karnataka also indicated that contemplated height of Dam at 524.256 meters is for additional storage, though for the purpose of generation of power which is non-consumptive use and at a height of 524.256 meters, it would utilise 302 TMC, which would be in excess of the enbloc allocation of 734 TMC. Mr. Ganguli also contended that the Upper Krishna Multipurpose Stage II Project Report of 1996 as per Exh. PAP 48, would indicate that the State has planned irrigation from the water at Almatti which the State would receive under Scheme "B" being implemented. This being the position, the very idea of having the dam height at Almatti at FRL 526.256, is even contrary to the mass allocation made in its favour under Scheme "A" and, therefore, the State should be injuncted. We are unable to appreciate this contention of the State of Andhra Pradesh inasmuch as on today the Central Government as well as the appropriate authority have not sanctioned the Upper Krishna Project Stage-II with the dam height at 524.256 meters. It would not be possible for this Court to pronounce that there will be a violation of the mass allocation if the State of Karnataka is allowed to have the dam height at Almatti at 524.256 meters, though as stated earlier, according to the State of Karnataka itself for utilisation of 173 TMC, the required dam height is 519.6 meters. It is under these circumstances, we are of the considered opinion that there should not be any bar against the State of Karnataka to construct the dam at Almatti upto the height of 519.6 meters and the question of further raising its height to 524.256 meters should be gone into by the tribunal, which learned Solicitor

General agreed on behalf of Govt. of India to be constituted immediately after the delivery of judgment of these two suits, so as to mitigate the grievance of each of the riparian States on a complaint being made by any of the States.. So far as sub-issue (b) is concerned, we really do not find any substance in the contention of Mr. Ganguli, the learned counsel appearing for the State of Andhra Pradesh. Though it may be fully desirable for all the States to know about the developments of the other States but neither the law on the subject require that a State even for utilisation of its own water resources would take the consent of other riparian States in case of an Inter-State river. So far as the second part of Issue 'b' is concerned, the answer is irresistible that the project of each State has to be approved by the Central Government as well as by other statutory authorities and the Planning Commission, but for which a State should not proceed with the construction of such project. Issues 9(a) and (b) are answered accordingly.

ISSUE 9(C)

Issue 9(C) had been framed while allowing the additional written statement of the State of Maharashtra, which relates to the question of submergence. It is to be noted that in the original written statement filed by the State of Maharashtra, a positive stand had been taken that under the decision of the tribunal, there has been an enbloc allocation of water in favour of each of the three riparian states and as such there was no bar on the State of Karnataka to have a dam at Almatti up to any height and, therefore, it was prayed that the suit filed by the Andhra Pradesh should be rejected. In the additional written statement that was filed by the State of Maharashtra, it has however been averred that the eventual submergence of area within the State of Maharashtra had not been known earlier and, therefore, neither before the tribunal nor in the original written statement filed, any grievance had been made with regard to the construction of dam at Almatti to a height of 524.256 meters, but since the joint study made by the officers of both the states have brought out that a large area within the State of Maharashtra would get submerged, if Karnataka is permitted to have the dam height at Almatti up to 524.256 meters, the State of Maharashtra has brought these facts to the notice of this Court in the additional written statement and the additional issue has been framed. In the absence of any relief being sought for in the plaint by the plaintiff against the State of Maharashtra, whether the defendant State of Maharashtra can claim any relief against the co-defendant is itself a debatable issue. Mr. Andhyarujina, the learned senior counsel, appearing for the State

A of Maharashtra , however contended that a suit filed in the Supreme Court under Article 131 of the Constitution is of a very peculiar nature and the normal principle of a suit filed in an ordinary civil Court should not apply. According to Mr. Andhyarujina, if a dispute between the two states involving the existence or extent of a legal right of one State is being infringed by the B action or in-action of another State, is brought before this Court invoking jurisdiction under Article 131 of the Constitution, this Court would be fully justified in entertaining and adjudicating the said dispute, no matter whether the dispute is raised as a plaintiff or a defendant in any proceeding before the Court. It is in this context the learned counsel referred to the observations of Bhagwati J and Chandrachud J, in the case of *State of Karnataka* v. *Union of* C *India*, [1978] 2 SCR 1, wherein Hon'ble Bhagwati J had indicated that the original jurisdiction of the Supreme Court under Article 131 on being invoked by means of filing a suit, the Court should be careful not to be influenced by the considerations of 'cause of action' which are germane in suit and the scope and ambit of the said jurisdiction must be determined on the plain terms of D the article without being inhibited by any a priori considerations. The learned Judge in the same decision had also indicated that the very object of Article 131 seems to be that there should be a Forum, which could resolve such disputes between two States or the State and the Union and that forum should be the highest Court in the land so that the final adjudication of disputes could be achieved speedily and expeditiously without either party having to embark E on a long tortuous and time consuming journey through a hierarchy of Courts. Mr. Andhyarujina also relied upon the observations of Bhagwati J in the aforesaid case to the effect:

> "What article 131 requires is that the dispute must be one which F involves a question on which the existence or extent of legal right depends. *The article does not say that the legal right must be of the plaintiff. It may be of the plaintiff or of the defendant. What is necessary is that the existence or extent of the legal right must be in issue in the dispute between the parties.* We cannot construe Article 131 as confined to cases where the dispute relates to the existence or G extent of the legal right of the plaintiff, for to do so, would be to read words in the article which are not there. It seems that because the mode of proceeding provided in Part III of the Supreme Court Rules for bringing a dispute before the Supreme Court under Article 131 is a suit, that we are unconsciously influenced to import the notion H of 'cause of action', which is germane in a suit, in the interpretation

of Article 131 and to read this article as limited only to cases where some legal right of the plaintiff is infringed and consequently, it has a 'cause of action' against the defendant. But it must be remembered that there is no reference to a suit or 'cause of action' in Article 131 and that article confers jurisdiction on the Supreme Court with reference to the character of the dispute which may be brought before it for adjudication. The requirement of 'cause of action', which is so necessary in a suit, cannot, therefore, be imported while construing the scope and ambit of Art. 131."

The learned counsel Mr. Andhyarujina, also relied upon the observations of Bhagwati J in the said decision to the following effect:-

"What has, therefore, to be seen in order to determine the applicability of Art.131 is whether there is any relational legal matter *involving a right, liberty, power or immunity qua the parties to the dispute. If there is, the suit would be maintainable, but not otherwise.*"

Reliance was also placed on the observations of Chandrachud J, in the self same case, which may be extracted herein under:-

"By the very terms of the article, therefore, the sole condition which is required to be satisfied for invoking the original jurisdiction of this Court is that the dispute between the parties referred to in clauses (a) to (c) must involve a question on which the existence or extent of a legal right depends."

Chandrachud J also had categorically stated:-

"I consider that the Constitution has purposefully conferred on this Court, a jurisdiction which is untrammeled by considerations which fetter the jurisdiction of a Court of first instance, which entertains and tries suits of a civil nature. The very nature of the dispute arising under Article 131 is different, both in form and substance, from the nature of claims which require adjudication in ordinary suits."

Mr. Andhyarujina, also referred to the comments of Mr. Seervai in his book, wherein the author has said that it is reasonable to hold that the court

A has power to resolve the whole dispute, unless its power is limited by express words or by necessary implications and the Supreme Court would have the power to give whatever reliefs are necessary for enforcement of a legal right claimed in the suit, if such legal right is established. Mr. Andhyarujina also contended that once the grievance of the State of Maharashtra having brought forth before the Supreme Court in a pending proceeding under Article 131 of the Constitution, the jurisdiction having been invoked by the State of Andhra Pradesh, the Court has ample power under Article 142 of the Constitution and for doing complete justice between the parties, the Court would not be bound by the provisions of any procedure and can make a departure of the same. It is in this context, reliance was placed on the observations made by the C Supreme Court in the case of *Delhi Judicial Services* v. *State of Gujarat*, [1991] 4 SCC 406, whereunder this Court has observed as follows:-

> "No enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter."

Mr. Andhyarujina submitted that the likelihood of submergence within F the State of Maharashtra on account of height of dam at Almatti being raised to 524.256 meters, was disclosed only during the pendency of the present suit and the State of Karnataka itself in its letter dated 10th of August, 1998 had communicated to the State of Maharashtra that the State need not approach the Court of law on this issue as the matter can be resolved amicably. According to the learned counsel, the State of Karnataka too agreed to carry out actual G field surveys and calculations to determine the extent of submergence under the directions of Central Water Commission in its meeting dated 22.2.1999 and those studies are still under progress and further the Supreme Court itself had passed an order of status quo relating to the height of Almatti Dam by order dated 2.11.1998 and consequently, the State of Maharashtra never thought it H fit to file an independent suit, invoking the jurisdiction of the Court under

Article 131. But the State of Karnataka having obtained the liberty from this Hon'ble Court to proceed further with the installation of the assembly of the gates by order dated 4.11.1998 and the said State of Karnataka refusing to give an undertaking to the State of Maharashtra not to raise the height of the Almatti Dam beyond the present level of 509 meters, the State of Maharashtra was compelled to put forth its grievance on the question of likely submergence of its territory and has prayed for the relief of injunction against the State of Karnataka for raising the dam height up to 524.256 meters. Mr. Andhyarujina also submitted that the exact extent of area to be submerged in the event the Almatti Dam is allowed to be constructed upto 524.256 meters, has not yet been ascertained and surveys are still on, but there cannot be any doubt that a large scale of the area within the State of Maharashtra would get submerged. Mr. Nariman, the learned senior counsel, appearing for the State of Karnataka did not seriously dispute the right of a co-defendant like State of Maharashtra to put forth the grievances so as to get relief against another co-defendant, though he undoubtedly, submitted that in the event, the State of Maharashtra was allowed to have the additional written statement and an adjudication of the additional issues framed, the State of Karnataka should have been given an opportunity, putting forth its case. He however contended that the dispute relating to submergence of territory of Maharashtra on account of the height of the dam at Almatti being raised to 524.256 meters, cannot be a matter of adjudication in a suit under Article 131, since the State of Maharashtra had not raised the dispute before the tribunal itself, even though the Project Report submitted by the State of Karnataka before the tribunal indicated the height of the dam at 524.256 meters. According to Mr. Nariman, such a dispute would be a fresh water dispute and would not be a part of adjudicated dispute and as such under Article 131 of the Constitution this dispute cannot be entertained and decided upon by this Court. Mr. Nariman also contended that the materials on record do not establish or do not help the Court to come to a positive finding that in the event, the Almatti Dam is raised to 524.256 meters, a large extent of the State of Maharashtra would get submerged inasmuch as the submergence, if any and the flow back, if any, would be in the river itself and not any territory beyond the river. Mr. Nariman further urged that the State of Maharashtra did anticipate submurgence of its territory as would appear from its stand before the tribunal which is apparent from paragraph 6.3.1(k) of Exh. MRK-1. It is true, according to the learned counsel that the tribunal did not consider the said question but after the Original Report was submitted, Maharashtra could have filed an application under Section 5(3) of the Act, seeking clarifications on the question of submergence but, that was

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A not admittedly done, which would indicate that it had no grievance on the question of submergence. Having examined the rival contentions on this issue, we have no hesitation to hold that the issue must be answered against the State of Maharashtra.

B It is no doubt true that the jurisdiction of the Court in a suit under Article 131 of the Constitution is quite wide, which is apparent from the language used in the said article and as has been interpreted by this Court in the two cases already referred to (*see [1978] 2 SCR 1 and [1978] 1 SCR 64*). It is also true that Article 142 confers wide powers on this Court to do complete justice between the parties and the Court can pass any order or issue any direction C that may be necessary, but at the same time, within the meaning of Article 131, the dispute that has been raised in the present suit is between the State of Andhra Pradesh and State of Karnataka and question, therefore, would be whether it involve any existence or extent of a legal right of such dispute. In answering such a dispute, it may be difficult to entertain a further dispute on D the question of submergence as raised by the State of Maharashtra, a co-defendant. But in view of the stand taken by Mr. Nariman, without further delving into the matter and without expressing any final opinion, whether such a stand, as the one taken by Maharashtra is possible for being adjudicated upon, we would examine the merits of the said contention. A bare perusal of the report of the tribunal setting out the facts as found by it and giving its E decision on the matters referred to it as per Exh.PK1 as well as the Further Report of the said tribunal, giving explanation to the application for clarifications filed by the different States, as per Exh. PK2, we find that the question of submergence within the territory of the State of Maharashtra on account of Almatti Dam in the State of Karnataka has not at all been discussed nor any F opinion has been expressed thereon. The tribunal having given its decision on the question of sharing of the water in river Krishna on enbloc allocation basis, if the user of such water in a particular way, becomes detrimental to another State, then such a grievance would be a fresh dispute within the meaning of Section 2(C) read with Section 3 of the Act and it cannot be held to be an adjudicated dispute of the tribunal. We have already indicated that it is only G an adjudicated dispute between the States on which a decision has been given by a tribunal constituted under Section 4 of the Act by the Government of India, can be a subject matter of a suit under Article 131, if there is any breach in implementation of the said decision of the tribunal. But a dispute between the two states in relation to the said Inter- State river arising out of the user H of the water by one State would be a fresh water dispute and as such would

be barred under Article 262 read with Section 11 of the Inter-State Water Disputes Act, 1956. The question of submergence of land pursuant to the user of water in respect of an Inter-State river allocated in favour of a particular State is inextricably connected with the allocation of water itself and the present grievance of the State of Maharashtra would be a complaint on account of an executive action of the State of Karnataka within the meaning of Section 3(A) and also would be a water dispute within the ambit of Section 2(C) and, therefore, it would not be appropriate for this Court to entertain and examine and answer the same. We do appreciate the concern of the State of Maharashtra, when it comes to its knowledge that there would be large-scale inundation and submergence of its territory if the height of Almatti Dam is allowed to be raised to 524.256 meters, as per the latest Project Report of the State of Karnataka, but such concern of the State of Maharashtra alone would not be sufficient for this Court to decide the matter and issue any order of injunction as prayed for in the additional written statement filed by the State of Maharashtra and on the other hand, it would be a matter for being agitated upon before a tribunal to be constituted by the Govt. of India in the event, a complaint is made to that effect by the State of Maharashtra. We also do not find sufficient materials in this proceeding before us to enable this Court to come to a positive conclusion as to what would be the effect on the question of submergence, if the height of the dam at Almatti is allowed to be constructed up to 524.256 meters inasmuch as, according to the State of Maharashtra, the joint surveys are still on. It is too well settled that no Court can issue an order of mandatory injunction on mere apprehension without positive datas about the adverse effects being placed and without any definite conclusion on the question of irreparable injury and balance of convenience. Then again, while allowing a particular State to use the water of an inter- State river, if the manner of such user really submerges some land in some other State, then the question has to be gone into as to what would be the amount of compensation and how the question of rehabilitation of those persons within the submerged area can be dealt with which really is an aspect of the doctrine of equitable apportionment and all these can be gone into, if a complaint regarding the same is made and the Government of India appoints a tribunal for the said purpose. But these things cannot be gone into, in a suit filed under Article 131 as a part of implementation of an adjudicated dispute of a tribunal. It is also surprising to note that even though the Original Project Report of 1970 in relation to Almatti Dam had been produced before the tribunal, which was adjudicating the disputes raised by different States, yet the State of Maharashtra never thought of the question of submergence and never at-

tempted to get that question decided upon. In the aforesaid premises, howsoever wide the power of the Court under Article 142 of the Constitution may be, we do not think it proper to entertain the question of submergence, raised by the State of Maharashtra in its additional written statement and decide the question of injunction, in relation to the height of Almatti Dam on that basis. Issue 9 (c) is accordingly decided against the State of Maharashtra.

It would also be appropriate to notice at this stage another argument advanced by Mr. Andhyarujina, the learned senior counsel appearing for the State of Maharashtra, to the effect that in view of Clause XV of the decision of the Tribunal each State is entitled to use water allocated in their favour within its boundary, the moment by user of such water by one State, any territory of another State get submerged then it would be a violation of the decision of the Tribunal contained in Clause XV, and therefore, the said State should be injuncted from such user. Clause XV of the decision reads thus:-

> "Nothing in the order of this Tribunal shall impair the right or power or authority of any State to regulate within its boundaries the use of water, or to enjoy the benefit of water within that State in a manner not in consistent with the order of this Tribunal."

The aforesaid Clause does not in any way interfere with the rights of a State from using the water allocated by the Tribunal within its boundaries nor is this Clause capable of being construed that if any submergence is caused in any other State by such user, then the user becomes inconsistent with any order of the Tribunal. Mr. Andhyarujina's entire argument is based upon the expression 'regulate within its boundary' but that expression applies to the use of water or enjoys benefits of water within that State. Since the question of submergence of any other State by the user of water by another State allocated in its favour is not a subject matter of adjudication by the Tribunal and in fact the Tribunal has not expressed any opinion on the same it would be difficult for us to hold that submergence *ipso facto* even if admitted to be any within the State of Maharashtra by user of water by the State of Karnataka at Almatti can be held to be inconsistent with the order of Tribunal. In this view of the matter we are unable to accept the submission of Mr. Andhyarujina, learned senior counsel appearing for the State of Maharashtra that the user of water by the State of Karnataka by constructing a Dam at Almatti is in consistent with Clause XV of the decision of Tribunal. Issue 9(C), therefore, is answered against the State of Maharashtra.

ISSUE NO. 10

The aforesaid issue has been framed in view of the averments made in paragraph 68 of the plaint. In the aforesaid paragraph of the plaint the plaintiff has indicated the figure in terms of acreage of land planned to be irrigated by different projects and excess utilisation of the water beyond the allocation made by the Tribunal in respect of different projects. The plaintiff obviously is under a misconception that in the decision of the Tribunal there has been a projectwise allocation of water in respect of different projects in different States. We have already considered the matter at length and have come to the conclusison that the allocation was made enbloc and not projectwise and as such, the question that construction of oversized reservoir at Almatti is contrary to the decision of the Tribunal does not arise. Besides Clause VII of the decision of the Tribunal indicates as to how use of water in a water year will be measured and it stipulates that while use shall be measured by the extent of depletion of the waters of the river Krishna in any manner whatsoever including losses of water by evaporation and other natural causes from man made reservoirs and other works without deducting the quantity of water which may return after such use to the river, but so far as water stored in any reservoir across any stream of the Krishna river system is concerned, storage shall not of itself be reckoned as depletion of the water of the stream except to the extent of the losses of water from evaporation and other natural causes from such reservoir. The water diverted from such reservoir for its own use, however, has to be reckoned as use by that State in the water year. In view of this decision of the Tribunal assuming the State of Karnataka has the potentiality of storage of water at Almatti, in the absence of any materials placed by the plaintiff to indicate as to any diversion from such reservoir by the State of Karnataka for its own use, it is not possible to come to a conclusion that there has been a violation of the decision of the Tribunal by the State of Karnataka by having potentiality of storage of water at Almatti, as contended by the plaintiff's counsel. It is in this connection it is worthwhile to notice that after submission of the report and the decision in the year 1973 as per Exhibit PK-1 the Government of India had filed the application for clarification which was registered as Reference No. 1 of 1974 by the Tribunal and Clarification 1(b) was to the following effect :-

> "While the Tribunal have laid down restriction on the use of water in certain sub-basins as well as the total use by each State, there may be locations where hydro power generation (within the basin) may be

A feasible at exclusively hydro-sites or at sites for multi-purpose projects. At such sites, part of the waters allocated to the States, as also water which is to flow down to other States could be used for power generation either at a single power station or in a series of power stations. The Tribunal may kindly give guidance as to whether such use of water for power generation within the Krishna basin is B permitted even though such use may exceed the limits of consumptive use specified by the Tribunal for each State or sub- basin or reach, and if so, under what conditions and safeguards."

The State of Andhra Pradesh to the aforesaid application for clarification C submitted two Notes Nos. 9 and 10 before the Tribunal on 7th May, 1975 and 8th May, 1975. In this note it was specifically pleaded that the Tribunal may be pleased to explain that the Upper State have no right to store water in excess of share allocated to them and in a manner which will affect the right of the State of Andhra Pradesh in the dependable flow. Several grounds had been D advanced by the State of Andhra Pradesh as to why such guidance is needed, particularly when under Scheme 'A' allocation there has been no express provision for sharing of deficiency. The Tribunal considered the same and ultimately noted in its further report under Exhibit PK-2 that the State of Andhra Pradesh withdrew the said note and consequently no ground for any further clarification. A note having been submitted by the State of Andhra E Pradesh seeking a clarification for fixation of a limit in the matter of storage of water by the upper riparian States and then ultimately having withdrawn the same the present grievance that construction of large sized Dam at Almatti by the State of Karnataka would adversely affect the State of Andhra Pradesh and its right could be infringed is devoid of any substance. The issue is accordingly F answered against the plaintiff.

ISSUES NO. 11 & 12 :

These two issues center round the same question as to whether there was any specific allocation or utilisation at Upper Krishna Project and whether G providing for irrigation under Almatti Canal is contrary to the decision of the Tribunal since no allocation for irrigation has been made thereunder. We have already discussed the relevant materials placed by the State of Andhra Pradesh as well as the decision of the Tribunal and we have come to the conclusion that the plaintiff - the State of Andhra Pradesh, has utterly failed to establish H that infact there was any specific allocation by the Tribunal in respect of Upper

Krishna Project or the Almatti Reservoir and on the other hand, the allocation was enbloc making it clear and unambiguous that States can utilise the quantity of water allocated in their favour within their territory. This being the position we have no hesitation to answer these two issues against the plaintiff State - Andhra Pradesh and we hold that the plaintiff has failed to produce any materials in support of the aforesaid two issues. These two issues accordingly are answered against the plaintiff.

ISSUE NO.13

So far as this issue is concerned the question of entitlement of the State of Karnataka to reallocate or re-adjust utilisation under UKP or any other project unilaterally does not arise at all. If the Tribunal would have made any projectwise allocation and would have restricted the user of water under UKP to any particular quantity then the question of re-allocation by the State of Karnataka on its own would have arisen but the Tribunal not having made any allocation in respect of the Upper Krishna Project which includes Almatti and having made an enbloc allocation so long as the total user by the State of Karnataka does not exceed the enbloc allocation in its favour it cannot be said that there has been any violation by the State of Karnataka by planning to use any particular quantity of water at Almatti. Then again the question of getting concurrence of other riparian States, as has been raised by the State of Andhra Pradesh is wholly misconceived. Neither there exists any law which compels any State to get the concurrence of other riparian States whenever it uses water in respect of inter-State river nor the decision of the Tribunal which allocates the water in the Krishna Basin on the basis of 75% dependability which figure was in turn arrived at by an agreement of parties puts any condition to have the concurrence of other riparian State. In this view of the matter without further dilating on this issue, we answer the same against the plaintiff.

ISSUE NO. 14

The aforesaid issue has been raised on the hypothesis that the Union of India is going to sanction different projects within the State of Karnataka which are in violation of the decision of Krishna Water Disputes Tribunal. As has been indicated earlier, so far as the Upper Krishna Project is concerned, the Government of India has approved the Dam height at crest level of 509 meters. The subsequent revised project submitted by the State of Karnataka in 1993 and re- submitted in 1996 are still under consideration and no final decision has been taken thereon. The Union of India in its counter affidavit

A has categorically refuted the allegations made by the State of Andhra Pradesh in this regard and on the other hand, it has been averred that State of Andhra Pradesh is going ahead with some project not sanctioned by the Union Government. In course of hearing Mr. Ganguli, learned Senior counsel appearing for the State of Andhra Pradesh, has not produced any materials in support of the aforesaid stand pertaining to issue no. 14. We, therefore, decide the said issue against the plaintiff.

B

ISSUE NO. 15

The aforesaid issue has been framed on the allegation of the plaintiff that C the State of Karnataka is likely to execute the Upper Krishna Stage II multipurpose project without getting the environmental clearance under the Environment Protection Act as well as in violation of the Notification issued by the Central Government in exercise of its power under the same Act and the Rules made thereunder. Under Article 256 of the Constitution it is an D obligation for the States to exercise their power ensuring compliance with laws made by Parliament and even it enables the Union Government to give such direction to a State as may be necessary for that purpose. In a federal structure like ours, the Constitution itself maintains balance by distributing powers between the Centre and the States and by conferring power on the Central Government to regulate and to issue directions whenever necessary. The E several provisions of the Constitution have been tested in the last 50 years and there is no reason to conceive that any State will force ahead with its project concerning user of water in respect of Inter State reservoir without getting the sanction/concurrence of the Appropriate Authorities and without compliance with the relevant statutes or laws made by the Parliament. It is a common F knowledge that the large scale projects planned by each of these States, are submitted to the Planning Commission for its approval and for getting financial assistance. Such projects are then examined by different authorities and it is only after getting approval of the Planning Commission the same is submitted to the appropriate departments of the Government of India where again all the formalities are scrutinised and final sanction or permission is G granted. So far as user of water in respect of an Inter State Reservoir is concerned, the plans are also examined by the Central Water Commission, who is an expert body and the views given by such Commission also is taken into consideration by the Government of India. This being the entire gamut of procedure we really fail to understand on what basis the State of Andhra H Pradesh has made the allegation and the issue has been struck in that respect.

Needless to mention that every such projects whether being executed in the State of Maharashtra or Karnataka or Andhra Pradesh must be approved by the appropriate authority of the Government of India and necessarily, therefore, before any approval is accorded, the project must be found to have complied with all the relevant laws dealing with the matter. It has not been placed before us that the State of Karnataka has carried out any project in contravention of the provisions of any particular law made by Parliament or in contravention of any direction issued by the Government of India. This issue accordingly, in our opinion, is pre-mature. But we hasten to add that all the projects of different States concerning user of water available to them in respect of an Inter State River must be duly sanctioned by the Appropriate Authorities of the Government of India after proper scanning and it is only then the State would be entitled to carry out the same. The issue is answered accordingly.

ISSUE NO. 16

If the issue in question is examined in relation to the construction of Almatti Dam, which in fact is the bone of contention in the suit itself, we have not been able to find out as to how the State of Andhra Pradesh has been or would be adversely affected or what would be the consequences adversely affected or what would be the consequences thereon. When a plaintiff wants to seek a relief of injunction by the action or inaction of the defendant on the ground that such action or inaction has been grossly detrimental to the interest of the plaintiff State and has infringed the rights of the plaintiff State then in such a case it is obligatory for the plaintiff to put materials on record and establish the necessary ingredients to enable the Court to come to the conclusion that by such action or inaction of the defendant the plaintiff has suffered irreparable damages . When we examine the averments in the plaint as well as the documents sought to be relied upon by the plaintiff on this score, we find that there exists no materials on the basis of which it is possible for a Court to come to a conclusion that on account of the construction of Almatti Dam within the State of Karnataka the lower riparian State - the plaintiff has been adversely affected or is likely to be adversely affected. The complaint and grievance of the plaintiff State is rather imaginary than real and on the records of this proceedings no materials have been put forth to enable the Court to come to a conclusion on the question of so-called adverse effect on the State of Andhra Pradesh on account of the construction of Dam at Almatti. Mr. Ganguli, learned Senior Counsel appearing for the State of Andhra

A Pradesh referred to the written memorandum furnished to the Committee by the State of Karnataka wherein the said State had unequivocally admitted that the additional storage in Almatti will cause a temporary reduction in quantum of flows going to Andhra Pradesh for a period of about three months during August to October which is made good later on. According to the learned B counsel since those three months are vital for the crops in the State of Andhra Pradesh the State will sustain irreparable damages and, as such on the admission of the State of Karnataka a finding could be arrived at. At the outset we must state that the written memorandum furnished by the State of Karnataka cannot be read in isolation by spinning out a particular sentence and must be read as a whole. Thus read we do not find any admission on the part C of the State of Karnataka indicating any reduction of flows to the State of Andhra Pradesh. Mr. Ganguli also pointed out to Clause XV of Scheme 'B' whereunder the Tribunal itself had come to the conclusion about the possibility of water shortage and had empowered the concerned authority to make necessary adjustment. But what has been stated thereunder is in relation to the D adoption of Scheme 'B' which has not been possible on account of lack of sincerity of the State of Andhra Pradesh and even thereunder the Krishna Valley Authority has been empowered as often as it thinks fit to determine the quantity of water which is likely to fall to the share of each State and adjust the uses of the authorities in such a manner so that by the end of water year each State is enable, as far as practicable, use the water according to their E share. We need not further examine this aspect particularly when Scheme 'B' has not been operative so far and even this Court has refused to issue any mandatory injunction for adoption of Scheme 'B' in OS 1 of 1997 filed by the State of Karnataka. In the aforesaid premises, we do not have enough materials to come to the conclusion that the construction of Almatti Dam by F the State of Karnataka has in any way affected or likely to affect the State of Andhra Pradesh in any manner and consequently the said issue must be answered against the plaintiff.

ISSUE NO. 17

G Under this issue, the question that arises for consideration is whether by the decision of the Krishna Water Disputes Tribunal, only 5.00 TMC was awarded for utilisation at Hippargi. While answering Issue No. 3, we have already held that the tribunal only made enbloc allocation and not any specific allocation for specific projects, excepting those mentioned in Clause (IX) and H under Clause (IX) so far as Hippargi is concerned, coming under K2 sub-

basin, the same does not find mention therein. In this view of the matter, the said issue is answered against the plaintiff.

ISSUE NO. 18

The aforesaid issue has been framed on the basis of averments made in paragraph 66(v) and paragraph 68(b) item No. 4. The averment in paragraph 66(v) is on the basis of Newspaper Report and the averment made in paragraph 68(b) item No. 4 is the own estimation of State of Andhra Pradesh. Defendant No. 1- State of Karnataka denies the contents of the averments in the plaint vide paragraph No. 12.88 and paragraph No. 12.111. The counsel appearing for the State of Andhra Pradesh also did not place any material in support of the aforesaid issue in course of the arguments and the averments in the plaint having been denied in the written statement, the issue in question must be answered against the plaintiff.

ISSUE NO. 19

Though, the plaintiff-State of Andhra Pradesh on its own estimation, has made an averment in paragraph 68(b) to the effect that the plan utilisation by the State of Karnataka in K2 sub-basin is 428.75 TMC on the basis of which the aforesaid issue has been framed, but no positive datas have been placed before us to come to the aforesaid conclusion. On the other hand, the State of Karnataka in its written statement has asserted that under Upper Krishna Project, the utilisation would be to the tune of 173 TMC and this is apparent from several documents placed before the tribunal as well as in this proceeding. In this view of the matter, we answer this issue by holding that the plaintiff has failed to establish that the cumulative utilisation in K2 sub-basin of the State of Karnataka would be to the tune of 428.75 TMC. At any rate, since we have already held that the allocation was enbloc and there is no restriction for utilisation in K2 sub-basin in the decision of the tribunal. The issue really does not survive for consideration. The issue is answered accordingly.

ISSUE NO. 20

This issue relates to the decision of the tribunal in Clause (IX), under which Clause, restrictions have been put to the extent indicated thereunder. But the State of Andhra Pradesh has not been able to establish the allegation made in this regard nor even the counsel, appearing for the State has made any submission thereon. During the course of hearing of the suit, on behalf of the State of Andhra Pradesh, written submissions had been filed and even after

A the close of the hearing, the State of Andhra Pradesh has filed a written submission on 15th of March, 2000, in which also, there has been no mention about the alleged violation in sub-basin K-6, K-8 and K-9. We, therefore, answer this issue by holding that the plaintiff has failed to establish the same and the issue is answered against the plaintiff accordingly.

B

ISSUE NO. 21

This issue relates to utilisation of water under Almatti. In paragraph 66(iii), the plaintiff has made the averment, which has been denied and explained in the written statement by the State of Karnataka vide paragraph C 12.85 and the State of Karnataka further averred that the entire utilisation at Almatti is within its allocable share and no injury is caused to the State of Andhra Pradesh thereunder. Since, we have already held that under the decision of the tribunal, the allocation was enbloc and not project-wise, even if it is held that utilisation under Almatti would be of the order of 91 TMC, D as claimed, the same would not violate the decision of the tribunal. That apart, we do not have any positive material, on the basis of which, it can be said that the utilisation under Almatti would be of the order of 91 TMC. The issue is answered accordingly.

E In course of arguments Mr. Ganguli, the learned Senior counsel for the State of Andhra Pradesh had raised a contention that the State of Karnataka to frustrate any decree to be passed by this Court injuncting the defendant no.1 from raising the construction of the Dam at Almatti at a height of 524.256 has already incorporated an autonomous body, called Krishna Bhagya Jala Nigam Limited (KBJNL)and the State Government has divested itself of all powers F relating to the construction of Dam at Almatti with the aforesaid Nigam and this has been designedly made so that any order or decree for injunction would not be binding. Since this argument had been advanced towards the concluding stage and there was no assertion in the plaint in this regard, nor any issue had been struck by the Court, the State of Karnataka had been permitted to G file an affidavit indicating the correct state of affairs in relation to the constitution of KBJNL and to allay or apprehension in the minds of the plaintiff State. An affidavit had been filed by the Secretary to the Government of Karnataka, Irrigation Department, who has also been nominated as Director of KBJNL, the said nomination having been made under Article 147(c) of the H Articles of Association of the Companies. It has been categorically stated in

the said affidavit that for facilitation of mobilising funds and providing sufficient funds to complete irrigation projects the constitution of KBJNL has been constituted with the sole idea to complete the works of Upper Krishna Projects by 2000AD. This company is a Government Company which has been established with an approval of the Cabinet in the State of Karnataka by its decision dated 6th May, 1994 and the Chief Minister of the State of Karnataka is the Chairman of the Company whereas Deputy Chief Minister is the Vice- Chairman of the Board of Directors. All the Subscribers to the Memorandum are Government Officials and it has been declared to be a Government Company. The Memorandum of Articles of Association have been exhibited as Exhibited PAP 210. The affidavit has given the details as to how the State Government retains full control over KBJNL and on going through the said affidavit we have no hesitation to come to the conclusion that the apprehension of the plaintiff State is wholly mis-conceived and devoid of any substance.

In view of our conclusions drawn on different issues, it is not possible for the Court to grant the relief of permanent mandatory injunction, so far as construction of the Dam at Almatti is concerned as well as the reliefs sought for in paragraphs (b) to (k). But at the same time, we make it clear that there is no bar for raising the height of the Dam at Almatti upto 519.6 meters subject to getting clearance from the Appropriate Authority of the Central Government and any other Statutory Authority, required under law. The question of raising the height upto 524.256 meters at Almatti could be appropriately gone into by a Tribunal, to be appointed by the Central Government, on being approached by any of the three riparian States and such Tribunal could also go into the question of apprehension of submergence within the territory of the State of Maharashtra and give its decision thereon, in the event the height of the Dam at Almatti is allowed to be raised upto 524.256 meters. The Tribunal would also be entitled to go into the question of reallocation of the water in river Krishna basin, if new datas are produced by the States on the basis of improved method of gazing.

The suit is disposed of accordingly. There will be no order as to costs.

S.B. MAJMUDAR, J I had the privilege of going through the draft judgment prepared by brother G.B. Pattanaik, J. in the aforesaid suit, I respectfully agree with the same. However, looking to the importance to two pivotal issues, being issue Nos. 2 and 9(a), (b) & (c), I have thought it fit to

A supplement the reasoning in the aforesaid judgment by my concurring observations on these issues as under :

Issue N. 2 :

Has this Hon'ble court jurisdiction to entertain and try this Suit?
B (MAH). Article 131 provides as under :

> "131. Original jurisdiction of the Supreme Court - Subject to the provision of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute -
>
> C
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) between two or more States.
>
> D
>
> If and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :
>
> xxx xxx xxx

E We are not concerned with the Proviso which deals with treaties and agreements entered into or executed before the commencement of the Constitution. As Article 131 itself is subject to the other provisions of the Constitution, we have to turn to Article 262 which deals with *disputes relating to waters*. Sub-article (1) thereof provides that :

F

> *"262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.* - (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use distribution or control of the waters of, or in, any inter-State river or river valley."

G

Sub-article (2) thereof lays down that :

> "(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint
> H an is referred to in clause (1)."

It is not in dispute between the parties that the Inter-State Water Disputes Act, 1956 (hereinafter referred to as 'the Disputes Act') is a legislation passed under Article 262 of the Constitution. It is equally not in dispute that Section 11 thereof excludes the jurisdiction of this Court is respect of water disputes referred to the Tribunal. It will, therefore, have to be seen whether the State of Andhra Pradesh, as plaintiff, having invoked the jurisdiction of this Court Article 131 has, in substance, raised 'water dispute' which will exclude the jurisdiction of this Court as per Section 11 of the Disputes Act read with Article 262 sub-article, (2). In other words, if in substance, the plaintiff want adjudication of any 'water dispute' between it and the other contesting States, namely, the State of Karnataka or the State of Maharashtra which are upper riparian States located in the Krishna basin through which the river Krishna, which is admittedly an inter-State river, flows. The expression 'water dispute' has been defined by the Disputes Act as per Section 2(c) as under :

> " "water dispute" means any dispute or difference between two or more State Governments with respect to -
>
> (i) the use, distribution or control of the waters of, or in, any inter-State river or river valley; or
>
> (ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or
>
> (iii) the levy of the any water-rate in contravention of the prohibition contained in Section 7."

Keeping in view the aforesaid salient features of the Constitutional scheme and the relevant provisions of the Disputes Act, we may turn to the plaint of the State of Andhra Pradesh in the Present suit. While deciding the question of jurisdiction of this Court, the averments in the plaint on demurrer will have to be kept in view. Paragraph 4 of the plaint recites that :

> "After the Krishna Water Dispute Tribunal rendered its decision, first on 24.12.1973 and a further decision on 27.5.1976, the plaintiff understood that all the riparian States, being constitutional units of the Federation of the Republic of India, would not only accept the said decisions but would give full effect to the same in letter and in spirit as is expected of constitutional Governments established by and under

A the Constitution of India. The Plaintiff had expected all the party States to consult each other for the projects that they may undertake on the inter-State river Krishna so as to make it apparent to the other States that the projects are in consonance with the decisions of the Tribunal and that their implementation would not, in any manner, affect the rights of the other riparian States. However, in the recent past, to the utter surprise of the Plaintiff, it has come to light that Karnataka, far from acting in accordance with the letter and the spirit of the decisions of the KWDT, has grossly violated the terms of inter-State river Krishna. Karnataka has not only suppressed from the plaintiff information regarding execution of a number of projects unauthorisedly undertaken by it, but also suppressed crucial informations even from Defendant No. 2 Union of India while seeking its approval to these projects. It is rather unfortunate that Defendant No. 1 also misled the Central Government and its agencies while seeking financial and other approvals of its projects. The Plaintiff, with a view to amicably settle the matters, between the party States, appealed, not only to the Defendant No. 1 to desist from such illegal execution of projects, but also to the Union Government to intervene in the matter and to ensure that Karnataka does not contravene the terms of the decisions of the KWDT and does not take undue advantage of it being placed as an upper riparian State with regard to the inter-State river Krishna. However, all such persuasions and negotiations failed. The Plaintiff is thus constrained to approach this Hon'ble Court invoking the jurisdiction under Article 131 of the Constitution in public interest and in the interest of the inhabitants of the plaintiff-State seeking immediate reliefs of protection of their interests by this Hon'ble Court."

After mentioning the history of the earlier water dispute between the riparian States which were adjudicated upon by the Krishna Waters Disputes Tribunal (hereinafter referred to as 'the KWDT') constituted under Section 4 of the Disputes Act by the Central Government and also after reciting the substance of the decision rendered by the said Tribunal, the grievances voiced in that suit in the light of the post-award developments are high-lighted in paragraphs 65 to 68 of the plaint under the caption 'Violation of KWDT decision by Karnataka - defendant No. 1, in the suit' and it is in the light of these grievances that prayers and reliefs have been put forward after paragraph 75 of the plaint. The main prayers on the basis of which relief is sought for are prayers (a), (c), (d) and (f) which read as under :

"(a) declare that the report/decision dated 24.12.1973 and the further report/decision dated 27.5.1976 of the Krishna Water Disputes Tribunal (KWDT) in their entirety are binding upon the three reparian States of Maharashtra, Karnataka and Andhra Pradesh and also the Union of India.

(b) xxx xxx xxx

(c) declare that the party States are entitled to utilise not more than the quantity of water which is allocated or permitted by the decisions of the KWDT for the respective projects of the respective party States before the Tribunal; and that any variation in either storage or utilisation of the waters by each such state in respect of each of such projects could only be with the prior consent or concurrence of the other riparian States;

(d) declare that all the projects executed and/or which are in the process of execution by the State of Karnataka which are not in confirmity with and conflict with or violate the decisions of the KWDT, as illegal and unauthorised.

(e) xxx xxx xxx

(f) declare that the States of Karnataka and Maharashtra shall not be entitled to claim any rights preferential or otherwise in respect of storage, control and use of waters of the inter-State river Krishna in respect of the schemes/projects not authorised by the decision of the KWDT.

xxx xxx xxx".

The aforesaid averments in the suit high-lighting the grievances of the plaintiff-State of Andhra Pradesh when read in the light of the prayers put forward for consideration and the reliefs claimed thereby leave no room for doubt that the entire suit is based on the ground that defendant No. 1-State of Karnataka has violated the binding decision of the Tribunal which pertains to Scheme "A" which was duly notified under Section 6 of the Disputes Act by the Central Government. It is this plaint which is sought to be resisted by the first defendant-State of Karnataka by filing its written statement. In the light to these pleadings of main contesting States, issues are framed in the suit. The

A relevant issues high-lighting the grievances of the plaintiff State are issue Nos. 1, 3, 5, 9(a), (b) & (c), 10 and 20, which read as under :

"1. Whether the State of Karnataka has violated the binding decisions dated 24.12.1973 and 27.5.1976 rendered by the KWDT by executing the projects mentioned in para 66, 68 & 69 of the B Plaint? (A.P./KAR).

3. Does the Plaintiff prove that the allocation of Krishna Waters by the KWDT in its Final Order are specific for projects and not enbloc as contended by the Defendant? (MAH).

C 5. Whether the Plaintiff is entitled to a declaration that all the projects executed and/or which are in the process of execution by the State of Karnataka, and not in conformity with or in conflict with the Decisions of the KWDT are illegal and unauthorised? (A.P.).

D 9. (a) Whether the construction of the Almatti dam with a FRL of 524.256 m. together with all other projects executed, in progress and contemplated by Karnataka would enable it to utilise more water than allocated by the Tribunal? (A.P.).

E (b) Whether Karnataka could be permitted to proceed with construction of such a dam without the consent of other riparian States, and without the approval of the Central Government? (A.P.).

(c) Whether Karnataka can be permitted to raise the storage F level at Almatti dam above RL 509.16 m. in view of the likely submergence of territories in Maharashtra.

10. Whether the Plaintiff proves that the reservoir and irrigation canals as alleged in paragraph 68 of the Plaintiff are oversized. If so, are they contrary to the Decision of the Tribunal? (A.P.).

G

20. Whether the State of Karnataka has violated the KWDT award by proceeding with several new projects in the sub-basin such as K-6, K-8 and K-9 in respect of which restrictions in quantum of utilisation have been imposed in the final decision of the H Tribunal? (A.P.)."

Keeping in view the aforesaid salient features of the plaint of the State of Andhra Pradesh, the nature of controversies raised therein, reliefs claimed and the issues which fall for consideration of the Court, it is difficult to agree with the contentions of contesting defendants, especially, State of Maharashtra that the plaintiff's case does not fall within the fore-corners of Article 131 of the Constitution. It is obvious that the disputes raised by the plaintiff- State of Andhra Pradesh pertain to the alleged non-implementation of the binding award of the KWDT by defendant No. 1 State. It has nothing to do with raising of a fresh water dispute. According to the plaintiff State, whatever was the earlier water dispute between the plaintiff and the defendant No. 1 State or for that matter defendant No. 3 State, was already adjudicated upon by the Tribunal constitution under Section 4 of the Disputes Act and which decision was duly published under Section 6 thereof being the decision pertaining to Scheme "A". The grievance of the plaintiff-State is that though the decision is binding on the upper riparian States namely, defendant Nos. 1 and 3, the executive action of the concerned States amount to flouting and violation of the binding decisions of the Tribunal. This clearly raises a question of execution and implementation of an already adjudicated water dispute. Once that conclusion is reached, it becomes obvious that Article 262 would be out of picture and only Article 131 will remain operative for being invoked by the disputant State against the defendant States as it would certainly raise a dispute regarding execution and implementation of binding award of the Tribunal and, therefore, a contest does arise between two or more States on this score. Accordingly, Issue No. 2 will have to be answered in favour of the plaintiff and against the defendants.

Issue Nos. 9(a), (b) & (c) :

So far as these issues are concerned, it has to be kept in view that the main contention of the plaintiff State of Andhra Pradesh is that in the binding award of the KWDT pertaining to Scheme "A", the Tribunal has gone into the question of project-wise allocation of quantity of water available for each of the projects of the contesting States located in the Krishna river basin in so far as they are within the territorial limits of each of the contesting riparian States. However, when we turn to the award of the Tribunal (Exh.PK-1) and as the further award of the Tribunal under Section 5(3) of the Disputes Act (Exh.PK-II) which ultimately got gazetted at pages 102 and 114 of the Exhibit PK-II, we find that, nowhere it is held by Tribunal that out of the total quantity of water, namely, 2096 TMC per water year on the basis of 75% dependability

A any fixed quota of water for utilising, was earmarked for Upper Krishna Project (hereinafter referred to as `UKP') which consisted of three dams namely, Hippargi weir, Almatti Dam and Narayanpur Dam. Clause III of the final order of the Tribunal as gazetted under Section 6 of the Disputes Act clearly provides that "the Tribunal hereby determines that, for the purpose of this case, the 75 per cent dependable flow of the river Krishna up to Vijayawada is 2,060 T.M.C." and this entire quantity is available to the States of Maharashtra, Karnataka and Andhra Pradesh. Out of the total quantity thus found available for distribution, the State of Maharashtra as per clause V is enjoined not to use in any water year more than 560 TMC up to the water year 1982-83 and further additional quantities in future as laid down therein. Similarly, the State of Karnataka is enjoined not to use in any water year more than 700 TMC to start with, up to the water year 1982-83 and further permitted quantities thereafter as laid down therein. While plaintiff-State of Andhra Pradesh is given approval to use in any water year the remaining water that may be flowing in the river Krishna but thereby it shall not acquire any right whatsoever to use in any water year nor be deemed to have been allocated in any water year water of the river Krishna of more than 800 TMC up to water year 1982-83 and the additional percentage as provided for subsequent water years. When this final order is read with the Report of the Tribunal comprised of volumes 1 and 2, Exh.PK-I and Exh.PK-II, it is difficult to hold as contended by the plaintiff-State that the Tribunal has awarded fixed quantity of water to be utilised for each of the projects, especially the UKP. This conclusion gets high-lighted, when we turn to clause IX of the final order of the Tribunal pertaining to Scheme "A" wherein out of the water allocated to each of the States certain projects are mentioned for which given quantity of water is allocated. Now in the entire list of projects wherein allotment of water is made project-wise as mentioned in clause IX, UKP is conspicuously absent. It must, therefore, be held that even though the allocation of dependable flow of water per each water year is made for the State of Karnataka with a ceiling as found in clause V of the decision as aforesaid and even while the Tribunal in this connection as referred to UKP the ultimate allotment of total quantity of water has not resulted in indicating any earmarked quantity of water to be stored and utilised in UKP situated in the krishna river basin within the territorial limits of defendant No. 1 State. It is, therefore, difficult to accept the contention of learned senior counsel for the plaintiff-State of Andhra Pradesh that any project-wise allocation of available water is decided upon by the Tribunal while framing Scheme "A", so far as UKP is concerned. Once that conclusion is reached, it becomes obvious that at what height the Almatti

dam should be constructed, was not on the anvil of scrutiny of the Tribunal nor was any decision rendered by the Tribunal in that connection which could be made subject matter of the challenge in the present suit of the State of Andhra Pradesh on the ground that any such express direction of the Tribunal in this connection is violated by defendant No. 1 State.

Even if this conclusion is reached a moot question survives whether the construction of the Almatti Dam with FRL of 524.256 would ultimately result in utilisation of more water by defendant No.1 State than what is allotted by the Tribunal. This grievance, which is made subject matter of issue No. 9(a) at the instance of the plaintiff-State of Andhra Pradesh, has a clear nexus with the grievance of the said State about the violation of the decision of the Tribunal. Thus, even if it is held that the decision of the Tribunal regarding Scheme "A" has not expressly mentioned any permissible height to which the Almatti dam could be constructed with appropriate storage capacity of water if it is held on evidence that the height of 524.256 FRL would result in utilisation of more water per water year than as allowed, as per clause V of the decision of the Tribunal, then the question of violation of injunction of clause V by defendant No. 1 State would clearly fall for consideration. It is in that light that we have to consider the grievance of the plaintiff-State.

For deciding this question we may usefully refer to UKP Stage-II Multi Purpose Project - detailed Report submitted by defendant No. 1 State before the Tribunal (Exh.PAP-46). In the said Report, we find at serial No. 2 salient features of the project. It is no doubt mentioned as UKP Stage-II Multi Purpose Project, Irrigation and power. At paragraph 2.3.1 we find mentioned irrigation for Stage-II schemes and culturable command area is shown to be 1,97,120 hectares. While dealing with power at 2.3.2, we find total annual energy to be generated as 672 million units. Chapter IV of the said report PAP-46 deals with Hydrology covering water budget Gate height at Almatti dam and Flood routing studies for PMF for Back Water Effect. In para 4.4.3 it has been mentioned that according to the studies made by IISc., the minimum FRL required at Almatti reservoir to utilise 173 TMC of water to meet the mandatory release for RTPS, domestic and industrial and irrigation requirements is EL 519.60 m. Considering the prospects of power generation at Almatti dam, which is crucial for the State, the Government of Karnataka has decision to maintain water level at FRL at EL 524.256 m. during monsoon months to utilise the storage above EL 519.60 m. for power generation only. It is not in dispute between the parties that according to the defendant No. 1

A State, it seeks to store 173 TMC of water at Almatti dam for the purpose of irrigation. If that is so the said water can irrigate cultural command area as per paragraph 2.3.1 mentioned earlier and can also generate electricity of 672 million units, as seen from paragraph 2.3.2. mentioned earlier. We my refer to an affidavit of Prof. D.K. Subramanian on the impact of increasing the FRL of the Almatti dam in Karnataka on power in the State of Andhra Pradesh at page 109 on compilation II filed by plaintiff-State of Andhra Pradesh and which affidavit has been relied upon by defendant No. 1 State itself in support of its case. The said affidavit makes an interesting reading. At page 110 of compilation II at para 38, the following relevant averments have been made by the dependent in support of defendant No. 1 State case :

> "If the FRL of Almatti dam is restricted to 519.60 m., then the power generation will be only 250 MW leading to an energy generation of about 672 million kilowatt hours. If the FRL is increased to 524.256 m. then it is both possible and feasible to set up the four cascade power plants downstream of Narayanpur also in addition to increasing the capacity of Almatti power plant."

Once these averments in support of defendant No. 1's case are read in the light of PAP - 46 referred to earlier, it becomes clear that for generating electricity of 672 million units, the height of the dam could very well be at 519.60 m. That would serve the purpose of the defendant No. 1 State both for irrigating the command area of 1.97.120 hectares as well for generating aforesaid units of electricity and would very well result in treating the Almatti project as multi-purpose project.

We may also usefully refer in this connection to an affidavit of Prof. Ram Prasad on behalf of State of Karnataka-defendant No. 1 herein. It has been furnished by defendant No. 1 State in support of its case. The said affidavit is at page 103 of compilation II file of the State of Andhra Pradesh. Paragraph 4 of the said affidavit also makes an interesting reading. The same reads as under :

> "The Upper Krishna project (UKP) consists of two reservoirs, one at Almatti and the other at Narayanpur, to utilise 173 TMC of water for irrigation (including evaporation from the reservoirs). At the instance of the Government of Karnataka, Indian Institute of Science (IISc) carried out a study in 1996 (mentioned in para 12) in which I

participated as one of the two technical consultants, which concluded that the full reservoir level (FRL) of the dam at Almatti to utilise 173 TMC. After allowing for a 50-years sedimentation of the reservoirs would be R.L. 519.6 m. The Government of Karnataka has planned to raise the FRL of the dam to RL 524.256 m. in order to generate power in the near future with the additional storage available from RL 519.6 m. to RL 524.256 m. limiting the total utilisation under the Project to 173 TMC. The IISc developed a "rule curve" for the operation of UKP reservoirs with Almatti FRL at 524.256 m. so as to maximise the power generation, at the same time limiting the utilisation to 173 TMC. The increase in the FRL and operation of the reservoir as per rule curve, changes the pattern of flow downstream, i.e., flow into Andhra Pradesh (A.P.) which utilise these waters for irrigation as well as power generation at its projects at Jurala, Srisailam, Nagarjunasagar and Prakasam Barrage. Mainly, this change takes the form of a reduction in the flow to Andhra Pradesh in the month of August due to increased impoundment at Almatti, and increase in the flows during subsequent months due to release of the impounded water. This change improves the irrigation performance in Andhra Pradesh, as will be clear later from the reservoir working tables."

We may also refer to another affidavit of Shri M. Krishnappa "on the size of the dam at Almatti and the canals under UKP" relied upon by defendant No. 1 State of Karnataka. The said affidavit is at page 106 of the aforesaid compilation II dealing with Almatti Dam. The deponent has stated under :

"Almatti dam is the main storage under the UKP. The FRL of the Almatti dam is fixed at RL 1720 ft. (524.256 m.). This was done during the initial days of planning, that is, even before the constitution of the KWDT. For the utilisation of 173 tmc of water for irrigation, domestic uses and power generation, a storage of 123.25 tmc at Almatti Reservoir, with a FRL of 519.60 m. is necessary. However, FRL of 524.256 m. with a gross storage of 227.10 tmc is required for an ultimate utilisation of 302 tmc, for irrigation, domestic purposes and power generation. The size of the dam, as per engineering practices, has relevance to the ultimate utilisation of 302 tmc. under the UKP. In this regard, I have studied the relevant technical records made available by the Irrigation Department and the project officials."

These affidavits of experts, relied upon by defendant No. 1 State itself show that for utilising 173 TMC of water for irrigation and domestic use and power generation FRL 519.60 will be sufficient. It may be kept in view in this connection that under the award of the Tribunal an assessment of water requirement for UKP by the State of Karnataka was made by the Tribunal in the general terms as 155 TMC of water at Almatti dam and 5 more TMC was added to UKP because of calculation error so far as Hippargi weir project was concerned. They total up to 160 TMC and even that apart, according to Defendant No. 1 State, it would require storage capacity at Almatti dam for TMC of water for irrigation, domestic use and power generation. We may also keep in view the Tribunal's decision, as seen from PK I and II, that Almatti dam was meant for being treated as a storage carry over reservoir for ultimately releasing water for irrigation to the down stream Narayanpur project. The height of the Almatti reservoir at FRL 519.60 is also found sufficient for the present purpose by the experts whose affidavits have been relied upon by defendant No. 1 State itself, as seen earlier.

In this connection we may also refer to the pertinent averments made in the plaint based on the extract of correspondents exchanged between the parties and the Central Water Commission. In para 28 of the plaint a communication dated 1.4.1986 by the Central Water Commission, Government of India, by its letter dated 23rd October, 1986 addressed to the plaintiff State is referred to. The said communication, amongst others, stated as under :

> "(1) the KWDT has allowed utilisation under the UKP of a total of 160 TMC utilisation allowed under Stage I of the project plus 52 TMC utilisation under Stage II, and 5 TMC utilisation under Hippargi Project).
>
> (2) the UKP Stage-I approved by Planning Commission in April 1978, contemplated utilisation of 119 TMC including the reservoir losses.
>
> (3) in February 1982 CWC received from the Government of Karnataka a project report on UKP Stage II for irrigating an additional area of 2.00 lakh hectare with an installed capacity for power generation of 218 MWs. As per the project report, the total utilisation contemplated under UKP stages I & II was said to be 173 TMC. (119

TMC Stage I + 31 TMC for Stage II + diversion of Godavari Waters from Polavaram 21 TMC, + regeneration from use of 21 TMC of Godavari waters, 2 TMC). A

(4) Central Water Commission has received a separate report on Hippargi project which envisages utilisation of 10 TMC of Krishna water which was yet to be approved by the Planning Commission, thus the total utilisation contemplated was 183 TMC (i.e. 160 TMC of Krishna water + 21 TMC of Godavari water + 2 TMC of regeneration) and not 200 TMC, as report in a newspaper. B

xxx xxx xxx" C

At paragraph 34 of the plaint a D.O. letter dated 25.4.94 addressed to the Chief Minister of Andhra Pradesh by the then Union Minister for Water Resources is referred to. In this connection the following relevant averments in that communication are extracted : D

"It was only thereafter that in his D.O. letter No. 6.1.91-p.1-1660, dated 25.4.1994 addressed to the Chief Minister of Andhra Pradesh, the then Union Minister for Water Resources proposed to convene a meeting of the Chief Ministers of the Krishna Basin States on Upper Krishna Project Stage-II along with other inter-State projects. In the background note on the projects which was forwarded alongwith the said letter it was stated that the Central Water Commission had observed that the project as envisaged (UKP Stages I & II) creates a physical capability of water utilisation in excess of the envisaged utilisation of 173 TMC. It was observed that "this is possible in view of the proposed top of the radial gate at FRL + 521 meters against the required level of 518.7 meters for utilisation for 173 TMC of water". E F

In para 40 of the plaint at page 60 of Vol. III is mentioned a letter of 11th July, 1996 addressed by the then Minister for Water Resources, Government of India to the Chief Minister of the Plaintiff State regarding UKP Stage II. In the said letter it was disclosed that the Central Water Commission have opined that since no permanent flood pool is envisaged, gate top above FRL of 518.70 M is not acceptable. Meaning thereby that the gate level can go at G H

A Almatti dam up to that height and any further height would not be acceptable to the Central Water Commission.

At para 48 of the plaint it has been averred that "at the request of Andhra Pradesh, the Steering Committee of the ruling United Front Government at the Centre constituted a Committee of four Chief Ministers to B examine the issues relating to the construction of Almatti Dam. The Committee of the Chief Ministers met on 12th August, 1996 when it was decided to constitute an Expert Committee, with a representative of the Central Water Commission and Planning Commission, who, however, did not ultimately participate in the proceedings." It has been further stated that the C Expert Committee, after going on spot as mentioned in para 51 of the plaint observed as under :

> "As regards the storage capacity required for utilisation of 173 TMC at UKP as claimed by the 1st Defendant, the Committee has observed D that even as per the Indian Institute of Sciences at Bangalore an FLR of + 518.7 m. would be adequate for the purpose. The Committee however allowed probable losses in storage capacity due to siltation etc. and observed that the FRL on the top of the shutter be fixed for the present at + 519.6 m. and the gates be manufactured and erected E accordingly. In the opinion of the Expert Committee, Almatti dam with FRL at + 519.6 m. will provide a storage of about 123 TMC which, alongwith storage of 37.8 TMC at Narayanpur, will be quite adequate to take care of the annual requirements of 173 TMC presently envisaged under the Upper Krishna Project. The Committee felt that first step to be taken to solve the present problem regarding F Almatti dam is to implement its suggestion and restrict the height of the dam at + 519.6 m...."

Now it is, of course, true that the plaintiff-State had not accepted the entitlement of first defendant to use 173 TMC under UKP and the height of G the dam at FRL 519.6. The Expert Committee's opinion backed up by the aforesaid affidavits of the experts relied upon by defendant No. 1 State itself shows that the height of Almatti dam at FRL 519.6 would meet the basic requirement of defendant No 1 State leaving aside its demand for further storage of water if more water is available to it beyond the allotted water as H per clause V of Scheme "A" which is the binding scheme between the parties

and in the absence of Scheme "B" getting fructified.

In the light of the aforesaid stand taken by defendant No. 1 State and its witnesses and also the opinion of the Expert Committee and the observations of the Central Water Commission, it becomes absolutely clear that even according to defendant No. 1 State, the height of Almatti dam at FRL 519 would meet its present requirements of storage of sufficient water at Almatti dam for irrigation and power generation purposes. It may be that its future need depending upon the contingency of Scheme "B" ultimately getting finalised may require larger storage capacity calling for greater height at Almatti dam but at present as seen from the record, its need would be satisfied by restricting the height of Almatti dam at FRL 519. In fact, so far as the aforesaid height is concerned, even the plaintiff-State, while cataloguing violations of KWDT decisions by the Karnataka State, has made the following pertinent averments in paras 66(ii) & 66(iii) at pages 74 to 76 of its plaint :

> "66(ii). As per well accepted engineering practices, a live storage of maximum of 103 TMC is considered sufficient for utilisation of 155 TMC of water for irrigation. This is more apposite in view of the local conditions of the project area. Since the live storage capacity of the Narayanpur reservoir was only 23.77 TMC, the Tribunal allowed construction of the Almatti reservoir only as a carry over reservoir to supplement Narayanpur but did not permit any irrigation under Almatti. Karnataka, however, unilaterally altered the design of Almatti reservoir and converted the same into a multi-purpose project providing for direct irrigation to an extent of 4.13 lakh acres and for generation of 297 MW of hydel power, which involved additional utilisation of atleast 91 TMC of water beyond what was permitted and allocated to UKP by KWDT. As per the modified design, the height of the dam at Almatti has been sought to be increased from 518.7 m. to 524.256 m. so as to have an increased storage of 116 TMC beyond the permissible storage for irrigation permitted by KWDT at Narayanpur.
>
> (iii) The Almatti Project in addition to being a carry over reservoir now envisages utilising an additional 91 TMC of water beyond KWDT allocation to fulfil the following further objectives :

S. No.	Details & Utilisation	Area (in lakh acres)	Water Requirement (in TMC)
(a)	Canal irrigation under Left and Right Bank Canals at Almatti	0.90	11
(b)	Irrigation under foreshore lift scheme (Mulwad)	3.23	39
(c)	Additional requirement for sugar cane and other second season crops under lift schemes	--	19
(d)	Incremental evaporation loss due to additional storage for power generation (100 TMC)	--	22
	Total	4.13 Lakh Acres	91 TMC

If Karnataka is permitted to utilise an additional quantum of 91 TMC of water for irrigation and other purposes at Almatti, the dependable flow in the river downstream of Almatti and Narayanpur would be severaly reduced adversely affecting the interest of the lower riparian - plaintiff State.

Moreover, the said additional utilisation of 91 TMC for irrigation purposes at Almatti by Karnataka would drastically affect the ecological balance, degrade the environment, increase the pollution in the river water and render large extents of irrigated areas in the plaintiff-State dry. It would also alter the flow pattern which in turn is bound to jeopardise the riparian interests of the agriculturists who have prescriptive rights, a right of customary use of river water within the plaintiff-State. Such utilisation would also adversely affect the power production systems within the Plaintiff-State."

These averments thus clearly indicate that the real grievance of the

plaintiff-State is pertaining to the height of Almatti Dam beyond 518.7 m. and going up to 524.256 m. In other words, there is no real grievance of the plaintiff-State regarding maintenance of height of Almatti Dam at least up to 518.7 m. or 519 m. Beyond that it would be a real bone of contention by the plaintiff-State. The aforesaid grievance of the plaintiff-State is further highlighted, when we turn to para 68 of the plaint at page 82. Therein the plaintiff states that the 1st Defendant Karnataka has grossly violated the decisions of the KWDT. In the said para pertaining to Almatti Dam, at item 2, it was mentioned as under :

"Sl. No.	Name of the Project	Area permitted (lakh acres)	Planned Area (lakh acres)
2.	Almatti	Nill	4.13"

On a conjoint reading of the aforesaid averments in paras 66(ii) and (iii) and para 68(a)(2), it becomes at once clear that the real grievance of the plaintiff-State is of storage and utilisation of additional 11 TMC water at Almatti Dam by raising the height up to 524.256 m. which would result in the irrigation of planned area of 4.13 lakh acres. Under these circumstances, therefore, in our view as at present advised if the height of Almatti Dam is fixed at FRL 519 m. it would meet the requirements not only of the plaintiff-State but also meet the present requirement of defendant No. 1 State and also would not fall foul on the opinion of the Expert Committee as well as on the clearance given by the Central Water Commission to Stage II of the UKP Project, as seen earlier.

In this connection, it is also interesting to note what defendant No. 1 State of Karnataka has to say in connection with its report regarding UKP Stage II. In compilation II of the relevant document filed by the State of Andhra Pradesh, we find a copy of that report at page 98 in connection with the minimum Almatti FRL required. The report reads as under :

> "The minimum Almatti FRL required to get 173 TMC utilisation is found to be 518.7 m. The reservoir operation tables for Almatti reservoir for the years 1950-51 to 1988-89 with FRL 518.7 m. and the corresponding operation tables for Narayanpur Reservoir for the same period are enclosed after the end of Table 6. It is seen that there are only 7 failure years in a period of 39 years, which are less than 25% of the total number of years of operation."

A In must, therefore, be held while answering issue No. 9(a) that there is really no dispute between the plaintiff-State and defendant No. 1 State that construction of Almatti Dam with at least an FRL 519.6 m. will meet the requirement of defendant No. 1 State on the one hand and also the grievance of the plaintiff-State on the other hand. In other words, construction of Almatti Dam with an FRL of 524.256 may not be feasible or permissible at this stage looking to the allocation of gross quantity of water to Karnataka State as per Scheme "A" on the basis of 75% dependable availability of water per each water year as decided upon by the Tribunal. Any increase of the height beyond FRL 519 m. may depend upon further allotment of water to Karnataka State by any subsequent - decision of the Tribunal, as and when constituted, as that would depend upon the implementation of proposed Scheme "B" which up till now has not been elevated to the status of a binding deciding of any Water Disputes Tribunal.

When we turn to issue No. 9 (b), we find that it assumes that construction of a dam within the territory of Karnataka requires consent of other riparian States. This assumption by itself cannot be sustained for the simple reason that every riparian State within its own territory can construct a dam as required by it. The grievance of other riparian States would arise only if such construction is likely to affect the available water flow of inter-state river as available to it by any adjudication of the Tribunal or if it raises a dispute in this connection to be adjudicated upon by any future Tribunal. The absolute assumption in the issue that State of Karnataka cannot be permitted to proceed with construction of dam without consent of other riparian States, therefore, cannot be accepted and will have to be considered subject to the aforesaid rider.

So far as the second assumption is concerned, the approval of the Central Government will be required under the federal setup as and when any project is to be constructed in Karnataka State. It has to get clearance from appropriate statutory and executive authorities. It cannot therefore, be assumed that State of Karnataka would proceed with the construction of such dam without approval of the Central Government. In fact the evidence on record has shown that it has already approached the Central Government for necessary approval. Issue No. 9(b) is answered accordingly.

Issue No. 9(c) :

The aforesaid conclusion of ours would answer issue No 9(a) between

the plaintiff-State and the Defendant No 1 State being the main contesting States. However, before this conclusion is reached *inter parties*, Plaintiff and the Defendant No. 1 as afore-stated, the grievance of defendant No. 3 State of Karnataka also has to be kept in view in connection with permissible height of Almatti Dam. Learned senior counsel Shri Andhyarujina for the State of Maharashtra-defendant No. 3 herein, vehemently contended that if the height of Almatti Dam to be constructed by the State of Karnataka is allowed to go beyond 519 m. FRL which is cleared by the Central Water Commission there is a likelihood of submergence of number of villages of Maharashtra State by way of back effect of water collected at that dam. He frankly stated that this contention was not raised before the Tribunal as the Tribunal had not considered the question of clearance of any height of Almatti Dam. But after the filing of the present suit, on further enquiry and material gathered by it, it is seen that there is a possibility of such submergence. Now so far as this grievance is concerned, in the compilation MAH-2 furnished by the State of Maharashtra, the following relevant averments have been made at paras 1.8 and 1.9 as under :

> "1.8. As the raising of the height of the Almatti which is the subject of controversy in Suit No. 2 of 1997 was kept in abeyance, the State of Maharashtra did not desire to precipitate a sensitive issue having larger consequences.
>
> 1.9. In July 1998, the Government of Maharashtra took up the question of likely submergence of the territory of Maharashtra with the State of Karnataka and the Union Water Resources Ministry and concerned Union Government Agencies. By that time, the State of Maharashtra was able to carry out in its preliminary survey which showed that with Almatti FRL/MWL RL 524.256 m. there would be submergence of Maharashtra's territory to an extent of 5 to 6 meters depth (16 to 20 feet depth). This submergence would further increase during the floods. Therefore, State of Maharashtra requested Karnataka by its letter dated 27.7.1998, for an immediate stoppage of all further construction at Almatti dam and specially the installation of gates and any storage against the gates to ensure that no territory of Maharashtra was submerged. It also asked for a written guarantee from Karnataka State that it would not install radial gates at Almatti and/or store water unless the matters of submergence of and likely damages to the structures in the territory of Maharashtra, were discussed and settled

A with the Maharashtra State to its entire satisfaction. The State of Karnataka was also informed that in the event of non receipt of written assurance, the State of Maharashtra would be compelled to approach the Honorable Supreme Court and seek judicial intervention for a total stoppage of all construction work at the Almatti dam and prevent storage of water above crest level RL 509.00 m."

B

At para 1.13 at page 73 the stand of the State of Maharashtra is stated as disclosed from the correspondence exchanged between the parties :

"(a) The level of Krishna river near the Maharashtra Karnataka border is less than RL 519.00 m. compared to FRL RL of 524.256 m. at Almatti and FRL RL 524.87 m. at Hippargi, with the result there will be submergence in Maharashtra to the extent of 5 to 6 meters.

C

(b) No actual field surveys have so far been undertaken by Karnataka to assess the magnitude and extent of submergence in Maharashtra. Karnataka has now stated that such surveys would be done by Karnataka only from April 1999.

D

(c) None of the Central Government agencies have so far technically examined the submergence aspect in Maharashtra due to Almatti dam with FRL RL 524.256 m.

E

(d) For Almatti dam, with crest level RL 509.016 and FRL Rl 524.256, none of the technical aspects such as Maximum design flood spillway adequacy, number and size of gets, siltation and its effects upstream in Maharashtra, flood routing, reservoir operation schedules etc., have so far been examined or certified as correct and acceptable by the Central Water Commission. All these aspects materially affect and influence the extent of submergence in Maharashtra."

F

At page 1.14 at page 75 it has been averred as under :

"It is now learnt that the State of Karnataka now proposes to weld skin plates on the frame work of radial gates. This will now complete the erection of the gates and raise the height of the Almatti dam to FRL RL 524.256 m. Raising of the FRL Rl to 524.256 m. of the dam will submerge territories in Maharashtra. The State of Karnataka has not been given any right to submerge any State's territories by the Krishna Water Disputes Tribunal."

G

H

When we turn to I.A. No. 8 of 1999 filed by the State of Maharashtra for grant of leave to file additional written statement, we find the following pertinent observations at page 6 at para 1.2. The same read as under :

> "After it filed its Written Statement, a detailed study by Maharashtra of the documents, records, project reports and answers to intereocutories etc. filed in OS 1 and OS 2 of 1997 by the States of Karnataka and Andhra Pradesh revealed for the first time that the territory of the State of Maharashtra was likely to be submerged by the State of Karnataka by constructing the Almatti dam with FRL RL 524.256 m. and Hippargi Barrage with FRL RL 524.87 m. and would result in displacement of population from several villages and a few towns in Maharashtra. There was also likelihood of enormous damage to private and public properties and works and structures including archaeological structures and pilgrimage places as hereinafter stated in para 5 below. There would also be disruption of communications, enhanced distress and damages during floods each year due to sedimentation and reduction of existing river channels' capacities, flattening of bed gradients, change in the already fragile river regime near the border of the two States and increased flood depths and duration and consequent distress every years."

Similar submissions are found at page 34 of the additional written statement filed by the State of Maharashtra, Statement No. 1 captioned as list of villages from Maharashtra State likely to be effected by floods due to Almatti Dam (in Karnataka State) with FRL RL 524.256 m., has mentioned list of 58 villages covered by the Krishna river basin.

The aforesaid grievance of the State of Maharashtra, which is defendant No. 3, against defendant No. 1 is really a dispute between the two defendants and does not project any dispute qua the plaintiff-State, but even proceeding on the basis that suit under Article 131 is a comprehensive one and seeks to resolve the simmering disputes between all the contesting States which are the riparian States situated in inter-State river Krishna basin and not applying the strict yardstrick of a suit before an ordinary civil court, we have to appreciate the real grievance voiced by the State of Maharashtra against the height of Almatti Dam. It centers around the height of 524.256 m. Any height beyond 519 m. and going to 524.256 m., according to the State of Maharashtra, is

A likely to submerge its villages though being a possibility and not a real certainty. So far as this grievance is concerned, therefore, it can be safely assumed that defendant No. 3's grievance is really confined to a remote and un-ascertained possibility of submergence of its villages if the height of Almatti Dam was more than 519 m. and reaches 524.256 m. Grievance about B height of 524.256 m. is also voiced by the plaintiff-State of Andhra Pradesh, though for different reasons. It can, therefore, safely be assumed that, as at present advised, the height of Almatti Dam if permitted up to 519 m. will not pose any real problem to the plaintiff-State on the one hand or to defendant No. 3 State on the other and will also serve the present need of Defendant No. 1 State regarding storage of sufficient water at Almatti Dam in the light of C binding decision of Scheme "A". In other words, the height of 519 m. appears to be not in serious dispute amongst all the three riparian States located in Krishna river basin and if this height is permitted to be maintained at Almatti Dam that would also not go against the opinion of Central Water Commission on the one hand and the Expert Committee's opinion of the four Chief D Ministers on the other.

But leaving aside this aspect of the grievance of the State of Maharashtra, it may be mentioned that the dispute sought to be raised by defendant No. 3 State of Maharashtra is against defendant No. 1 State, namely, State of Karnataka regarding any increase in the height of Almatti Dam beyond 519 E m. or for that matter beyond 512 m. which, according to learned senior counsel Shri Andhyarujina for the State of Maharashtra, can be the permissible height and which would have no adverse effect of submergence in the Maharashtra territory, However, this dispute cannot be resolved in the present proceedings for the simple reason that it would assume the character of a 'water dispute' F as we will presently see. 'Water dispute' as contemplated by Article 262 has been defined by Section 2(c) of the Disputes Act, as extracted earlier. It means any dispute or difference between two or more State Governments regarding use, distribution or control of waters of, or in, any inter-State river or river valley. Raising of the height of Almatti Dam beyond the level of 512 m. would G entitle the State of Karnataka to control waters of river Krishna which is an inter-State river and if this type of control of the Krishna water by defendant No. 1 State is likely to submerge villages of Maharashtra State, which is an upper riparian State, by back-effect, it would clearly fall within the definition of 'water dispute' as found in Section 2(c)(i). That would immediately attract Section 3(a) which deals with complaints by State Governments as to water H disputes. It provides that :

"*3. Complaints by State Government as to water disputes.* - If it appears to the Government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or of any of the inhabitants thereof, in the waters of an inter-State river or river valley have been, or are likely to be, affected prejudicially by -

(a) any executive action or legislation taken or passed, or proposed to be taken or passed, by the other State; or

xxxx xxxx xxxx"

It becomes clear that the Maharashtra State, namely, defendant No. 3, apprehends that because of the executive action of Defendant No. 1 State contemplating raising of height of Almatti Dam at 524.256 M., the defendant No. 3 State or its inhabitants are likely to be prejudiced by submergence of its villages and the lands occupied by residents therein. Thus on a conjoint reading of Section 2(c)(i) and Section 3(a) of the Disputes Act such a grievance voiced by defendant No. 3 State against defendant No. 1 would consequently fall within the fore-corners of the Disputes Act enacted by the Legislature under Article 262. Once that conclusion is reached the result becomes obvious. This type of grievance and dispute cannot be adjudicated upon by us under Article 131 and it is for the Maharashtra State if so advised to raise such a dispute which earlier it did not raise, by filing an appropriate compliant under Section 3 of the Disputes Act before the Central Government and once that happens Section 4 of the Act would be automatically attracted. It provides as under :

"*4. Constitution of Tribunal* - (1) When any request under Section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute.

(2) (The Tribunal shall consist of a Chairman and two other members nomination in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court.)

A (3) The Tribunal may appoint two or more persons as assessors to advise it in the proceeding before it.

Thus the grievance about submergence raised by Defendant No. 3, State squarely falls within the scope of 'water dispute' between defendant No. 3 State and defendant No. 1 State. For its resolution, adjudication by the Tribunal is the only way out. It is not in dispute between the parties that such a water dispute was never got adjudicated upon by KWDT. In other words, it remains an open dispute calling for its adjudication. It cannot be considered by us under Article 131. In fact in the statement of case of the State of Maharashtra defendant No. 3 herein before the Krishna Water Disputes Tribunal, which is annexed as MRK-I, the State of Maharashtra itself has considered such a grievance as a part of 'water dispute'. In para (k) in the reliefs sought by the State of Maharashtra from the Water Tribunal it was submitted as under :

> "(k) that for the purpose of giving effect to the decision of this Honourable Tribunal all directions may be given and orders passed which are usual and proper in a final determination of an inter-States' River Water Dispute including a direction that the water shall not be used in any project which will have the effect of submerging the territory of any other State except with the prior consent of, and prior agreement on the adequate compensation for the damage to the concerned State if it has consented to a part of its territory being submerged."

It is, of course, true that though the defendant No. 3 State considered the question of submergence as a part of 'water dispute' to be resolved by the Tribunal, the Tribunal did not consider the question of submergence of villages in the territory of defendant No. 3 State because of the height of Almatti Dam. It has, therefore, remained a simmering dispute between the defendant No. 3 State and Defendant No. 1. It, therefore, requires to be adjudicated upon by a competent Tribunal as noted earlier. It is axiomatic that crucial question for determination under Section 3 of the Disputes Act is whether the interest of the State of Maharashtra or of any of its inhabitants in Krishna river valley will be prejudiced by the executive action of another riparian State, like the Defendant No. 1. The State is one integral unit and its interest includes the well-being of its inhabitants within its territory including areas outside the river basin. Therefore, under the Inter-State Water Disputes Act, 1956 the

relevant consideration is the interest of the State as a whole and all its inhabitants and not merely the interest of the basin areas of the State. Consequently, it must be held that the dispute regarding the apprehended submergence of villages of Maharashtra State by raising of the height of Almatti Dam by State of Karnataka beyond 519 m. is an unresolved water dispute which cannot be considered by us under Article 131 and we have to relegate respondent No. 3 State to filing of an appropriate complaint under Section 3 of the Disputes Act before the Central Government, if so advised, if in the mean time no amicable agreement or settlement of the dispute *inter-se* between defendant No. 3 State and defendant No. 1 State is arrived at.

Now, let us take stock of the situation. As we have seen earlier, there is no real dispute amongst the three States up to the height of 519 m. of Almatti Dam. We can, therefore, while answering issue Nos. 9(a) and (b) safely hold that, as at present advised and as the evidence stands on record construction of Almatti Dam with an FRL 524.256 together with all other projects executed and in progress and contemplated by the Karnataka State cannot be granted nor can the Karnataka State be permitted to construct up to that height without the consent of all other riparian States as well as without the approval of the Central Government. However, this will be subject to the rider that there cannot be any objection to permitting the State of Karnataka defendant No. 1 to construct Almatti Dam up to a height of 519 m. for which, as already discussed, there is no real dispute amongst the parties. However, even this much indulgence granted to defendant No. 1 State will be subject to the following safeguards and riders :

Even while defendant No. 1 State proposes to construct the Almatti Dam up to FRL 519 m. it will be subject to clearance by all other competent authorities functioning under different Statutes. Requisite clearance will be required by defendant No. 1 State of raising the height of the dam even up to 519 m.

In particular, such clearance will have to be obtained under the Environment Protection Act, 1986 and from the Ministry of Forests & Environment, Govt. of India in this connection.

Appropriate clearance will also have to be obtained from the Central Water Commission for raising the height up to 519 m.

The aforesaid permission/clearance to raise the height of 519 m. by this

A order will also subject to any further directions if any, obtained by the disputant States concerned from any future Water Disputes Tribunal which may be constituted by the Central Government on the complaint raised by any of the disputant States, including the State of Maharashtra defendant No. 3 herein. The interim relief granted by this Court pending hearing of the present suit will stand modified to the effect that the State of Karnataka, subject to the aforesaid clearance of the authorities, can raise the height of the Almatti Dam up to 519 m., as at present advised.

The raising of further height of Almatti Dam beyond 519 m. will obviously abide by the decision, if any, obtained in future from appropriate C Water Dispute Tribunal constituted under the Disputes Act on complaints raised by any of the three disputant States before us and also after getting clearance from the Tribunal and all other competent authorities. The question of raising the height of Almatti Dam beyond 519 m. will also fall for consideration of the Tribunal after 31st May, 2000 when Scheme "A" will come up for review as already directed by the KWDT in its Report PK-I & D PK-II. It will also have to be considered in the light of proposed Scheme "B" which may fall for consideration of appropriate Water Disputes Tribunal in future if complaints in this connection are raised by any of the contesting States before the Central Government.

E Issue Nos. 9(a), (b) and (c) are answered as aforesaid.

Original Suit No. 2 of 1997 will stand disposed of as indicated above. In the facts and circumstances of the case there will be no order as to costs.

BANERJEE, J. I have had the privilege of going through the detailed F judgments prepared by Brother Pattanaik concerning these two Suits (OS No. 1 and OS No. 2) and I record my concurrence therewith. I have also the privilege of going through the judgment prepared by Brother Majmudar, in OS No. 2 concerning certain issues and I do also record my concurrence therewith but I wish to add a few pages as my reasoning in the matters in issue by way of one concurring judgment for both the Suits as below:- G

The points of controversy in these two suits (OS No. 1 and OS No. 2/97) under Article 131 of the Constitution between the States of Karnataka, Andhra Pradesh and Maharashtra pertain to the use and sharing of Krishna river water. Whereas Karnataka has filed Original Suit No. 1 of 1997 H against the State of Andhra Pradesh as the first defendant and State of

Maharashtra as the second, the Original Suit No. 2 of 1997 has been instituted by the State of Andhra Pradesh against the States of Karnataka and Maharashtra. Union of India, however has been impleaded as a party defendant in both the Suits.

Before, however, proceeding with the controversies as raised, be it noted that peculiar is the distribution of water resources in the country which cannot but be ascribed to be highly uneven as regards time element. Over 80 to 90 per cent of the run off in Indian rivers occurs in four months of the year and there are regions of harmful abundance and acute scarcity. The country has to deal with several critical issues for quite some time in the matter of water resources of the country. The total water requirement of the country by the year 2050 would be to the tune of 973 to 1180 Kms. Irrigation is the key area for highest water requirement followed by domestic use including drinking, power projects and other uses. The Report of the National Commission for Integrated Water Resources Development as prepared by the Ministry of Water Resources, Government of India: (September, 1999) records:

> "The country's total water requirement in the year 2050 barely matches the estimated utilisable water resources. It is of paramount importance that we should aim at reducing water requirement to the low demand scenario. While there appears to be no need to take an alarmist view, three major considerations have to be kept in the forefront while formulating an integrated water policy. First, that the balance between the requirement and availability can be struck only if utmost efficiency is introduced in water use. Second, average availability at the national level does not imply that all basins are capable of meeting their full requirement from internal resources. Third, the issue of equity in the access to water, between regions and between sections of population assumes greater importance in what is foreseen as a fragile balance between the aggregate availability and aggregate requirement of water."

The Report further records that though the National Water Policy of 1987 was a good first step in the direction of evolving a national consensus but by reason of emergence of new issues, there is existing urgent necessity to revise the National Water Policy. Till such time that, however, this new revived policy can be given its true form and shape and thereupon implement the same in the actual physical ways and means, though unfortunate, the Inter-

A State River Disputes continue and the same have turned out to be more common than uncommon: this is, however, not restrictive to this country only but it has crossed the trans-national boundaries. The observations of the U.S. Supreme Court in the case of Kansas v. Colorado 51 Law Ed.U.S. (203-206) 967 seem to be rather apposite in the present context. Brewer, J. speaking for the Bench observed as below:

B

> "This suit involves no question of boundary or of the limits of territorial jurisdiction. Other and incorporeal rights are claimed by the respective litigants. Controversies between the states are becoming frequent, and, in the rapidly changing conditions of life and business, are likely to become still more so. Involving, as they do, the rights of political communities which in many respects are sovereign and independent, they present not infrequently questions of far-reaching import and of exceeding difficulty."

C

D The framers of the Constitution, however, being alive to the situation did incorporate Article 262 providing for adjudication of disputes relating to waters of inter-State Rivers or River Valleys. Significantly, sub-Article 2 of Article 262 by its unequivocal language expressly provides for a total ouster of jurisdiction of courts including the Supreme Court by Parliamentary legislation as regards resolution of such disputes. The subsequent legislation E as introduced into the Statute Book, namely, the Inter-State Water Disputes Act 1956 is such a legislation under Article 262 of the Constitution and Section 11 thereof excludes the jurisdiction of the courts including that of the Supreme Court in respect of a water dispute. The true effect of Section 11, however, will be dealt with shortly hereinafter but before so doing, be it noted that F whereas Article 262 pertains to ouster of jurisdiction of the Supreme Court, Article 131 relates to conferment of jurisdiction on to the Supreme Court and it is in this context, the effect of Article 262 will also has to be appreciated vis-a-vis Article 131 of the Constitution.

G Needless to record here that Indian Constitution being federal in form and character, there is existing division of powers between the Union and State Governments with clearly defined areas of authority between the States and the Union excepting, however, in certain exigencies as provided therein. The Three Lists under Seventh Schedule amply exhibit the wisdom of our Constitution framers in the matter of maintaining a dual polity. The independ- H ence of the judiciary is maintained so as to determine the issues between the

Union and the States or between one State and another and it is in this perspective, Article 131 of the Constitution provides for the original jurisdiction to the Supreme Court of India to the exclusion of any other court in regard to disputes between the Union and one or more States or between the Union and any State or States on one side and one or more States on the other or between two or more States.

Very learned and detailed submissions have been advanced vis--vis Articles 262 and 131 of the Constitution, but before embarking on to a detailed discussion, it will be convenient to note the factual matrix of the matter in issue.

The background facts:

On 10th April, 1969, the Government of India constituted the Krishna Water Dispute Tribunal and referred thereto the water dispute regarding the utilisation of the water of river Krishna, the disputants being the States of Mysore, Madhya Pradesh, Orissa, Andhra Pradesh and Maharashtra. Subsequently, however, Orissa and Madhya Pradesh were discharged from the records of the case and I do not think it expedient to record the detailed reason therefor save and except as noted hereinabove.

In their statements of cases, Maharashtra, Mysore and Andhra Pradesh asserted their claims to the utilisation of water of Krishna river for existing and future projects: whereas Maharashtra claimed 820.70TMC for gross utilisation, Mysore claimed 1430.00 TMC and Andhra Pradesh claimed 1888.10 TMC as regards their gross utilisation. In addition to the above , Maharashtra claimed 32.5 TMC for regenerated flows and 70-80 TMC for industrial use and domestic water supply. Andhra Pradesh also like Maharashtra did claim further additional 120 TMC for domestic water supply and industrial use and Mysore State demanded 1430 TMC but did not include its needs for water for domestic and industrial use. There is no point of dispute that the total available water in the Krishna river system cannot match with the demands as raised or claims asserted.

Incidentally, Krishna is the second largest river in India. It rises in the Mahadev range of Western ghats near Mahabaleshwar in Maharashtra and flows through Mysore and Andhra Pradesh obtaining further water accumulation support from various tributaries, rivulets and streams and finally joins the Bay of Bengal. In the run of 186 miles within Maharashtra, the bed fall

A is 14.06 ft. per mile, the fall up to mile 85 being steeper at the rate of 22.1 ft. per mile. In the run of 300 miles within Mysore, the bed fall is 2.12 ft. per miles and in a run of 358 miles within Andhra Pradesh, the bed fall is 3 ft. per mile. Be it noted that rivers Bhima and Tungabhadra are tributaries of Krishna but they themselves are major inter State rivers.

B

Tracing back the factual backdrop, it also appears that there was, in fact, an agreement between Madras and Mysore as regards sharing of Tungabhadra water above Mallapuram only. This agreement of July, 1944 fixed the share of Madras and Mysore only in the Tungabhadra water and it did not bind the other riparian States. While it is true that the agreement of July, 1944 preserved C Mysore's existing utilisation it has also established Mysore's right to use other quantities of water. After Independence and formalisation of Hyderabad State's accession to India, the Planning Commission on 31st July, 1951 wrote to the Governments of Bombay, Madras and Hyderabad enclosing copies of summary records of discussion and Memorandum of Agreement and asking D them to ratify the agreement. Letters of ratification were sent by the Madras Government on 17th August, 1951, by the Hyderabad Government on 23rd August, 1951 and the Bombay Government on 30th August, 1951. Mysore, however, refused to ratify the agreement as required. As a matter of fact, on 24th September, 1951 as the records depict, the Mysore Government sent a note to the Planning Commission recording therein that the draft agreement E should be modified so as to allow Mysore, the right to use 143.5 T.M.C. of water and the question of ratification would be considered only after modification to the extent indicated above. It is this factual back-drop which has prompted the Tribunal to answer the first issue in regard to the conclusiveness of the Agreement of 1951 noted above in the negative. The Tribunal came to F the specific conclusion that since Mysore did not ratify the agreement, there is no operative and concluded agreement between the parties and the ratification by other States were wholly ineffective.

The next issue raised before the Tribunal was to the effect, viz. 'what directions, if any, should be given in the equitable apportionment of the G beneficial use of water of Krishna river and the river valley'. On the main issue as above, however, following sub issues were also raised:

SUB-ISSUES

H (1) On what basis should the available waters be determined?

(2) How and on what basis should the equitable apportionment be made? A

(3) What projects and works in operation or under construction, if any, should be protected and/or permitted? If so, to what extent?

(4) Should diversion or further diversion of waters outside the Krishna drainage basin be protected and/or permitted? If so, to what extent and with what safeguards? How is the drainage basin to be defined? B

(5) Should any preference or priority be given to irrigation over production of power? C

(6) Has any State any alternative means of satisfying its needs? If so, with what effect?

(7) Is the legitimate interest of any State affected or likely to be affected prejudicially by the aggregate utilisation and requirements of any other State? D

(8) What machinery, if any, should be set up to make available and regulate the allocations of waters, if any, to the States concerned or otherwise to implement the decision of the Tribunal? E

Incidentally, the Krishna water disputes were investigated by the Tribunal in terms of an order of reference under Section 5(1) of the Inter- State Water Dispute Acts and the Tribunal upon consideration of the matter forwarded its unanimous report and decision under Section 5(2) of the Act to the Government of India on 24th December, 1973. The parties before the Tribunal, however, taking recourse to the provisions of Section 5(3) of the Act of 1956 filed four separate references for clarification before the Tribunal, and the Tribunal subsequently upon hearing the respective submissions on 27th May, 1976 prepared its further report incorporating therein clarification sought for under Section 5(3) of the Act to the Central Government which was, however, subsequently published by the Central Government in terms of Section 6 of the Act of 1956 as the decision of the Tribunal. F G

It ought also to be noticed that the Tribunal in its final order formulated Scheme A for distribution of water for each of these three States. Significantly, however, as regards Scheme A, the Tribunal in no uncertain terms observed H

that the same should be reviewed after a period of 25 years. The effect of such an inclusion is to be noticed with some care; but before doing so it would be convenient to note the basic features of the order as passed by the Tribunal firstly in the year 1973 and finally in the year 1976. It is significant to note that the Tribunal while directing Scheme 'A' for distribution of Krishna river water, has also formulated another Scheme (accepted to be as Scheme 'B'), the details of which would appear hereinafter in this Judgment. Suffice, however, it to note presently, that the Tribunal itself thought it fit not to treat it as an implementable decision.

The basic features of the order as passed in 1973 are as below:

(a) Mass allocation of utilisable dependable flow at 75% and having the detailed parameters of the past years pertaining to the flow of water, the total run of water would be 2060 TMC out of which 1693.36 TMC should be allocated to the three States for protected uses and the remaining 366.64 TMC (2060 TMC-1693.36 TMC) in the manner as below:

		TMC
1.	State of Maharashtra	125.35
2.	State of Mysore	190.45
3.	State of Andhra Pradesh	50.84
	Total	366.64

Thus, out of the dependable flow 2060 TMC, the share of each State is as follows:-

		TMC
1.	State of Maharashtra	565.00
2.	State of Mysore	695.00
3.	State of Andhra Pradesh	800.00
	Total	2060.00

(b) The determination of the quantity of water which would be added to the 75% dependable flow of the river Krishna up to Vijaywada on account of return flows.

(c) In order to give a complete picture, the Tribunal considered it fit and proper to incorporate certain provisions on the subject of apportionment of water of river Krishna between Maharashtra, Mysore and Andhra Pradesh *inter alia* as under.

(a) Clause III of the order relates to the dependable flow and augmentation in the dependable flow due to return flows.

(b) Clauses IV and V embody the scheme for apportionment of water of the river Krishna between the three States of Maharashtra, Mysore and Andhra Pradesh. In Clause V it has been stated with regard to the State of Maharashtra and Mysore that each of them shall not use in any water year more than a particular quantity of water specified therein. It is necessarily implied that both these States may use, in any water year, water of the river Krishna upto the quantities specified in that Clause subject to the conditions and restrictions imposed by the Tribunal and subject to the availability of water. It has been clarified that water has been allocated to each of the three States enbloc and that subject to the conditions and restrictions, each State shall have the right to make beneficial use of the water allocated to it in any manner it thinks proper. It was made clear that the water allocated to each State is for all beneficial purposes including domestic and industrial uses and no separate allocation is made for such uses.

(c) Clause IX places restrictions on the use of water in the Krishna basin by the three States. Restrictions on the State of Maharashtra that it shall not use in any water year more than 7 TMC from the Ghataprabha sub-basin (K-3) as otherwise the requirements of the State of Mysore for the projects in that sub-basin may suffer. Restriction on the State of Andhra Pradesh that it shall not use more than 6 TMC from the catchment of the river Kagna in the State of Andhra Pradesh so that waters of that river may reach the main stream of the river Bhima. While placing restrictions on the use of water beyond the stated quantity by State, the Tribunal laid down an upper limit which is slightly above the total requirement of that State as assessed from the demands which have been either protected or which have been held as worthy of consideration.

(d) Clause X relates to the restrictions placed on the State of Maharashtra on the westward diversion.

(e) The provisions contained in Clauses XII and XIII are necessary as they would furnish the machinery for determining how much water is used by each State in each water year. They will also furnish valuable data which may be of considerable importance in future.

(f) Clause XIV deals with the review of the order of the Tribunal by a competent authority or tribunal after the 31st May, 2000.

As noticed above, the Tribunal itself has recorded that the Order ought to be reviewed after the lapse of a reasonable period of time. The reason for such a conclusion, however, is plain and unambiguous and in the words of the Tribunal, the reasons are as below:-

> "After a careful consideration we are of the opinion that the order of the Tribunal may be reviewed at any time after the 31st May, 2000. This period is considered reasonable by us in view of the fact that during the intervening period there will be increasing demands for water for irrigation and other purposes in the Krishna basin which may have to be examined in the light of the fresh data that may be available. It may be mentioned that the demands of the three States will by that time take much more realistic shape. Further, in view of the stupendous advance in the technology in the matter of conservation of water and its uses and also for other reasons it may become necessary to examine the subject of apportionment of water after the 31st May, 2000. We have, however, provided that the authority or the tribunal which will be reviewing the order of this Tribunal shall not, as far as practicable, disturb any utilisation that may be undertaken by any State within the limits of the allocation made to it by the Tribunal. The Nile Commission of 1925 had recommended a similar provision to the effect that:-
>
> > "The Commission forsees that it will be necessary from time to time to review the question discussed in this report. It regards it as essential that all established irrigation should be respected in any future review of the question."

If during the intervening period there is an augmentation of the waters of the river Krishna by the diversion of the waters of any other

river, no State shall be debarred from claiming before the aforesaid reviewing authority or Tribunal that it is entitled to a greater share in the waters of the Krishna on account of such augmentation nor shall any State be debarred from disputing such claim."

Needless to record that the water being a nature's bounty and social benefactor; ought to be allocated in such a way so as to have its beneficial use by all concerned. The word 'beneficial use' cannot but mean and imply use of water which is conducive to the well being of the society - it may be for irrigation: for domestic use: for industrial purposes: for wild life protection: for pisciculture - it is not possible to comprehend all the factors within the ambit of the expression 'beneficial' but in totality of the situation, one can, I suppose, attribute a meaning to the effect that beneficial use means 'beneficial use of the society, be it in any sphere'. Admittedly, water is scarce in this country; as such, the use must also be in accordance with strict requirement and not de hors the same. The Tribunal took into consideration various factors in the matter of allocation of water of the river Krishna to the three States. It is significant to note that the river originates at Mahabaleshwar in Maharashtra and passes through Karnataka and Andhra Pradesh being the last riparian owner and then on to the sea. Any excess water, therefore, which is not utilised by either of these three States falls on to the sea. The Tribunal thus considered five factors in the matter of allocation.

1. Allocating the waters of certain tributaries of the river Krishna entirely to one State or another and dividing the remaining water on an equitable basis.

2. Allowing guaranteed supply of water to a lower State by an upper State and permitting the use of remaining water to the upper State with or without any restriction.

3. Restricting diversion by an upper State to its share determined on an equitable basis leaving remaining water for use to a lower State.

4. Allocating the water of the river Krishna to the three States by percentages to be fixed by the Tribunal.

5. Mass allocation of water of the river Krishna to the three States upto a certain limit providing further that the parties are to share

A the water in certain percentages to be fixed by the Tribunal in surplus as well as deficit years.

Having dealt with the issue and having provided Scheme 'A' for allocation, the Tribunal itself, however, observed that "it would be better if we devise two schemes for the division of the waters of the river Krishna between the States of Maharashtra, Mysore and Andhra Pradesh. These schemes will be called Schemes A and B. Scheme A will come in operation on the date of the publication of the decision of this Tribunal in the Official Gazette under Section 6 of the Inter-State Water Disputes Act, 1956. Scheme B may be brought into operation in case the States of Maharashtra, Mysore and Andhra Pradesh constitute an inter-State administrative authority which may be called the Krishna Valley Authority by agreement between them or in case such an authority is constituted by legislation made by Parliament." It is needless to record that Scheme 'A' does not at all depend upon the agreement of the parties and comes into operation by virtue of the order of the Tribunal. It is altogether independent of Scheme B. The Tribunal in its wisdom, however, though specific that Scheme B cannot come into operation without unanimous consent and approval of the parties or by enactment of legislation by the Parliament did, however, note in detail the modalities of Scheme B. It is on this score the Tribunal recorded as below:-

> "Now we proceed to examine how the waters of the river Krishna should be divided between the parties under Scheme 'B'. The essential element in this scheme is that the States of Maharashtra, Mysore and Andhra Pradesh share the utilisable waters of the river Krishna in each water year in stated proportions depending on the availability of water in that year, that is, if there is any deficiency in that year all the states suffer and if there is surplus all the States get the benefit, according to their shares fixed by the Tribunal. Another important feature is that it provides for fuller utilisation of the waters of the river Krishna by permitting the parties to construct additional storages in their territories to impound the water that may be flowing in excess of the dependable flow in any water year to be used in that very water year or in the succeeding water years. We have already laid stress on the point that for such a scheme to be workable, an inter-State administrative authority, which may be called the Krishna Valley Authority, should be established by agreement between the parties and failing such agreement between the parties by any law made by

Parliament under Entry 56 List I of the Seventh Schedule of the Constitution.

> For the fuller utilisation of the waters of the river Krishna we are of the opinion that such an authority should be established to supervise and regulate, if necessary, that the water available for utilisation in the river Krishna in each year be shared by the three States. For reasons which we have already mentioned we are not setting up such an authority under our Order. But if such an authority is set up either by agreement between the parties or under the law made by Parliament we consider it proper to place on record our views as to how in that case the waters of the river Krishna should be divided between the States of Maharashtra, Mysore and Andhra Pradesh. Ultimately it is for the parties or for the law made by Parliament to draw up a final scheme and our views are subject to modification in both the cases."

Be it noted that the States of Maharashtra and Mysore, however, raised objections in the matter of conferment of powers in Krishna Valley Authority to transfer water from the reservoir of the lower State for various reasons. But the Tribunal had negatived the same with an observation that obviously the Krishna Valley Authority (KVA) will be composed of high ranking engineers who are expected to use their discretion in the matter of transfer of water from one State to another judiciously. In fine, however, the Tribunal concluded by recording that so far as the Scheme B is concerned the question of enforcement of such a Scheme is left with the "good sense of the parties or to the wisdom of the Parliament".

The "good sense", however, has not dawned on to the parties as yet and neither has the wisdom of the Parliament prompted it to legislate on the score and as such, introduction of Scheme B in the matter of resolution of disputes between the lower riparian State and two upper riparian States viz.-a-viz the water dispute pertaining to river Krishna according to the Tribunal's own view does not and cannot arise and it is because of this conclusion of the Tribunal, I refrain myself from detailing the modalities of Scheme 'B'.

It would thus be convenient, therefore, at this stage to note the case with which the parties have come into this Court upon invocation of Article 131 of the Constitution. But before so doing, a short but an interesting question has to be considered as regards interpretation of Article 262 of the Constitution

A and as raised by the learned Solicitor General of India while contending that both the suits (OS No.1 and OS No.2) being barred under Article 262 having due regard to the language used therein. For convenience sake, Article 262 is set out herein below-

B

> "262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.-
>
> (1) Parliament may by law provide for the adjudication of any dispute of complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

C

> (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)."

D

Incidentally, whereas Article 262 pertains to legislative enactments containing an ouster of jurisdiction of the Supreme Court: Article 131 relates to conferment of the jurisdiction of the Supreme Court in the event of there being any dispute between two States or between one or more States on the one hand and another on the other hand or between Union of India and other E States. Let us, however, analyse the issue of ouster of jurisdiction under Article 262 as contended by Mr. Salve, the learned Solicitor General of India. The heading of Article 262 is rather significant since it reads as "disputes relating to waters" and in the Body of the Article it is provided that in the event of there being any dispute, the Parliament may by law provide for adjudication F of any dispute in regard to use, distribution or control of the waters of, or in, any inter-State river or river valley. Article 262 is specific as regards adjudication of disputes pertaining to water whereas Article 131 provides for a general power and conferment of jurisdiction of the Supreme Court in the event of there being any dispute between two States etc. etc. There is neither any conflict between Article 262 and Article 131 nor, thus, the fields covered G therein overlap each other, a specific exclusion has been thought of by our Constitution framers and being provided for in the Constitution.

The issue, however, is slightly different presently, to wit, as to whether the present suit is barred under Article 262 read with Section 11 of the Act H of 1956. It is now settled and I need not dilate on this score that the Inter-State

Water Disputes Act, 1956 has been enacted on the Statute Book by the Parliament in exercise of the powers conferred by Article 262. Section 11 of the Act of 1956 reads as below:-

> "11. The bar of jurisdiction of Supreme Court and other Courts - Notwithstanding anything contained in any other law neither the Supreme Court nor any other Court and shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act."

There is, therefore, a total ouster of jurisdiction of all Courts. In this context reference may be made to an earlier decision of this Court reported in AIR 1992 SC 522 (in the matter of Cauvery Water Disputes Tribunal) wherein this Court while analysing Article 262 and the Water Disputes Act, 1956 stated:-

> "An analysis of the Article shows that an exclusive power is given to the Parliament to enact a law providing for the adjudication of such disputes. The disputes or complaints for which adjudication may be provided relate to the "use, distribution or control" of the waters of, or in any inter-State river or river valley. The words "use", "distribution" and "control" are of wide import and may include regulation and development of the said waters. The provisions clearly indicate the amplitude of the scope of adjudication inasmuch as it would take within its sweep the determination of the extent, and the manner, of the use of the said waters, and the power to give directions in respect of the same. The language of the Article has, further to be distinguished from that of Entry 56 and Entry 17. Whereas Article 262(1) speaks of adjudication of any dispute or complaint and that too with respect to the use, distribution or control of the waters of or in any inter-State river or river valley, Entry 56 speaks of regulation and development of inter-State rivers and river valleys. Thus the distinction between Article 262 and Entry 56 is that whereas former speaks of adjudication of disputes with respect to use, distribution or control of the waters of any inter-State rivers or river valley, Entry 56 speaks of regulation and development of inter-State rivers and river valleys (emphasis supplied). Entry 17 likewise speaks of 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.

A It does not speak either of adjudication of disputes or of an inter-State river as a whole as indeed it cannot, for a State can only deal with water within its territory. It is necessary to bear in mind these distinctions between Article 262, Entry 56 and Entry 17 as the arguments and counter-arguments on the validity of the Ordinance have a bearing on them.

B

We have already pointed out another important aspect of Article 262, viz., Clause (2) of the Article provides that notwithstanding any other provision in the Constitution, Parliament may by law exclude the jurisdiction of any Court including the Supreme Court in respect C of any dispute or complaint for the adjudication of which the provision is made in such law. We have also noted that Section 11 of the Inter-State Water Disputes Act makes such a provision.

The said Act, as its preamble shows, is an Act to provide for the "adjudication of disputes relating to waters of inter-State rivers and D river valleys". Clause (c) of Section 2 of the Act defines "disputes" as follows:

"2. In this Act, unless the context otherwise requires, _

E (a) _____

(b) _____.

(c) "water dispute" means any dispute or difference between two or more State Governments with respect to

F

(i) the use, distribution or control of the waters of, or in, any inter-State river or river valley;

(ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation G of such agreement; or

(iii) the levy of any water rate in contravention of the prohibition contained in Section 7".

Section 3 of the Act states that if it appears to the government of any H State that the water dispute with the Government of another State of the nature

stated therein, has arisen or is likely to arise, the State Government may request the Central Government to refer the water dispute to a Tribunal for adjudication. Section 4 of the Act provides for the constitution of a Tribunal when a request is received for referring the dispute to a Tribunal and the Central Government is of the opinion that the water dispute cannot be settled by negotiations. Section 5 of the Act requires the Tribunal to investigate the matter referred to it and forward to the Central Government the report of its findings and its decision. The Central Government has then to publish the decision under Section 6 of the Act which decision is final and binding on the parties to the dispute and has to be given effect to by them. These dominant provisions, among others, of the Act clearly show that apart from its title, the Act is made by the Parliament pursuant to the provisions of Article 262 of the Constitution specifically for the adjudication of the disputes between the riparian States with regard to the use, distribution or control of the waters of the inter-State Rivers or river valleys. The Act is not relatable to Entry 56 and, therefore, does not cover either the field occupied by Entry 56 or by Entry 17. Since the subject of adjudication of the said disputes is taken care of specifically and exclusively by Article 262, by necessary implication the subject stands excluded from the field covered by Entries 56 and 17. It is not, therefore, permissible either for the Parliament under Entry 56 or for a State legislature under Entry 17 to enact a legislation providing for adjudication of the said disputes or in any manner affecting or interfering with the adjudication or adjudicatory process or the machinery for adjudication established by law under Article 262. This is apart from the fact that the State legislature would even otherwise be incompetent to provide for adjudication or to affect in any manner the adjudicatory process or the adjudication made in respect of the inter-State river waters beyond its territory or with regard to disputes between itself and another State relating to the use, distribution or control of such waters. Any such act on its part will be extra-territorial in nature and, therefore, beyond its competence."

Let us, therefore, analyse the prayers in the plaint of O.S. Nos.1 and 2 in order to deal with the question of bar of jurisdiction as raised by Mr. Salve. Prayers in OS No.1 of 1997 (State of Karnataka v. State of Andhra Pradesh & Ors.) are set out herein below and they read:

> "(a) decree and declare that the surplus water in the river Krishna i.e., in excess of 2060 TMC at 75% dependability, must be shared in accordance with the determination and directions of the Tribunal,

A contained in its Report (1973) and further Report (1976).

(b) decree and declare that the Defendant No.1 State of Andhra Pradesh is not entitled to insist on its right to use the surplus water i.e. in excess of 2060 TMC at 75% dependability, so long as Scheme B framed by the Tribunal is not duly and fully implemented by the B State.

(c) Defendant No.3 be directed by a permanent order and injunction including mandatory, decree, order and injunction, to notify Scheme B framed by the Tribunal and made provision for establishment of a Krishna Valley Authority and for implementation of the directions of C the Tribunal in the Report (1973) and Further Report (1976), as contemplated under Sec.6A of the Inter State Water Disputes Act, 1956.

(d) For a permanent order and injunction restraining the Defendant D No.1 from continuing to execute the following projects vis., Telugu Ganga, Srisailam Right Bank Canal, Sirisailam Left Bank Canal, Bheema Lift Irrigation and Pulichintala Projects till the Scheme B framed by the Tribunal is duly and effectively put into operation and implemented.

E (e) Pending the hearing and final disposal of the suit, the Defendant No.3 be restrained from clearing any new projects of the State of Andhra Pradesh not envisaged in Scheme A.

(f) Pending the hearing and final disposal of the suit, the Defendant State of Andhra Pradesh be restrained by order and injunction of this F Hon'ble Court, from using any portion of surplus waters in excess of 2060 TMC for allowing any of the following projects viz., Telugu Ganga, Srisailam Right Bank Canal, Sirisailam Left Bank Canal, Bheema Lift Irrigation and Pulichintala Projects until implementation of Scheme B framed by the Tribunal.

G

(g) For such other reliefs as the nature of case requires."

The present suit (O.S. No.1 of 1997) is thus a suit for a declaration that the surplus water in the river in excess of 2060 T.M.C. at 75% dependability must be shared in accordance with the determination and declaration of the H Tribunal. The second prayer is also pertaining to a declaration that the State

of Andhra Pradesh is not entitled to insist on its right to use surplus water. The main prayer in suit No.1, however, is the prayer for a mandatory injunction to notify Scheme B framed by the Tribunal and to make provision for establishment of a Krishna Valley Authority as contemplated under Section 6A of the Water Dispute Act of 1956. The three prayers above, however, unmistakably depict that the plaintiff State of Karnataka has moved this Court for vindication of a right in accordance with the direction of the Tribunal as contained in the reports of 1973 and 1976. It does not pertain to any water dispute as such, neither it can be claimed to be so having regard to the averments in the plaint. Mr. Salve, however, appearing for the Union of India and initiating the preliminary issue as regards the non-maintainability under Article 262 contended that Section 2 (c) of the Act of 1956 is of widest possible amplitude by reason of the definition of the words 'water dispute'. 'Water dispute' have been defined under Section 2(c) of the Act of *1956 as* below:-

A B C D E

> "2.a & b_____
>
> (c) "water dispute" means any dispute or difference between two or more State Governments with respect to (i) the use, distribution or control of the waters of, or in any inter-State river or river valley; or (ii) the interpretation of the terms of any Agreement relating to the use, distribution or control of such waters or the implementation of such Agreement; or (iii) the levy of any water-rate in contravention of the prohibition contained in Section 7."

The dispute pertaining to water in order to be subject, however, to Section 11 must relate to use, distribution and control by reason of the definition Section itself, since the same has specifically used the expression 'use, distribution and control of waters in any river.' In the event, it does not come within the ambit of the expression 'use, distribution or control,' Section 11 which bars the jurisdiction of all Courts in respect of any water dispute which is otherwise to be referred to the Tribunal would not have any manner of application. The test of maintainability of a legal action initiated by a State in a Court would thus be whether the issues raised therein are capable of being referred to a Tribunal for adjudication. In the factual matrix of the matter under consideration, question of adjudication of any water dispute within the meaning of Section 2(c) would not arise. The suit pertains to implementation, but does not require any further adjudication of water rights between the

F G H

A States. Reference to two decisions of this Court *N.P. Ponnuswami* v. *Returning Officer, Namakkal Constituency & Ors.*, [1952] SCR 218 and *Mohinder Singh Gill & Anr.* v. *The Chief Election Commissioner, New Delhi & Ors.*, [1978] 2 SCR 272 in the contextual facts may not have much relevance; as such, we need not detain ourselves in dealing with the same. The plenary power of Article 329 (b) which is a blanket ban on litigative challenge to electoral steps taken by the Election Commission for carrying forward the process of election to its culmination in the formal declaration of the results rests on to principles as more detailed in Mohinder Singh Gill's case. But, as noted above, the contextual facts do not warrant any detailed discussion and hence I refrain from doing so in regard thereto. Suffice it to note that whereas the adjudication of water dispute is wholly barred by reason of the power as contained in Section 11 of the 1956 Act read with Article 262 but by reason of the factual aspect of the matter and by reason of the prayer for implementation of the award rather than adjudication, the mischief of the bar of the Section 11 will not have any application whatsoever. In that view of the matter the preliminary issue as raised by Mr. Salve that the provision for exclusion is operational in the facts of the circumstances of the matter under consideration cannot be acceded to. The suit, therefore, is otherwise maintainable.

As regards the second suit being O.S. No.2 of 1997 (State of Andhra Pradesh vs. State of Karnataka and Others) and a perusal of the prayers therein indicate that suit is for a declaration in regard to utilisation of the quantity of the water as permitted by the decisions of Krishna Water Dispute Tribunal. And for the same reasons also the preliminary issue as raised by Mr. Salve vis-a-vis the second suit being O.S.No.2 of 1997 also fails.

Turning attention on to the merits of the matter in the issue, be it noticed that at the instance of the parties, there are altogether 34 issues raised in the two suits apart from the preliminary issue of non-maintainability of suits under Article 262 read with Section 11. We appreciate the most learned instructive and lucid submissions that have been made for a number of days on behalf of the parties. But in my view the area of dispute is rather limited and scope restrictive and as such I need not set out all the issues raised in the suits above noted. Though, of course, if I may note that the submissions made on behalf of the parties appearing before us have been most illuminating and instructive, to assess, however, the crux of the matter being one of the basic elements of the judicial approach and it is in this context, I do feel it expedient to record that in O.S. No.1 of 1997, the only question which needs an answer is as to

whether Scheme 'B' as suggested by the Krishna Water Disputes Tribunal be termed to be a decision within the meaning of Section 6 of the Act of 1956.

As regards the second suit where the State of Andhra Pradesh initiated the action in Court being O.S. No.2 of 1997 the height of the dam at Almatty is the focal point for consideration and it is on this score this Court has been pleased to have Issue No. 9(a) and (b) for adjudication which reads as below :

> "9.(a) Whether the construction of the Almatti dam with a FRL of 524.256 meter together with all other projects executed, in progress and contemplated by Karnataka would enable it to utilise more water than allocated by the Tribunal?
>
> (b)Whether Karnataka could be permitted to proceed with construction of such a dam without the consent of other riparian State, and without the approval of the Central Government?

Needless to record here that the learned submissions center around these two issues in whole of the two suits being O.S. No.1 and O.S. No. 2 and which have in fact occupied more than 25 hearings before this Bench.

It would, however, be convenient at this juncture to note that the issue pertaining to Scheme B - whether a decision or not, is the most relevant and the all important issue. But before dealing with the same on the factual aspects, a hurried reference to the exact meaning of the word 'decision' as used in the Act of 1956 ought to be made. In common English acceptation the word "decision" means and implies settlement : conclusion: formal judgment: resolved (the Concise Oxford Dictionary, New Seventh Edition). The situation we have, however, is slightly easier in the sense that the language of the Statute (Act of 1956) is rather simple and categorical. Section 5(2) of the Act specifically provides that when a Tribunal has been constituted in terms of Section 4, the Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving the decision of the matters referred to it and Section 5(3) provides that if upon consideration of the decision of the Tribunal, the Central Government or any State Government is of opinion that anything therein contained requires explanation or the guidance is needed, the Central Government or the State Government within three months from the date of the decision, again refer the matter to the Tribunal for consideration and the decision of the Tribunal shall

A stand modified accordingly.

Incidentally, in the contextual facts the decision of the Tribunal was pronounced in 1973 but by reason of applications in terms of Section 5(3) of the Act of 1956, the Tribunal published a further report in the year 1976. Be it noted that the decision in terms of Section 5 is required to be published by B the Central Government and on such publication in the Official Gazette in terms of Section 6 of the Act of 1956, the decision of the Tribunal shall stand as final and binding on the parties to the dispute and shall be given effect to by them. The decision of the Tribunal, thus assumes a very significant role in the matter of adjudication of water dispute by the Tribunal. Conceptually - an C ideal situation: Constitution Framers in their great thoughtfulness and by reason of divergence of language and custom provided that all Inter-State Water Disputes shall have to be resolved by a decision of the Tribunal set up therefor. In the instant case there was in fact such a Tribunal which did go into the issue of allocation of water of river Krishna between the three States as D noted above . The decision of the Tribunal has to be implemented and this is a Statutory requirement, therefore, and resultantly the decision will assume its conclusiveness and its binding nature immediately after publication of the same in the Official Gazette.

It is rather significant to note that the Issue No.2 as raised before the E Tribunal and noticed hereinbefore has been answered by the Tribunal in the final order itself by way of Scheme A, the detailed Scheme as suggested by the Tribunal. Scheme B however, does not find place in the final order. Admittedly, the Tribunal delved into the issue as an alternative scheme for resolution of disputes by establishment of Krishna Valley Authority and it is F this Scheme - it is this second Scheme which Mr. Nariman, Sr. Advocate appearing for the Plaintiff State of Karnataka contended that the Scheme itself ought to be treated as a part of the final order and decision of the Tribunal and as such ought to be implemented.

It is to be noted, however, that the authority spoken of (Krishna Valley G Authority) in terms of the order of the Tribunal itself has to be established either by agreement between the parties or by any law made by the Parliament under Entry 56 of List I of the Second Schedule to the Constitution. The Tribunal in no uncertain terms stated that propriety would not authorise the constitution of such an authority. If I may state with all deference to the H Tribunal that there is no question of any propriety involved in the matter in

issue at all since the Tribunal being a creature of the statute hadn't had any authority or jurisdiction to constitute any Board or Authority - it has to act within the parameters as laid down under the statute and not de hors the same and in the absence of such an authority, question of any propriety does not and cannot arise. The decision of the Tribunal, the statute provides, shall have a binding force on the parties to the water dispute, upon publication of such a decision. At best, observations pertaining to Scheme B and the proposal for establishment of Krishna Valley Authority can be only recommendatory in nature since Scheme B does not admittedly form part of the decision of the Tribunal which has since been published by the Central Government in terms of the provisions of the statute.

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It is by reason of the aforesaid I am, however, rather surprised that the Tribunal has taken upon itself to frame an alternative scheme when admittedly it had no power, authority or jurisdiction whatsoever to constitute Krishna Valley Authority which is ascribed to be the "heart of Scheme B". The Tribunal has had to rely upon either the good conscience of the parties or the legislative will of the legislature to have a legislation in that regard .

D

With due deference to the Tribunal again I say that I have not been able to appreciate the need of propounding a 2nd Scheme as Scheme 'B' when the Tribunal itself stated:

E

I. "When directing the transfer of water, the Krishna Valley Authority may give appropriate directions regarding the manner in which the water so transferred shall be used by the State, receiving the water."

II. "If it is found on final accounting at the end of the water year that the water used in the water year by any State is in excess or less than its share under paragraph 2, the said Authority may, subject to the provisions of paragraph 3, take such steps as it deems necessary to adjust the water accounts of the parties by regulating the extent of the use of water to be made by each State in succeeding years."

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III. "The Krishna Valley Authority shall tentatively determine the shares of all the States."

IV. "The Krishna Valley Authority will be in a position to give directions to the parties to adjust their utilisations in such a way

H

A that the use made by each State at the end of a water year is as far as practicable...."

V. "The Krishna Valley Authority is to ensure that the parties get waters in proportion to their share. For this purpose it can take any step which it deems proper at any time."

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VI. "The Krishna Valley Authority may even direct transfer of water from the project to upper State to the project of the lower State from time to time."

C VII. "We take it that the Krishna Valley Authority will be composed of high ranking engineers who are expected to use their discretion in the matter of transfer of water from one State to another judiciously."

D VIII. "A highly competent body such as the Krishna Valley Authority which will not only consist of the representatives of the States but also of the Government of India will take due care while directing the transfer of water from one State to another. As a further safeguard, it may be provided that the direction of transfer of water from one State to another shall be by a E resolution passed in a meeting in which all the available members nominated by the Government of India are present."

The extract from the report of the Tribunal as above, would lead to an unmistakable conclusion that the Tribunal wanted to provide certain guidelines F to the Krishna Valley Authority as and when it is so constituted and significantly, the Tribunal itself has left it to the good sense and better appreciation of the parties or the legislative intent for the formation of such an authority - this is where I respectfully join issue: even conceptually till date the authority is not born and thus not even in embryonic stage.

G It is on this factual backdrop that both Mr. Parasaran, Sr. Advocate appearing for the State of Andhra Pradesh and Mr. Salve, Solicitor General appearing for the Union of India and Mr. Andhyarujina, Sr. Advocate appearing for the State of Maharashtra contended in a similar tone that the prayers in the Suit (O.S. No. 1 of 1997) being an amalgum of two schemes, H question of grant of any relief would not arise. As a matter of fact, the learned

Solicitor General for the Union of India, drew the attention of the Bench to the following statements of the Tribunal in its order:

> "After deeply pondering over the matter we have come to the conclusion that it would be better if we devise two schemes for the division of the waters of the river Krishna between the States of Maharashtra, Mysore and Andhra Pradesh. These schemes will be called Scheme A and B. Scheme A will come in operation on the date of the publication of the decision of this Tribunal in the Official Gazette under Section 6 of the Inter-State Water Disputes Act, 1956. Scheme B may be brought into operation in case the States of Maharashtra, Mysore and Andhra Pradesh constitute an inter-State administrative authority which may be called the Krishna Valley Authority by agreement between them or in case such an authority is constituted by legislation made by Parliament. Scheme A does not at all depend upon the agreement of the parties and comes into operation by virtue of the order of the Tribunal. It is altogether independent of Scheme B...."
>
> "....In the end so far as the Scheme B is concerned, we leave the question of the enforcement of such a scheme to the good sense of the parties or to the wisdom of Parliament."

On the wake of the statements as recorded by the Tribunal as above, I do not see any reason to ascribe Scheme B as the decision of the Tribunal requiring publication or notification by the Central Government in terms of the provisions of the Act of 1956.

Section 6 of the Act of 1956 provides for publication of the decision of the Tribunal and is rather specific in its language and on an analysis of the same it appears that there is existing a statutory and mandatory requirement, to publish, in the event, a decision is communicated to the Central Government by the Tribunal pertaining to a water dispute within the meaning of the Act of 1956. As noticed above, the Tribunal itself recorded in no uncertain terms that in so far as Scheme B is concerned, question of enforcement thereof would be dependant upon the good sense of the parties or to the wisdom of the Parliament. This is thus not a decision in terms of Section 6 of the Act of 1956 so as to create an obligation for its publication so far as the Central Government is concerned. The Tribunal itself has treated it differently and in no uncertain terms recorded that whereas Scheme A should be enforced

A immediately, enforcement of Scheme B shall be effected on the happening of either of the two contingencies as noted hereinbefore.

One redeeming feature I wish to emphasise, well it is true, that in spite of Article 262 and in spite of the factum of the present Suit (O.S. No.1 and 2 of 1997) not being hit by Article 262 but that does not, however, clothe the B Court to pronounce on an issue which the Tribunal itself thought it fit to leave open. The exercise of jurisdiction on the part of the Tribunal to deal with the issue of Scheme B in the order is totally outside the purview of the authorisation and as such the observations cannot but be ascribed to be wholly without jurisdiction. As noted above, the heart and soul of Scheme B C admittedly has not come up as yet either at the instance of the parties or at the legislative intervention. As such, question of notifying Scheme B by the Central Government and an order of this Court on that count does not and cannot arise. The obligation to notify or publish arises only in the event of compliance of statutory requirement or there being a final decision of the Tribunal and in the contextual facts as noted above, there is no implementable D Scheme B by any stretch neither can the same be termed to be a decision of the Tribunal pertaining to Krishna Valley water dispute between the three States of Maharashtra, Karnataka and Andhra Pradesh. In short, there must be an implementable decision and when the Tribunal itself recorded its non-implementability, issuance of an order of Mandamus on to the Central E Government by this Court in exercise of its power under Article 131 does not and cannot arise.

Significantly, there has been a further criticism in regard to the prayer for notification of Scheme B by the learned Solicitor General. According to him, the decision of the Tribunal was pronounced in the year 1973 and the F further report after Section 5 (3) proceeding came in the year 1976 and the Scheme B at best being a recommendation cannot, however, be ascribed to be a decision in the year 1997 and I do find myself in agreement with Mr. Solicitor that a Tribunal cannot exhypothesia pronounce a decision which requires for its implementation, a law to be enacted by Parliament or by G consent of the parties, more so by reason of the fact that the Union Government is not a party to the dispute and the Tribunal would not otherwise have the jurisdiction to issue any directive and conversely, the Union Government will not have any obligation either to agree to carry out any directive.

Scheme B has been expressly recommended subject to alternative H contingencies - (I) an agreement between the parties or, (II) a legislation by

Parliament and it is by reason of the factum of non-fulfilment of either of the two happenings even during this interregnum, question of Scheme B as being capable of being notified as a decision does not arise. Scheme B in short, would not constitute a decision. The Krishna Valley Authority spoken of earlier and being the 'heart of the Scheme' shall have to be created by the Central Government and having due regard to the factum that Central Government has not created any such authority as yet, question of implementation of Scheme B, as a decision of the Tribunal does not and cannot arise. Needless to record, that there cannot possibly be any binding direction either and, in fact, there has been none in the matter of constitution of an Authority such as Krishna Valley Authority - it has been left solely to the concurrence of the parties and the legislative intent of the legislature.

Let us, however, at this stage, shortly record as to how the parties have dealt with the report of the Tribunal vis-a-vis Scheme B and constitution of Krishna Valley Authority. The documentary evidence as placed before this Court, however, negates even the desire of the plaintiff (State of Karnataka) to implement Scheme B or for formation of Krishna Valley Authority.

As early as in 1989, Secretary to the Government of India, Ministry of Water Resources by a letter dated May 2, 1989, addressed to the Chief Secretary, Government of Karnataka, informed the latter *inter alia* the following:

> "
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> ---
>
> ---
>
> It may be recalled that in respect of Krishna basin the concept of a Krishna River Authority has already been described by the Krishna Water Disputes Tribunal in the context of Scheme "B" providing for fuller utilisation of Krishna waters.
>
> It is, therefore, requested that the issue of establishment of Krishna Valley Authority may kindly be considered in the light of the developments quoted above and the views of the Government of Karnataka communicated early so that appropriate further steps can be taken."

By reason of the factum of there being no response from the Karnataka State, further letters were written and eventually on 17th August, 1992, the

A Secretary to the Government of Karnataka, Irrigation Department addressed a letter to the Secretary to Government of India, Ministry of Water Resources (Ex.P.K.93) with the following observations:

> "I write to invite reference to the letter cited above and to inform you as follows:-
>
> B
>
> (a) the State of Karnataka is examining, in depth, the subject of establishment of an authority to be called as Krishna Valley Authority for implementing the Scheme "B" of allocation as formulated by the Krishna Water Disputes Tribunal.
>
> C
>
> (b) The views of Karnataka on this subject will be communicated as soon as a final decision is taken in the matter.
>
> I am further directed to request you not to take any decision in the matter, without hearing the views of Karnataka, as this issue will have
> D far reaching implications on the interests of the States in the Krishna Basin."

Subsequently, as regards the establishment of Krishna Valley Authority, Under Secretary to the Government of Karnataka, Irrigation Department addressed a letter dated 30.8.93 to the Secretary to the Government of India,
E Ministry of Water Resources to the following effect:

> "I am directed to refer to the Government letter dated 17.8.92 under reference and to communicate the following comments of Karnataka on the establishment of Krishna Valley-
>
> F
>
> (a) The Krishna Water Dispute *Tribunal has considered in its final order, only scheme "A" for implementation, i.e. allocation of 75% dependable flows only. The order of the Tribunal comes up for review in 2000 A.D. the time upto 2000 A.D. is required by the State for the implementation of projects as per Scheme "A" of allocations ordered*
> G *by the Tribunal. The Tribunal, in its final order has not contemplated any machinery to be set up for the Scheme "A" of allocation and hence there is no necessity for the setting up of the same.*
>
> *(Emphasis supplied)*
>
> (b) The constitution of machinery was only contemplated for scheme
> H "B" where surplus flows also had to be allocated. *But Scheme "B"*

did not form part of the final order of the Tribunal nor have the parties agreed so far for Scheme "B". The machinery can come only when parties opt for Scheme "B". (Emphasis supplied)

(c) However, even without reference to Scheme "B", the surplus water can be shared by the parties by mutual agreement. The basin States are considering this at present.

(d) I*n view of the above, Karnataka Government is of the firm opinion that establishment of Krishna Valley Authority is not called for at present." (Emphasis supplied)*

The further documentary evidence as late as even 19th September, 1995 would be of some assistance in the matter, the same being a letter from the Secretary to the Government of Karnataka, Irrigation Department to the Chief Engineer (PAO), Central Water Commission, the letter *inter alia* recorded the following:

"Further at Page-3, Para-1 of the proceedings, it is mentioned that Government of Karnataka may be agreeable to the proposal of constitution of Inter-State Krishna-Valley authority. In this connection, I would like to point out that I had not stated about agreeing to the proposal of setting up of Krishna Valley Authority but the proposal made was that Central Water Commission or any such authority can monitor regulations from Almatti dam under UKP with the proposal of keeping FFL of Almatti Dam at 521 M, and the utilisation under UKP being limited to 177tmc as per the planning made by the Karnataka State based on the award of the Krishna Water Disputes Tribunal."

Shortly thereafter, by a letter dated 20th November, 1995, Shri P.V. Rangayya Naidu, Minister of State of Water Resources, Government of India addressed a letter to Shri H.D. Deve Gowda, Chief Minister of Karnataka recording *inter alia* the following:

"The Tribunal had considered a Scheme 'B' which envisaged utilisation of average flow in Krishna River. For implementation of this Scheme it was envisaged to set up a Krishna Valley Authority. It would have ensured fuller utilisation of water of River

A Krishna. However, the Tribunal did not include Scheme 'B' in its final order.

National Water Policy adopted by the National Water Resources Council in September, 1987 laid down that the river basin should be taken as a unit for planning and development of water resources. With
B a view to operationalizing major components of the Policy, a sub-Committee of the Consultative Committee of the Ministry of Water Resources was formulated. This Committee also recommended that for all the major inter-state rivers, river basin organisations should be established by enacting suitable legislation.

C

If it is agreeable to you, I shall convene a meeting of the Irrigation Ministers of Krishna Basin States for working out the constitution and functions and the modalities for setting up of Krishna Valley Authority."

D The reply to the said letter, P.K.-97, by letter dated 3.2.96 (P.K.98) is also of some importance and the same is set out hereinbelow:

"Please refer your DO letter cited above wherein a proposal has been made to convene a meeting of Irrigation Ministers of Krishna Basin States for working out the constitution and functions and the modalities
E for setting up of Krishna Valley Authority.

In this connection, I would like to draw your attention to the Scheme B as envisaged by the Krishna Water Disputes Tribunal which provides for a fuller and better utilisation of the waters of the river Krishna. Only on the coming into operation of this scheme, Krishna
F Valley Authority has to be established.

So far, three Inter-State meetings at the level of Chief Ministers have been held, the first one on 21.4.1990 at Tirupathi, the Second Meeting on 22.8.1990 at Mysore and the third meeting on 22.5.1993 at
G Mahabaleswara, to resolve the issue of sharing the surplus waters of the Krishna basin. The fourth meeting is proposed to be held at Srisailam, after exchange of data as decided in the 3rd meeting which has not taken place so far.

I feel that the Constitution of Krishna Valley Authority can follow,
H when once a consensus on Scheme B emerges."

The documentary evidence therefore, are galore to unmistakably depict the intention of the State of Karnataka up to the year 1996 as to the implementation of Scheme B or the establishment of Krishna Valley Authority. As a matter of fact, there appears to be some justification in the contention of Mr. Parasaran that upon acceptance of the report of the Tribunal in its entirety, question of implementation of Scheme B would not arise. Scheme B would only come into effect as contended on the happening of two contingencies as noted above more fully and since none of the contingencies had taken place, question of implementation of Scheme B would not arise and it is on this score that Mr. Parasaran led very strong emphasis on the correspondence disclosed in the matter whereupon it is evident that Karnataka never wanted to implement Scheme B neither the establishment of Krishna Valley Authority. Even the precautionary advise of the Central Water Commission to the riparian owners did not yield any result and the state of the facts were such that an omission even, in the minutes was seriously pointed out so that no contra expression of opinion would find place on record and the matter was proceeded with that tenor and vigour for all these years. In the year 1997, however, the State of Karnataka thought it prudent to institute the suit for implementation of Scheme B. I do not find it to be very wrong when both Mr. Parasaran and Mr. Andhyarujina appearing for the State of Andhra Pradesh and Maharashtra respectively contended that the whole gamut of reasoning for this sudden change needs to be gone in detail and the matters undoubtedly needs a further look. Both the learned Senior Advocates have pressed into service the report of the Tribunal as regards the review of the whole situation in May, 2000 insofar as Scheme 'A' is concerned as otherwise there would be undue sufferance of the people of the riparian States. The documentary evidence noticed above lend credence to the submission of the State of Andhra Pradesh and Maharashtra.

The review aspect of the matter, in this context, ought also to be noticed namely the review of the distribution of water after 25 years as contained in the report of the Tribunal and which has since been published by the Central Government in terms of its obligation under Section 6 of the Act of 1956. The Tribunal itself felt that while Scheme B may be otherwise beneficial but Scheme B cannot be termed to be a part of the final order or the decision of the Tribunal warranting implementation by the Central Government.

The third aspect of the matter is in regard to the concept of equities. Undoubtedly, some projects have been constructed both by Maharashtra and

A by Andhra Pradesh and in the event of there being some change of situation, the national exchequer would very severely hit since the project cost are otherwise phenomenal. Not only there would be a drainage of national economy but correspondingly, the same will have its due effect on the entire super structure of the country. In any event, the Scheme A itself is due for review in the month of May, 2000 and obviously the review shall have to be
B by a Tribunal and it would be open for the Tribunal to have a fresh look into the matter. Incidentally, the Government of India at one point of time thought of implementation of Scheme B and all its efforts on this score however have been rendered nugatory by the State of Karnataka as noticed hereinbefore by way of reproduction of documentary evidence.

C

In any event, the claim of Karnataka in a suit for implementation of Scheme 'B' should not be pressed to a logical extent without regard to the relative suffering and the time during which the State of Karnataka have let the State of Andhra Pradesh and State of Maharashtra to go on with Scheme
D 'A' without any complaint whatsoever. Equity in any event would not permit enforcement of Scheme 'B' in the contextual facts. Observations of the US Supreme Court in State of Wisconsin vs. State of Illinois (74 L. ed.799) lend support to the above.

Undoubtedly, by reason of the long lapse of time the whole issue needs
E a relook and I am sure one of the riparian State would adopt the necessary steps in regard to constitution of such a Tribunal in due fulfillment of wishes and desires of the earlier Tribunal which itself has recorded a relook of the whole Scheme in the month of May, 2000.

F As regards the issue pertaining to the grant of Mandamus against the Central Government to frame a Scheme under Section 6 A of the Act and as submitted by Mr. Nariman, be it noted that the Act of 1956 is a complete code in itself and does not create any agency for executing the decision of the Tribunal. The Act is specific enough to provide that the decision of the Tribunal can be enforced by the State by reason of the same being binding
G nature as far as the States are concerned and as dealt with more fully hereinbefore the Union Government is not bound in any way.

Apropos the issue, however, Mr. Salve's stress was on four counts: - on the first count Mr. Solicitor General contended that "the decision of the
H Tribunal, as already stated, does not bind the Central Government. If Section

6A is construed as a power coupled with a duty, it must necessarily follow that upon its pronouncement the decision of the Tribunal binds the Union (which is not even a party to such decision) to the extent that it compels the union to do all that is necessary to implement such decision. Conversely, the implementation may itself involve obligations upon the union which cannot be imposed upon it by a Tribunal whose jurisdiction is confined to the parties to the water dispute. On the second count he contended that Section 6 and Section 6A operate in different fields - Section 6A conditionally empowers the union to take steps which it may consider appropriate to implement the decision of a tribunal. This power of the union is not conditional upon any disobedience by the States, nor is it confined to situations where the Tribunal directs the constitution of an authority: On the third count he contended that the principle of "power coupled with a duty" is therefore inapplicable on account of the fact that the decision of the Tribunal is not made binding upon the union under Section 6 of the Act. It also cannot be invoked since the nature of the power conferred under Section 6A is clearly legislative in character, which is discernible *inter alia* from

A. the nature of the power conferred.

B. The power to frame regulations, which would have overriding effect.

C. The nature of Parliamentary control.

D. The overiding power conferred in Section 6A (6).

On the fourth count Mr. Solicitor General contended that the provision expressly provides that Parliament may decide that no scheme is necessary in the circumstances. This clearly indicates that in the first instance, its delegate - the central government - would have to decide whether a scheme is necessary. It would be utterly inconsistent with the scheme of the statute to suggest that the central government is under a duty to frame a scheme, but in exercise of Parliamentary control, the necessity of the scheme is expressly referred to as one of the factors which may be considered.

The submissions have been made out on a total perspective of the situation and without dilating any further I record my concurrence therewith. The law as regards the issuance of a mandatory order or writ depends upon the authority exercising the power as well as the nature of the function and

A obligations arising therefrom. It is settled law that such a direction cannot possibly be granted so as to compel an authority to exercise a power which has a substantial element of discretion. In any event the mandamus to exercise a power which is legislative in character cannot be issued and I am in full agreement with the submission of Mr. Solicitor General on this score as well. At best it was only be an issue of good governance but that by itself would not mean and imply that the Union Government has executive power even to force a settlement upon the State.

B

In that view of the matter the Suit being O.S.No.1 of 1997 though otherwise maintainable but is devoid of any merit and the reliefs prayed for are wholly unwarranted in the contextual facts and as such dismissed without however any order as to costs.

C

As noticed above the principal point of controversy in O.S.No.2 of 1997 pertains to the height of Almatti Dam. My esteemed Brother Pattanaik, in the main judgment has dealt with the issue in great length and so has Brother Majmudar, in his concurrent judgment. While recording my concurrence with the conclusion reached, I would like to record my own reasonings therefor though, however, restricted to very specific issues as noted hereinbelow since I adopt the same reasonings as recorded in the above noted two judgments as regards the other areas of controversies.

D

E

Before, however, proceeding with the matter, a significant development during the course of trial of this suit ought to be noticed, since the parties herein have addressed this Court at length on the same. The record of the proceedings dated 30th September, 1997 records a concession on the part of Shri F.S. Nariman, Senior Advocate appearing for the State of Karnataka being the Defendant No.1(O.S.No.2) and Shri T.R. Andhyarujina, former Solicitor General of India, appearing for the State of Maharashtra being the Defendant No.3 (O.S.No.2) in the matter of acceptance of the prayer in the plaint in O.S.No.2 of 1997 filed by the State of Andhra Pradesh wherein the Plaintiff State of Andhra Pradesh prayed for a declaration that the report/decision dated 24.12.1973 and further report/decision dated 27th May, 1976 of the Krishna Water Disputes Tribunal in their entirety are binding upon the three riparian States of Maharashtra, Karnataka and Andhra Pradesh as also the Union of India. The order of this Court of 30th September, 1997 as noted above recorded that by reason of such a concession, question of there being any controversy as regards the binding nature of the decision of the Tribunal dated

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24th December, 1973 and as modified by further report and decision dated 27th May, 1976 between the three riparian States would not arise. The order however, records that the learned Attorney General appearing for Union of India was otherwise unable to make any statement by reason of lack of instructions in the matter but this Court was pleased to record that a partial decree to this extent on the basis of the concession or admission of the Defendant Nos. 1 and 3 (Karnataka and Maharashtra respectively) can be passed and as such no further issue need be framed to cover this prayer in the plaint.

It is this order which has been taken recourse to by Mr. Nariman in support of his contention that by reason of unequivocal acceptance of the prayer in the plaint, resistance on the part of Andhra Pradesh for declaration for implementation of Scheme B is not only unwarranted but unjustified. Mr. Nariman contended that the concession of the two upper riparian States has made the task of this Court easier by reason of the factum of acceptance of the case of the Plaintiff (State of Andhra Pradesh) as regards the implementation of the decision of the Tribunal in its entirety, more so by reason of the fact that the order of the Tribunal itself contain the second Scheme in the form of Scheme B. Quite some time has been spent on this issue and at the first blush the same also seemed to be rather attractive, but on a closer scrutiny of the submissions of the parties and more so that of Mr. Ganguly apropos the written statement filed by the State of Karnataka recording its understanding of the case as made out by the Plaintiff the State of Andhra Pradesh, the point as raised can not be sustained at all for convenience sake, the relevant extracts of the understanding of the State of Karnataka as regards the averments in the Plaint filed by the State of Andhra Pradesh, are set out hereinbelow:

> "3. MAIN CONTENTIONS OF THE STATE OF ANDHRA PRADESH
>
> 3.1 State of Andhra Pradesh contends that the entire report and Further Report of the Tribunal should and ought to have been gazetted and if gazetted, it would disclose that Karnataka was restricted to utilise for irrigation 155 TMC. in Upper Krishna Project and for that purpose the height of the Dam could not be more than 519.6 m. (Note: It is not disputed by Andhra Pradesh that the present stage of construction of the Almatti Dam is upto

A only 509.0 m.).

3.2 that if the Report and Further Report are taken into account, it will be clear that the area to be irrigated under the Upper Krishna Project would be of the order of 14.2 Lakh Acres. - and Karnataka has unilaterally planned to increase, the area to be
B irrigated to 23.77 lakh acres which is contrary to the Decision of the Tribunal.

3.3 that if Karnataka is permitted to go ahead with raising of Almatti dam beyond RL 519.60 m, it enables storage of more than 200.00 TMC. and utilisation of about 400 TMC. Therefore,
C according to Andhra Pradesh the downstream flow would be gravely affected and consequently the power and irrigation needs would suffer.

* * * * * * *"

D

On the wake of the aforesaid understanding as recorded in the written statement, Mr. Ganguly the learned Senior Counsel for the State of Andhra Pradesh being the Plaintiff in O.S. No. 2 of 1997 contended that the prayer made in the Plaint ought to be appreciated in the context of the averments made in the Plaint itself and the appreciation thereof by the
E Defendant and not de hors the same. Perusal of the statement as above would unmistakably depict the specific understanding of the State of Karnataka as regards the averments in the Plaint and that by itself negates the submission of Mr. Nariman. Having come to the conclusion as above, I need not dilate much on the other part of the submissions of Mr. Ganguly more so by reason
F of the fact that the same has been dealt with by Brother Pattanaik, with very great lucidity.

One of the principal contentions of Mr. Ganguly as regards the issue of height of Almatti Dam is the factum of acceptance of Scheme A, as the decision of the Krishna Water Dispute Tribunal. Mr. Ganguly contended that
G the decision having been published in terms of statutory requirement has a binding effect. Mr. Ganguly contended that out of total available water of 2060 TMC for distribution between the party States on agreed 75% dependability, the Tribunal allocated 1693.36 TMC to the three riparian States as protected utilisation and the balance quantity of 366.64 TMC be divided between three
H States as below:

I	State of Maharashtra	125.35 TMC	A
II	State of Mysore	190.45 TMC	
III	State of Andhra Pradesh	50.84 TMC	

B

The Tribunal in Clarification No.XXI as appears from Exhibit P.K.II recorded the following:

"In MR Note No.30, MY Note No.17 and AP Note No.14, the States of Maharashtra, Karnataka and Andhra Pradesh set forth their revised claims for allocation of water out of the water left after providing for all the protected C utilisations. We assessed the needs of the three States after considering their revised demands. We have allowed the demands for Gudavale Lift Scheme and Koyna-Krishna Lift Irrigation Scheme of Maharashtra and also for lift irrigation under Malaprabha Project for the reasons given at pages 638-643, 674-675 and 731-733 of Volume II of the Report. The reasons for not allowing D the demand for Bhima Lift Irrigation Project are given at pages 737-738 of Vol.II of the Report. We have considered the Upper Krishna Project at pages 714-719 of Vol.II of the Report. The parties agreed to protect the utilisation of 103 T.M.C. for the Project. We allowed the additional demand for this Project to the extent mentioned in the Report after taking into account the available water supply and the needs of the other States. Subject to our E observations made elsewhere in this Report, regarding the Upper Krishna Project, we see no ground for any further clarification.

However, we may add that this Project is to be executed by stages *and if it is found in future that more water is available for distribution* F *between the three States, the claim of Karnataka for allocating more water for this Project may receive favourable considiration at the hands of the Tribunal or authority reviewing the matter. Almatti Dam is under construction and may serve as carry-over reservoir* (Emphasis supplied).

G

It thus appears that the claim of Karnataka for allocating more water for Upper Krishna Project has been expressly negated and Almatti Dam has been taken to serve only as a carry-over reservoir obviously for irrigation purposes and it is on this score that Mr. Ganguly contended that the three riparian States being bound by the mandate of the Tribunal as contained in its decision, as H

notified in terms of Section 6 of the Act of 1956 cannot possibly act contra the decision of the Tribunal. Admittedly, the height of Almatti was at FRL 509. Under the final award or the decision of the Tribunal, the total utilisation permitted under all the three components of Upper Krishna Project i.e.Hippargi, Almatti and Narayanpur was 155 + 5 = 160 TMC and no irrigation was permitted under Almatti Canal since the Tribunal expressly observed in Exhibit P.K.II in answer to a clarification from the State of Maharashtra: "We may also point out that we did not allow any demand for water in respect of Almatti Canal." The further demand of the State of Karnataka for the Upper Krishna Project has also been negated by the Tribunal upon recording that in the event of future availability of water for distribution between the three States, the claim of the Karnataka ought to be considered while reviewing the matter as noticed hereinbefore in this judgment. Mr. Ganguly's stress has been that the factum of Almatti Dam being a carry-over reservoir does not thus require any further increase in height and thus seems to have some substance having regard to available water. Incidentally, be it noted here that this Court at an early stage of proceeding did direct maintenance of status quo as regards the height of Almatti Dam though, however, permitted construction of the side poles but without placement of any gate so as not to obstruct the flow of water. Facts disclose that the side poles have already been erected and what is required is to place the gate which can be effected admittedly without much loss of time.

It is on this perspective that Mr. Ganguly contended that the rights of the parties being adjudicated by the Tribunal having due authorisation of law cannot be interfered with, against the interests of another riparian State and in the event of there being an attempt to do so, this Court in exercise of its jurisdiction under Article 131 of the Constitution ought to grant a mandatory injunction restraining the State of Karnataka from raising the height of Almatti Dam to FRL 524 mt. as against the existing FRL 509 mt. While it is true that the rights of the parties have been adjudicated by the properly constituted statutory Tribunal and the decision of the Tribunal has a binding effect in terms of Section 6 of the Act of 1956 but the issue arises as to whether there exist any right as such, so far as the Plaintiff is concerned in the matter of obtaining an order of injunction - what is the infraction of its right (State of Andhra Pradesh). Admittedly, Scheme A requires a review in terms of the order of the Tribunal by May, 2000 and this requirement if read with the decision as above in O.S. (1) of 1997, the rights of the riparian owners, can not but be said to be still in the stage of fluidity rather than settled and confirmed and

grant of an order of injunction at this stage would neither be fair nor reasonable in the contextual facts - though however the submissions of Mr. Ganguly does not seem to be illogical, but having regard to the present contextual situation, I am unable to agree with the submissions in favour of the grant of injunction - the situation is not condusive for the grant, neither the grant is warranted at this juncture. Generally speaking, however, be it noted that the issue of grant of injunction is to be looked from the point of view as to whether on refusal of the injunction, the Plaintiff would suffer irreparable loss of injury keeping in view the strength of the parties' case. Balance of convenience or inconvenience is also another requirement but no fixed rules or notions ought to be had in the matter of grant of injunction and the relief being always flexible depending upon the facts and circumstances of each case. The justice of the situation ought to be the guiding factor (vide the decision of this Court in *Colgate Palmolive (India) Ltd.* v. *Hindustan Lever Ltd.*, [1999] 7 SCC P.1: myself being a party to the judgment). In the contextual facts, therefore, question of grant of any order of injunction in my view would not arise.

As noticed above, the height of Almatti Dam is the principal issue in O.S.No.2 of 1997: the question therefore arises as to whether non-acceptance of the case of the Plaintiff would mean and imply acceptance of the prayer of the Defendant No.1 to erect Almatti Dam at an height of FRL 524 mt - the answer however, cannot but be in the negative; more so by reason of the surrounding circumstances. The contentions of the two riparian owners and the specific language of Article 131 of the Constitution and having regard to the assertion of the State of Karnataka of its right to control its supply of water in the manner as it deems fit, interference with the proposal shall have to be had to sub-serve the ends of justice. But before proceeding further in this matter, it would be useful to refer to one of the decisions of this Court in the case of State of Karnataka v. Union of India (1978 (2) SCR 1) wherein Bhagwati, J. observed:

> "We cannot construe Article 131 as confined to cases where the dispute relates to the existence or extent of the legal right of the plaintiff, for to do so, would be to read words in the article which are not there. It seems that because the mode of proceeding provided in Part III of the Supreme Court Rules for bringing a dispute before the Supreme Court under Article 131 is a suit, that we are unconsciously influenced to import the notion of 'cause of action', which is germane

A in a suit, in the interpretation of Article 131 and to read this article as limited only to cases where some legal right of the plaintiff is infringed and consequently, it has a 'cause of action' against the defendant. But it must be remembered that there is no reference to a suit or 'cause of action' in Article 131 and that article confers jurisdiction on the Supreme Court with reference to the character of the dispute which may be brought before it for adjudication. The requirement of 'cause of action', which is so necessary in a suit, cannot, therefore, be imported while construing the scope and ambit of Article 131. It is no doubt true that the judgment delivered by me in the State of Rajasthan v. Union of India proceeds on the assumption that a suit under Article 131 can be instituted only if some right of the plaintiff is infringed, but there was no proper discussion of this question in the course of the arguments in that case and on fuller consideration, I think that no such restriction can be imported in the construction of Article 131 so as to narrow down the ambit and coverage of that article. The only requirement necessary for attracting the applicability of Article 131 is that the dispute must be one involving any question "on which the existence or extent of a legal right" depends, irrespective whether the legal right is claimed by one party or the other and it is not necessary that some legal right of the plaintiff should be infringed before a suit can be brought under that article. The plaintiff must of course be a party to the dispute and obviously it cannot be a party to the dispute unless it is affected by it."

Chandrachud, J. also in the same judgment and in the same vein observed:

> "I consider that the Constitution has purposefully conferred on this Court a jurisdiction which is untrammeled by considerations which fetter the jurisdiction of a court of first instance, which entertains and tries suits of a civil nature. The very nature of the disputes arising under Article 131 is different, both in form and substance, from the nature of claims which require adjudication in ordinary suits."

In my opinion, the view expressed above amply represents the true meaning and purport of Article 131 of the Constitution. It is a constitutional conferment of jurisdiction in regard to certain specified matters which is required to be decided by the Apex Court by reason of the nature of the

differences and disputes. This conferment of jurisdiction is under special circumstances and for special reasons having the concept of justice being the predominant factor behind the inclusion of such an Article in the Constitution. Ordinary rules or procedure cannot be made applicable in such special circumstances. On the wake of the above and by reason of the decision of this Court to do complete justice between the parties, more so having regard to the powers conferred on to this Court under Article 142 of the Constitution, this Court in my view has the power, authority and jurisdiction to pass any order or issue any direction as may be found necessary for the ends of justice and I need not dilate on the same since the law is well settled on that score. It will however be useful to note down certain factual events in this perspective and at this juncture.

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At the instance of the Prime Minister of India, four Chief Ministers were requested to intervene and consider the proposal of the State of Karnataka to have the Almatti Dam up to the height of FRL 524 mt. The four Chief Ministers in their turn, however, appointed by consent of each other, an expert Committee which has observed that question of the height being raised to FRL 524 mt. at this stage would not arise and as a matter of fact Dam height upto FRL 519 mt. would otherwise be conducive without offending any of the realities of the situation. Admittedly, Almatti is for storage purposes and since as per the existing arrangement, allocations are limited and restricted, question of further storage would not arise. This aspect of the matter has been highlighted by Brother Pattanaik, as also by Brother Majmudar, in his concurrent judgment and as such I need not dilate excepting recording that the apprehension expressed by Shri Andhyarujina as regards the flooding of the area in the event of the height of the Almatti Dam is raised or increased require serious consideration of the matter by the experts. The apprehension of Mr. Ganguly appearing in support of the Plaintiff State of Andhra Pradesh also very strenuously contended that in the event of an increase in dam height, no water would be available for the Kharif Crop to be raised, is also of some substance by reason of the express stand of the State of Karnataka that the deficiency of water supply in the month of August, September and October can be met immediately thereafter. It is this admitted case that the Kharif crop would be a total wash out in the event no water is available in July, August and September: Storage facility at Nagarjuna Sagar, Sri Sailem and Kalahasti would not really alleviate the situation. Earlier in this judgment I have stated that peculiarities are the characters of the rivers in this country - whereas one is in spate causing a tremendous amount of flood damage, the

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A other is totally dry causing an equal amount of dry famine season and on the wake of the aforesaid, the apprehensions expressed by both the States of Maharashtra and Andhra Pradesh do not seem to be baseless and as such the same needs serious consideration by the concerned Authority or Authorities at the time of re-consideration of Scheme 'A' in terms of our judgment in O.S. B No.1 of 1997.

In that view of the matter I record my concurrence with the findings of Brother Pattanaik, that by reason of the report of the experts, the Almati Dam and its upper limit can be placed at FRL 519 subject however, to clearances from appropriate authority or authorities as required under the law. I am also C in concurrence with Brother Pattanaik, that question of raising the ultimate height at Almatti could be gone into by the Tribunal upon assessment of the situation as placed by the riparian States and upon assessment of the apprehension of submergence and the apprehension of loss of Kharif crop as well. The Tribunal is directed to look into the matter if and when occasion arises D as regards the allocation of water in River Krishna Basin totally uninfluenced by the observations made by the earlier Tribunal's view by reason of long lapse of time and the availability of modern technology. The suit (O.S. 2 of 1997) stands disposed of accordingly. No order as to costs.

E **SETHI, J.** While agreeing with the main judgments of brother Pattainaik, J. in Original suits Nos. 1 and 2 of 1997 and supplementary concurring judgment of brother Majmudar, J. in Original Suit No. 2 of 1997. I am persuaded to place on record some of my observations in addition, which have been necessitated on account of the unreasonable, unrealistic, motivated and contradictory attitudes adopted and changed from time to time by the riparian F States of Krishna river basin, oviously under local pressures and political compulsions. It is hoped and expected from responsible representative governments of the States concerned that they would give due weight to the tremendous work done by the Krishna Water Disputes Tribunal and realise their constitutional obligations to the noation, being important and mighty G Constitutents of the Federation, the Union of India, keeping in view our observations in the judgment.

Water is a unique gift of nature which has made the planet earth habitable. Life can not be sustained without water. In the National Water H Policy issued by the Government of India in 1987, it was declared that water

is a prime natural resource, a basic human need and a precious national asset. Water, like air, is the essence of human survival. The history of water availability and its user is tied up with the history of biologically evolution in all civilizations. It will not be wrong to say that not only the life started in water but rather water is life itself. Lt is essential for mankind, aminals, environment, flora and fauna. There is no denial of the fact that in the ancient times water played an amportant role in the origin, development and growth of civilization all over the globe. Water is an imporatant factor in the economic development of the countries which ultimately affects the social and human relations beween the habitants. Planned development and proper utilization of water resources can serve both as a cause as well as an effect of the prosperity of a nation. Water on earth is available in the form of frozen snow, rivers, lakes, springs, water ways, water falls and aqueducts, etc.

In this galaxy and the environment surrounding the earth, its hydrosphere segment mostly consists of water in the shape of oceans. Out of the total available water on earth 97.3% water is such which can not be utilised for the benefit of the humanity. Only 2.07% water is available for consumption and mankind's utilization. Out of this consumable water 30% is used for irrigation, 7% for domestic and 12% for industrial purposes. Rest of the water goes water on account of mismanagement and the lack of facilities of better utilisation. Whereas water is scarce and limited, its users are numerous and ever increasing. With the development in the living standards of the people, the consumption of the water is increasing everyday without there being by corresponding increase in its total availability. According to an estimate in World Book Encyclopaedia, on an average a person needs about 60,600 ltrs. of water during his life time and in industrial countries like U.S.A. each person presently is using about 260 litrs. of water every day. The consumption in our country is however much less. On account of the advancement in the technology and of civilization, water needs are increasing. In their quest to have comfortable life, people want more and more water. Facilities like ACs., garbage disposals, automatic washers and modern bathrooms, earlier considered as luxury are now deemed as necessities of life of a large human population.

India is one the most fortunate countries endowed with enviable wealth of water resources. The average annual precipitation in this country is higher than that of any other continent in the world with the exception of South America. However, on account of meagre resources and lack of developmental

A facilities, India uses only 1/10th of the precipitation with it receives annually with the result that the rest of water goes waste into the sea. The sources of water in this country are either the frozen snow which melts in summer or accumulated water in dams during monsoon seasons which is utilised off that season. In the absence of proper water source management, great population of the people suffer every year on account of either the floods or droughts. Geographically, India has more than 20 major river basins. Some of those, such as Indus, Chenab, Ganga, Brahamputra and Teestha, though originating from and flowing in India are yet in effect and essence, international rivers as they pass through the territories of other sovereign states.

C Despite independence for more than half a century, the country has not been in a position to construct more than 3000 large and small dams with the result that most of the water otherwise available in the country remains unutilised. Almost in all countries of the world, efforts are being made to regulate the user of water resources alongwith the user of the land resources. D Water management is required to be viewed in the light of the land management. The law relating to water rights has undergone a sea change all over the world. International and inter-State disputes regarding the user of water are sought to be settled by recourse to the process of law in place of the old doctrine or settlemen "by war or diplomacy". Water under all prevalent systems of law has been declared to be the property of the public and dedicated E to their use, subject to appropriation and limitations as may be prescribed either under law or by settlement or by adjudication. The disputes relating to water management, its development and its distribution are to be considered not from rigid technical or legal angle but from the pre-eminenetly important humanitarian point of view as water wealth admittedly forms a focal point and F basis for the biological essence and assistance of socio economic progress and well being of human folk of all the countries. In resolution of the disputes relating to development, management and distribution of the water reliance has to be placed upon the long usage, customs, prevalent practices, rules, regulation Acts and judicial decisions. There is no dispute that under the constitutional scheme in our country right to water is a right to life and thus G a fundamental right. In India the importance of water is recognised under the constitution as is evident from Article 252, 7th Schedule List II Entry 17, List I, Entry 56, and Statutes like Inter-State Water Disputes Act, 1956 and Rivers Boards Act, 1956.

H The controversly, in the present proceedings, amongst the States of

Maharashtra, Karnataka and Andhra Pradesh is with respect to the utilisation of the water of Krishna River which is the second largest river in the Pennisular India. The river has a total length of 870 miles originating from Western Ghats near Mahabaleshwar and flows throught parts of the aforesaid three States. The Krishna River Basin has an area of about on lakh sq.miles which directly affects about 39 million inhabitants of the three States. The water of this river has been the bone of contention between the riparian States for over a period of one and a half century. It was only in 1955 when the Krishna Delta Canal System was commenced to properly regulate the user of water of this river. After re-origanisation of the States in November, 1956, the Central Water and Power Commission drew up scheme for re-allocation of Krishna Waters which was not accepted by the concerned States with the result that an Inter-State Conference ws held in September, 1960 but as no settlement could be arrived at, the matter was ultimately referred to the Tribunal for adjudication which submitted its reports Exhibits PK 1 and PK 2 which have been elaborately dealt with in the main judgment.

From April, 1969, alongwith the undefined huge water, national assets being the public money has flown through the river into the Bay of Bengal on account of pending litigation. Despite huge expenditure incurred and momenteous job performed by the Tribunal, the most acceptable solution regarding distributing of water not accepted by the concerned States on pretexts and under the wrangles of technicalities. Even the States initially accepting the reports of the Tribunal have been changing their stands which resulted in keeping the matter alive, notwithstanding the consequential losses but obviously for the concerned States' convenience primarily actuated by political considerations and changes but apparently for proclaimed interests of their inhabitants.

The dismissal and disposal of the suits filed by the States of Karnataka and Andhra Pradesh and rejection of the plea raised by Maharashtra in its additional written statement would not settle the dispute or solve the problem but unfortunately will become the basis of new litigation between the States which is surely likely to adversely affect their inhabitants resulting in the wastages of the waters of Krishna which otherwise has been found in abundance. It is hoped that as and when action is initiated upon our judgment, the Tribunal or the authority appointed in consequence thereof, for the purposes shall expedite the matter and ensure that the most precious gift of nature - water and the public money is not wasted in uncalled for, avoidable

A and imagimary litigation. It is not disputed that in the absence of the Reservoir System under Scheme B as formulated by the Tribunal, a lot of water of Krishna is wasted and permitted to submerge in the Bay of Bengal. Let better sense prevail upon all concerned to ensure the safety of the river and proper utilisation of its water for the benefit of inhabitants of the Krishna River Basin.

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S.M. Suit No. 1/97 dismissed and Suit No. 2/97 disposed of.