

(1994) 07 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No's. 12581 and 19922 of 1993 and 2158 of 1994

Parambikulam Aliyar Project Original Ayacutdars Association
and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-07-1994

Acts Referred:

Constitution of India, 1950 — Article 13, 133(1), 14, 143, 19

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 57, 70(1)

Tamil Nadu Irrigation Cess Act, 1865 — Section 1

Citation : (1994) 07 MAD CK 0008

Hon'ble Judges : Thangamani, J;Srinivasan, J

Bench : Division Bench

Advocate : K. Parasaran for A.K. Mylsamy, S.V. Radhakrishna, V. Manivannan and C.T.P. Prabhakar, for the Appellant; R. Krishnamoorthy, General, assisted by, R. Muthukumaraswamy, T.S. Krishnamurthy Iyer for G. Bhaskaran, K. Elango, G. Sahadevan and N.R. Chandran for Bharathidasan, K. Babu and C. Prakasam, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.

I. History.

1. The Parambikulam Aliyar Project was conceived in 1959 for the purpose of exploiting the rivers in the Western Ghats in Anamalai Region to the

fullest extent possible and giving irrigation facilities to as much area as possible in the rain shadow lands which are always drought-stricken for

nearly two centuries. The Project depended on the combined effort and co-operation of two neighboring States-Tamil Nadu and Kerala for

harnessing the rivers flowing in both the States. It contemplated integration of eight rivers, six on Anamalai Hills viz., Anamalayar, Nirar, Sholayar,

Parambikulam, Thunakadavu and Peruvuripallam and two on the plains viz., Aliyar and Palar, by constructing reservoirs across them and inter-

connecting them by tunnels, the tunnels were to help diversion of the waters impounded in the reservoirs to the plains of the then Coimbatore

district in Tamil Nadu and Chithur district in Kerala State. As the rivers were in various elevations ranging between 3800 feet and 1050 feet, it was

incidentally possible to utilise the drops between the rivers for the development of hydro-power. The project envisaged construction of dams and

power houses. The Taluks of Palladam, Udumalpet, Pollachi and Dharapuram in the then Coimbatore District formed a very dry region chronically

famine-stricken with poor rain fall and no natural water resources. During the last century and the first half of this century, the Government had to

spend large sums of money to afford relief to the famine stricken people in the area besides large remissions given to them. Dharapuram Taluk

became part of Periyar District after the bifurcation of Coimbatore District. With a view to develop the entire area and raise the general standard of

living, the project mentioned above was undertaken. Canals had to be constructed in such a manner as to make use of each and every drop of

water to the fullest extent possible and without wasting any part of it. It was initially estimated that 30.5 TMC feet of water could be realised and

utilised for irrigation, out of which 2.5 TMC feet in the Anamalayar Project would be available for Tamil Nadu only after the State of Kerala

completes the Edamalayar Scheme.

2. The project is divided into two basins viz., Aliyar Basin and Palar Basin. It should be mentioned that an area of about 40,000 acres was

expected to be irrigated by Aliyar basin every year and since 1973-74 that region has been getting water once in two years.

3. With reference to Palar basin, it was originally estimated that an extent of 2.03 lakhs acres of land could be irrigated. The work on the project

commenced in 1960. It was decided that even before the completion of the entire project, the available water could be released for the purpose of

irrigation of such extent as may be possible. Government framed rules known as Parambikulam Aliyar Project Water Cess Rules, 1965 in G.O.

Ms. No. 1956, Public Works, dated 26-6-1965, in exercise of the powers conferred by Section 1 of the Madras Irrigation Cess Act, 1865 for

the levy of water cess for the irrigation of the lands under the project. Rule 3 provide for issue of permits for all the lands irrigation of which is allowed from the project by or under the orders of the State Government. A form of permit is also prescribed, which contains the conditions under which the same is issued. A fee is charged for the issue of permit. Rule 5 enables the District Collector or the Executive Engineer concerned to cancel or modify any permit at any time after giving an opportunity to the permit-holder to put forward his objection. The rates of water cess are fixed by the Rules. Conditions 5 to 10 of the Conditions set out in the prescribed form read as follows.

5) The permit holder shall not take water contrary to any turn system that may be introduced by the authorities.

6) Irrigation of the land at any time, other than the period mentioned in column (9) or through any source other than that shown in column (8) will be irregular.

7) This permit may be cancelled or modified by the Collector of the district or the Executive Engineer at any time.

8) The State Government reserve to themselves the full right to refuse or restrict temporarily or permanently the supply of water for irrigation and modify the rates or method or both of charging for water at their discretion without assigning any reasons.

9) The State Government reserve to themselves the right of notifying the crops to be grown from time to time in the ayacut lands.

10) The State Government reserved to themselves the right to levy betterment fee at appropriate rates at a later stage.

4. By about 1967-68, a particular stage was reached in the construction of the project and the available quantum of water was released by dividing the ayacut into two zones. Each zone had 4.5 months period. The same was being categorised at stages. Before release of water, the agriculturists were informed expressly that they were permitted to raise only particular crops, which were always dry crops. They were never permitted to raise wet crops. On each occasion, the release of water was approved by the Government by a Government Order and issued to the Officials of the P.W. D., the District Collector and the Officers of the Agriculture Department, The concerned District Collector announced the

release of water specifying the crops, area, period supply etc., through All India Radio, local dailies and tom tom in the villages through the village

revenue officials. Whenever there was violation by the agriculturists by raising crops other than the notified, they were penalised under the Water

Cess Act. In fact, the Board of Revenue in B.P. Perm 286/67, dated 13-10-1967 suggested to the Government several measures to curb the

unauthorised raising of Wet crops and violation of the conditions of permits.

5. The Agriculturists of the lands which were not originally included in the ayacut were making frequent representations for extending the area of

the ayacut so that they could also have the benefit of irrigation from the project. Their representations were considered and the Chief Engineer of

the Project in his letter S2/17743/71-16 dated 9-2-1971 submitted preliminary proposal to the Government after study of the quantum of water

available, recommending further extension of the ayacut, which would be possible if the frequency of supply was changed. The Government

considered the recommendation and passed G.O. Ms. 450, Public Works, dated 25-3-1975 directing the Chief Engineer to include in the ayacut

an additional extent of 88,800 acres in the four taluks referred to earlier. Subsequently, the Government passed another order in G.O. Ms. No.

1234, Public Works, dated 7-8-1975 in supersession of the earlier G.O. and directed the Chief Engineer to include in the ayacut an additional

extent of 1,03,000 acres. By a third order in G.O. Ms. No. 126, Public Works, dated 29-1-1976, the Government directed the inclusion of

1,15,000 acres in the ayacut instead of 1,03,000 acres.

6. Though it was not implemented immediately, one ayacutdar by name Haridas, who was owning 9 acres 57 cents in Thoriyur Village, Pollachi

Taluk, filed W.P. No. 575 of 1978 praying for issue of a mandamus restraining the Government and the Chief Engineer from implementing G.O.

Ms. 126 dated 29-1-1976 in so far as he was concerned. The prayer was expressly limited to the benefit of the said Petitioner. A similar writ

petition was filed by another ayacutdar by name E.P. Thangavelu in W.P. No. 1309 of 1978. A similar prayer was made by him in so far as he

was concerned. He owned 21 acres 37 cents in Udukkam-palayam, Udumalpet Taluk. Admittedly the lands owned by the two Petitioners were

classified as unirrigated dry lands in Revenue records. They got the benefit of

irrigation under the project on permits obtained by them. Both the writ petitions were heard together. The learned Judge who heard the matter would appear to have suggested supply of water for irrigation once in 18 months to the Petitioners therein and extend the rest of the water to the new ayacut. The learned Judge passed an order on 25-3-1982 describing it as ""Aide Memoir"" recording the conditions imposed by Learned Counsel for the Petitioners therein that there shall be no increase in the ayacut beyond the 1.15 lakhs acres until Anamalayar diversion works contemplated in the Project were completed and the supply of water once in 18 months should not be sporadic and intermittent, but it should be for a week or ten days continuously before interruption so that agricultural operation could be carried on effectively and that the water should be supplied preferably from the third week of July or the first week of December, as the case may be with reference to the rotation of 18 months. The learned Judge directed the Government Pleader to get instructions on those conditions proposed by Learned Counsel for the Petitioner and added that in his opinion they were very reasonable and there should not be any difficulty in accepting the same. Thereafter, a common final order was passed on 22-12-1983 in the two writ petitions in the following terms:

The Learned Counsel for the Petitioners and the learned Additional Government Pleader agree that the following order could be made and imposed on the parties:

The Petitioner has no objection to the original Ayacut of 250000 acres covered by Parambikulam Aliyar Project being extended by 1,15,000 acres as envisaged by G.O. Ms. No. 126 dated 29-1-1976 or for any further extension:

Provided that before supplying water to the new ayacutdars in the extended ayacut, the original ayacutdars are first assured of supply of sufficient water, subject to availability once in eighteen months as regularly as possible or practicable.

There will be an order accordingly in these writ petitions: There will be no order as to costs.

7. Even during the pendency of the writ petitions, the Government had passed G.O. Ms. No. 518, Public Works, dated 13-4-1978 directing the

Chief Engineer (Irrigation) to send detailed plans and estimates in respect of the work for providing irrigation facilities to 1,15,000 acres ordered to

be included in the ayacut under G.O. Ms. No. 126, Public Works, dated 29-1-1976. The Chief Engineer was also directed to evolve a mode of

regulation of water under the project to the entire ayacut including the newly added extent.

8. By 1980, the last component of the Project, i.e., Lower Nirar Dam was completed. In 1982, G.O. Ms. No. 175, P.W. D. dated 28- 1-1982

was passed accepting the proposals of the Chief Engineer, (Irrigation) for the inclusion of 25000 acres of lands in the project at an estimated cost

of Rs. 4,00,00,000/- , in addition to the extent of 1,15,000 acres already mentioned. G.O. Ms. No. 175 was passed on the basis of

representations made by the agriculturists for inclusion of some pockets of lands which were situated between or surrounded by the agriculturists

for inclusion of some pockets of lands which were situated between or surrounded by the approved lands of the ayacut. Again, G.O. Ms. No.

1903, P.W. D. dated 14-9-1984 was passed directing inclusion of 35,000 acres of lands, after the Government examined various representations

made by the farmers in consultation with the Chief Engineer (Irrigation). It was clearly indicated that the said inclusion would be the final and last

extension. In 1983-84, the original extent of 2,03,000 acres were divided in three Zones and the irrigation supply was given for about 4.5 months

for each zone of ayacut out of six months. By the three G.O. Ms. referred to above, viz., G.O. Ms. No. 126, G.O. Ms. No. 175 and G.O. Ms.

No. 1903, an extent of 1,75,000 acres was directed to be included in the ayacut. The Government had taken into consideration that there was no

other natural source of water available in that area to cater even to the basic needs of the society and the wells in the area were of about 500 feet

deep and the water available in such wells were not even sufficient for the daily necessities of men and cattle. The extension of ayacut has been

done only after repeated representations from the farmers, who had no irrigations facility whatever for quite a long time. Huge amounts were spent

by the Government for acquiring lands for constructing branch canals, distributors and water courses as well as aquaducts and regulators. The

acquisition of lands for that purpose commenced in 1981. Thus, the total extent of ayacut having been increased to 3,77,000 acres of lands, the

Government had necessarily to think of a suitable pattern of irrigation for the purpose of making an equitable distribution of the available water to

the entire ayacut. In July 1982, the Technical Committee for improving the efficiency of Parambikulam Aliyar system submitted a report suggesting

division of the ayacut into four zones and supply of water to the same from Thirumurthy Dam on rotation basis. It was pointed out in the report that

in the four zones pattern, water will be running through the entire length of Parambikulam main canal throughout the two spells of the year, i.e., for a

period of nine months, which will help in recharging the ground water and improving the water table in the wells of the area. It was also pointed out

that in the ultimate stage, i.e., when the Anamalayar diversion and Nallar dam are constructed, the realisation at Thirumurthy dam can irrigate

2,60,000 acres annually or 3,90,000 acres once in 18 months and as such, in the ultimate set up, the entire ayacut under Thirumurthy dam will get

irrigation supply once in 18 months on rotational basis. The Committee made several suggestions for the purpose of carrying out the scheme. The

Government had repeated consultations with Expert Committees including the Central Water commission and the Standing Irrigation and water

Resources Commission and after ensuring itself of the benefits available to the agriculturists by implementation of the four zones pattern, the

Government chose to accept the same. In fact, the Chairman of the Standing Irrigation and Water Resources Commission and a Full Time member

toured the ayacut areas in March 1991 and had discussions with the officials of Irrigation, Agriculture, Agriculture Engineering and Revenue

Departments and also with the formers, both in the field and also in the formally organised meetings convened by the Collectors of Periyar and

Coimbatore Districts.

9. Yet another writ petition was filed in W.P. No. 13394 of 1992 by Parambikulam Aliyar Original Ayacut Udumalpet Canal Agricultural Society

represented by its President, for issue of mandamus calling for the records relating to the unsigned and undated notice issued by the Executive

Engineer, Udumalpet Division extending the ayacut area in Udumalpet by 14908 acres and providing irrigation facilities to the said area and quash

the same and consequently preventing the Chief Engineer (Irrigation) from implementing the said notice. When the interlocutory petition came up

before a learned single judge for orders on 20-10-1992 the learned Judge disposed of the main writ petition in the following terms:

It is agreed by both the counsel that the Petitioners, who are original ayacutdars will receive the accustomed supply of water in accordance with

the existing pattern of supply. After supplying the water to the Petitioners in the above manner, the farmers of the extended area will be supplied

water. If any exigencies arise affecting the interest of the existing ayacut, the department is bound to cut or reduce the supply to the extension area,

as the intention of the Department is not to give relief to the extension area to the cost of the existing ayacut.

II TAMIL NADU ACT 20 of 1993.

10. Thereafter, the State Legislative Assembly passed Parambikulam-Aliyar Project (Regulation of Water Supply) Act, 1993 (Act No. 20 of

1993) with a view to regulate the supply of water from Parambikulam-Aliyar Project and matters connected therewith. The Act received the

assent of the Governor on the 19th May 1993. The Statement of the Objects and Reasons sets out the following:

The High Court, Madras in W.P. Nos. 575/78 and 1309/78 challenging the order issued in G.O. Ms. No. 126, PWD, dated 29th January 1976

adding 1,15,000 acres of land to the irrigation system covered by the Parambikulam-Aliyar Project has directed that before supplying water to the

new ayacutdars in the extended ayacut, the original ayacutdars are first assured of supply of sufficient water subject to availability once in eighteen

months, as regularly as possible or practicable.

2. In view of the above direction of the High Court, Madras, the Government have called for a detailed report from the Chief Engineer (Irrigation)

who has reported that with the available water potential, water can be supplied to the extended area by dividing the entire ayacuts into four zones,

each zone getting water for a period of 4,1/2 months to 6 months once in two years and therefore, has suggested that water may be supplied to the

new ayacuts of 1.75 lakhs acres of land from the said project.

3. The Government have, after carefully considering the report of the Chief Engineer (Irrigation) and after obtaining the opinion of the experts in this

matter, accepted the proposal for re-zoning the ayacuts covered by Parambikulam-Aliyar Project into four zones as feasible.

4. The Government, after taking into consideration the aforesaid factors, have decided to provide irrigation facilities under Parambikulam Aliyar

Project dividing the whole area into four zones, providing irrigation to each zone once in two years as against the existing three zones providing

irrigation to each zone once in eighteen months, in view of the drought-prone nature of the area and in view of the infrastructural facilities already

created in the said Project incurring huge expenditure.

5. The four zone pattern for supply of water to total extent of 3,77,152 acres in Parambikulam-Aliyar Project will be as detailed below:

Zone. Land in

acres

I 98,558

II 98,418

III 94,024

IV 86,152

Total 3,77,152

6. The Bill seeks to give effect to the above decision.

11. The preamble to the Act refers to Article 48 of the Constitution of India and declares that in the interest of the general public and in order that

maximum possible advantage may result in the matter of agricultural production and for bringing prosperity to the backward and drought-prone

areas, it has been considered necessary, as a measure of agrarian reform to bring more lands under cultivation in the Coimbatore and Periyar

Districts by regulating the irrigation system in the Parambikulam-Aliyar Project to optimum use possible in pursuance of the directive principles

enshrined in Article 48 of the Constitution of India. The Preamble also refers to the original extent of the ayacut and the repeated representations

from the ryots of the proverbially drought-prone taluks of Palladam; Dharapuram, Udumalpet and Pollachi for the extension of ayacut and

approval of the same by the Government. Reference is made to G.O. Ms. No. 126 and W.P. Nos. 575/78 and 1309/78 and the directions given

by this Court and the subsequent reports from the Chief Engineer (Irrigation) and the opinion of the experts in the matter. Sections 3 and 4, which

are relevant for this case, are in the following terms:

3. Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court, Tribunal or other

authority or any custom, agreement or usage or any rule, notification or order made or issued by the government relating to inclusion of ayacuts in

the Parambikulam Aliyar Project or supply of water to such ayacuts on parts thereof and in force on the date of publication of this Act in the Tamil

Nadu Government Gazette, the Government may, after consulting the Chief Engineer (Irrigation) Or such other officer or authority as they may

consider necessary, by notification, regulate on rotational basis in accordance with the rules as may be prescribed, the supply of water for

agricultural purposes to a total extent of 3,77,152 acres of land in the Parambikulam-Aliyar Project comprised in the four zones as specified in the

Schedule.

(2) The Government shall, before issuing a notification under Sub-section (1), take into consideration the following matters:

(a) the interest of the general public;

(b) the maximum possible advantage which may result in agricultural production in extending the supply of water to more land;

(c) the. advantage of bringing prosperity to the backward and drought-prone areas by bringing them within the ayacuts;

(d) the availability of water to the existing ayacuts;

(e) the optimum utilisation of the available water to a larger extent of ayacuts; and

(f) such other matters as may be prescribed.

4. No court shall entertain any suit or application for the issue of any injunction or interim order restraining any proceeding which is being or about

to be taken u/s 3 or the rules made thereunder for regulating the supply of water by the Government or by any officer authorised u/s 5, in the

Parambikulam-Aliyar Project.

The Schedule to the Act contains the particulars of the four zones and the extents of lands included in each zone.

III. PRESENT DISPUTE

12. The first of these three writ petitions was filed on 6-7-1993 by Parambikulam-Aliyar Project Original Ayacutdars Association represented by

its Secretary and three individual ayacutdars. The prayer is for issue of a writ of declaration by declaring that the Act 20 of 1993, (hereinafter

referred to as "the Act) as unconstitutional, null and void and issue of a writ of mandamus to direct the Respondents to supply accustomed use of

water. The first Respondent is the State of Tamil Nadu and the second Respondent is the Chief Engineer (Irrigation) of the Project. The owners of

the lands which are included in the ayacut by extension, formed an association by name Parambikulam-Aliyar Project Extension Ayacutdars

Association. The Association got impleaded as a party to the writ petition by filing W.M.P. No. 33809 of 1993, ordered on 6-1-1994. The

second of the Writ Petitions was filed by a member of the Parambikulam Aliyar Project Original Ayacutdars Association for the same relief as

prayed for by the association in the earlier writ petition. That was filed on 4-11-1993. The third writ petition was filed by another member of the

said association on 9-2-1994. All the three writ petitions have been heard together by us as the prayers and the contentions are the same.

13. We do not think it necessary to refer in detail to the averments made in the affidavits filed in support of the writ petitions. Suffice it to point out

that the Petitioners in these writ petitions have been irrigating their lands with the water from the project only by virtue of the permits obtained by

them, issued under Parambikulam-Aliyar Project Water Cess Rules, 1965 referred to already by us. However, it is admitted by them in the

affidavits that they have planted coconuts in more than one lakh acres in the ayacut region and they have also been raising plantain, sugarcane,

cotton etc., Their claim is that they have a right to get the accustomed supply of water as the said right had already been recognised and upheld by

the orders of this Court in the earlier writ petitions. It is their contention that by extending the ayacut, there will be diminution in the quantity of

water which will be supplied to them. According to them, the water which is available is not sufficient even for supply once in 18 months to them

and if the pattern of supply is changed into once in 24 months, they will suffer irreparable damage as crops raised by them including the coconut

trees will wither away. On the basis of the aforesaid contentions, the following submissions were made by learned Senior Counsel in his argument:

1. The Act is invalid as it is ultra vires the powers of the Legislature because (a) it is adjudicatory in nature and the Legislature has chosen to

exercise judicial powers and at the same time bar any approach to any Court by the aggrieved persons: and (b) the Legislature has overruled the decisions of this Court in W.P. Nos. 575 of 1978, 1309 of 1978 and 13394 of 1992.

2. The Act is unconstitutional as it violates the provisions of Articles 14, 19, 21 of the Constitution of India.

3. The Act is vitiated by mala fides as it has been enacted for the purpose of securing the majority of votes in the two Assembly constituencies vi.,

Vellakoil and Kangayam forming part of Paiani Parliamentary Constituency for which bye-elections were held in September, 1993.

4. The State Government is bound by the principle of estoppel and consequently, the Act is unenforceable.

IV. DISCUSSION.

(1) ULTRA VIRES THE POWERS OF THE LEGISLATURE:

(a) Adjudicatory in nature:

14. The argument under this head is developed as follows: The Petitioners, being the registered ayacutdars under the project, are entitled to

accustomed supply of water for the purpose of irrigating their lands. Their right has already been recognised and affirmed by the Courts. The

present legislation, by introducing the four zone system and changing the turn of supply from once in 18 months to once in 24 months, has

adjudicated that the Petitioners are not entitled to their accustomed supply of water or that the supply of water once in 24 months will tantamount

to their accustomed supply. By doing so, the Legislature has trespassed upon the field exclusively reserved for the Judiciary by exercising judicial

powers. Our attention is drawn to the provisions of Sections 3 and 4 of the Act and it is contended that while on the one hand the Act overrules

retrospectively the judgments, decrees and orders of Court, on the other prevents the Court from entertaining any suit or application, and thereby

ousting their jurisdiction in toto. Reliance is placed upon the ruling of the Supreme Court in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and

Another, . In that case, the thirty-ninth amendments to the Constitution which introduced Article 329A in the Constitution was challenged. Clause

(4) of Article 329A of the Constitution made the previous law contained in the Representation of People Act as amended by Act 58 of 1974 and

Act 40 of 1975 inapplicable to challenge the election of the Appellant before the Court and also made no other Election Law applicable for

resolving the dispute. Further, it divested the previous authority viz., the High Court, of its jurisdiction to decide the dispute relating to the election

and did not confer jurisdiction on any other authority to decide that dispute. The majority held that Clause (4) was unconstitutional. Our attention is

drawn to the following observations made by Khanna, J.:

202. To confer an absolute validity upon the election of one particular candidate and to prescribe that the validity of that election shall not be

questioned before any forum or under any law would necessarily have the effect of saying that howsoever gross may be the improprieties which

might have vitiated that election, howsoever flagrant may be the malpractices which might have been committed on behalf of the returned candidate

during the course of the election and howsoever foul and violative of the principles of free and fair elections may be the means which might have

been employed for securing success in that election, the said election would be none-the-less valid and it would not be permissible to complain of

those improprieties, malpractices and unfair means before any forum or under any law with a view to assail the validity of that election. Not much

argument is needed to show that any provision which brings about that result is subversive of the principle of free and fair election in a democracy.

The fact that the candidate concerned is the Prime Minister of the country or the Speaker of the lower House of Parliament would, if anything, add

force to the above conclusion because both these offices represent the acme of the democratic process in a country. That in fact the elections of

the incumbents of the two offices were not vitiated by any impropriety, malpractice or unfair means is not relevant or germane to the question with

which we are concerned, namely, as to what is the effect of Clause (4) of Article 329A.

206. The matter can also be looked at from another angle. The effect of impugned Clause (4) is to take away both the right and the remedy to

challenge the election of the Appellant. Such extinguishment of the right and remedy to challenge the validity of the election, in my opinion, is

incompatible with the process of free and fair elections. Free and fair elections necessarily postulate that if the success of a candidate is secured in

elections by means which violate the principle of free and fair elections, the election should on that account be liable to set aside and be declared to be void. To extinguish the right and the remedy to challenge the validity of an election would necessarily be tantamount to laying down that even if the election of a candidate is vitiated by the fact that it was secured by flagrant violation of the principles of free and fair election, the same would still enjoy immunity from challenge and would be nonetheless valid. Clause (4) of Article 329A can, therefore, be held to strike at the basis of free and fair elections.

15. Reference is also made to the judgment in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, . The Court was concerned with a public interest litigation in the cause of bonded labourers in the country. The following observation made by Pathak, J. are relied on by Learned

Counsel for the Petitioners:

Article 32 confers the widest amplitude of power on this Court in the matter of granting relief. It has power to issue "directions or order or writs", and there is no specific indication, no express language limiting or circumscribing that power. Yet the power is limited by its very nature, that it is judicial power. It is power which pertains to judicial organ of the State identified by the very nature of the judicial institution. There are certain fundamental constitutional concepts which, although elementary, need to be recalled at times. The Constitution envisages a broad division of the power of the State between the Legislature, the Executive and the Judiciary. Although the division is not precisely demarcated, there is general acknowledgment of its limits. The limits can be gathered from the written text of the Constitution, from conventions and constitutional practice, and from an entire array of judicial decisions. The constitutional lawyer concedes a certain measure of overlapping in functional action among the three organs of the State. But, there is no warrant for assuming a geometrical congruence. It is common place that while the Legislature enacts the law, the Executive implements it and the Court interprets it and, in doing so, adjudicates on the validity of Executive action and, under our Constitution, even judges the validity of the legislation itself And yet it is well recognised that in a certain sphere the Legislature is possessed of judicial power, the Executive possesses a measure of both legislative and judicial functions, and

the Court, in its duty of interpreting the law, accomplishes in its perfected action a marginal degree of legislative exercise. Nonetheless, a fine and delicate balance is envisaged under our Constitution between these primary institutions of the State. In similar Constitutions elsewhere the Courts have been anxious to maintain and preserve that balance. An example is provided by *Marbury v. Madison* (1803) 5 US (1 branch) 137. I do not mean to say that the Court should hesitate or falter or withdraw from the exercise of its jurisdiction. On the contrary, it must plainly do its duty under the Constitution; But, I do say that in every case the Court should determine the true limits of jurisdiction and having done so, it should take care to remain within the restraints of its jurisdiction.

16. Reliance is placed on the judgment in *P. Sambamurthy v. State of A.P.* AIR 1987 S.C. 663 wherein the validity of the Proviso to Clause (5) of

Article 371D of the Constitution conferring power on the State Government to modify or annul a final order of the Administrative Tribunal was

challenged. The Court struck down the provision as ultra vires the amending power of Parliament inasmuch as it is violative of the basic structure

doctrine since it makes the Administrative Tribunal a less effective and efficacious institutional mechanism or authority for judicial review. The Court

said:

(4) It is obvious from what we have stated above that this power of modifying or annulling an order of the Administrative Tribunal conferred on the

State Government under the Proviso to Clause (5) is violative of rule of law which is clearly a basic and essential feature of the Constitution. It is a

basic principle of the rule of law that the exercise of power by the Executive or any other authority must not only be conditioned by the

Constitution but must also be in accordance with law and the power of judicial review is conferred by the Constitution with a view to ensuring that

the law is observed and there is compliance with the requirement of law on the part of the Executive and other authorities. It is through the power

of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained and every organ of

the State is kept within the limits of the law. Now if the exercise of the power of judicial review can be set at naught by the State Government by

overriding the decision given against it, it would sound the death knell of the rule

of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The Proviso to Clause (5) of Article 371D is therefore clearly violative of the basic structure doctrine.

17. Our attention is also drawn to the interpretation placed by the Supreme Court in *In the matter of: In the matter of : CAUVERY WATER*

DISPUTES TRIBUNAL, on Entry 56 of List I and Entry 17 of List II in the Seventh Schedule of the Constitution as well as Article 262. After

extracting Article 262 of the Constitution, the Court said:

An analysis of the Article was 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 adjudications 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 rivers and river valley. 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 river 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. 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.

18. None of the above rulings is of any help to the Petitioners in the present case. The State Legislature is undoubtedly competent to enact a law

on the subjects mentioned in List II of the Seventh Schedule. The learned Advocate General points out that the present Act will fall under Entries

14 and 17, which read as follows:

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the

provisions of Entry 56 of List I.

It is not the case of the Petitioners that there is any law made by the Parliament under Entry 56 of List I dealing with the subject matter in the

present Act. Hence, no question of repugnancy between the State Act and the Central Act will arise.

19. The doctrine of separation of powers which is invoked by the learned Senior Counsel for the Petitioners has been held not applicable in India.

In *In re Article 143, Constitution of India and Delhi Laws Act (1912) etc.* AIR 1951 S.C. 332, Patanjali Sastri, J. said:

It is true to say that, in a sense, the people delegated to the legislative, executive and the judicial organs of the State their respective powers while

reserving to themselves the fundamental rights which they made paramount by providing that the State shall not make any law which takes away or

abridges the rights conferred by that Part. To this extent the Indian Constitution may be said to have been based on the American model, but this is

far from making the principle of separation of powers, as interpreted by the American courts, an essential part of the Indian Constitution or making

the Indian Legislatures the delegates of the people so as to attract the application of the maxim. As already stated, the historical background and

the political environment which influenced the making of the American Constitution were entirely absent here and beyond the creation of the three

organs of the State to exercise their respective functions as a matter of convenient governmental mechanism, which is a common feature of most

modern civilised governments, there is not the least indication that the framers of the Indian Constitution made the American doctrine of separation

of powers, namely, that in their absolute separation and vesting in different

hands lay the basis of liberty, an integral and basic feature of the Indian Constitution. On the contrary, by providing that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions and that the Council shall be collectively responsible to the House of the People, the Constitution following the British model has effected a fusion of legislative and executive powers which spells the negation of any clear cut division of governmental power into three branches which is the basic doctrine of American constitutional law.

20. A similar statement is made by Shah, J. in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, , which reads as follows:

It cannot however be assumed that the legislative functions are exclusively performed by the Legislature, executive functions by the Executive and

judicial functions by the Judiciary alone. The Constitution has not made an absolute or rigid division of functions between the three agencies of the

State. To the executive, exercise of functions legislative or judicial are often entrusted. For instance power to frame rules, regulations and

notifications which are essentially legislative in character is frequently entrusted to the executive. Similarly judicial authority is also entrusted by

legislation to the executive authority: *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, . In the performance of the executive

functions, public authorities issue orders which are not far removed from legislation and make decision affecting the personal and proprietary rights

of individuals which are quasi- judicial in character. In addition to these quasi-judicial and quasi-legislative functions, the executive has also been

empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which

appear to partake at the same moment of legislative, executive and judicial characteristics. In the complexity of problems which modern

government have to face and the plethora of parliamentary business to which it inevitable leads, it becomes necessary that the executive should

often exercise powers of subordinate legislation. Halsbury's Laws of England, Vol.7, Article 409. It is indeed possible to characterise with

precision that a particular function exercised by any individual agency is necessarily of the character which the agency bears.

21. It cannot be disputed that a legislation can affect or take away vested rights

subject to the limitations prescribed by the Constitution. That will not amount to adjudication of rights of parties. At this state it is necessary to consider the scope and extent of the rights claimed by the Petitioners.

It is the argument of the Petitioners that they are registered ayacutdars under the project and they have a vested right to get the benefit of accustomed user of water and the government cannot interfere with the same. In support of this contention, reliance is placed upon some judgments of this Court dealing with the rights of the ryotwari proprietors to get water for irrigation vis-a-vis the Government. In *Rai Sahib C.N. Maduranayakam Pillai Vs. The Secretary of State for India in Council*, a Division Bench of this Court held after referring to the earlier decisions that in the Madras Presidency the ryot is entitled to receive the water which his lands were accustomed to for irrigation purposes without interference by the Government or anyone else. The Bench said:

The Government cannot be required to supply water when none is available and it has a right of conserving and distributing the water available in the interests of the particular ayacut. In years of shortage the only obligation of the Government is to make an equitable distribution of water. The ryot has a claim against the Government when it withholds from him the water which he has a right to demand taking into consideration the supply available. In face of the authorities the plea advanced on behalf of the Government that it has the right in law to supply Madras with water without regard to the claims of the ryots in the old ayacut cannot be accepted. It is of course manifest that the needs of the city of Madras are of very great importance and in the absence of rights in others no one could reasonably complain of the policy of the Government in giving this large City a preference in the supply of water, but when others have acquired rights, the law requires that they shall be respected. It follows that in our opinion the declaration granted to the Appellant does not do justice to the Appellant. The Government is not entitled to economise water in seasons or months of shortage in order that a perennial supply may be available for the use of Madras if this economy means that the ryots in the old ayacut will have their customary supply diminished.

It must be pointed out that the Bench dealt with wet lands and made a distinction between the ryots who were irrigating their lands with the water

in the reservoirs concerned even before the Government undertook a scheme to increase the storage capacity of the tanks with the primary object

of supplying water to Madras on the one hand and the ryots who got the benefit of supply of water for irrigation under the scheme for the first time

on the other. The Court said:

The ryots in the new area are in a different position to the ryots in the old area and it may very well be that their rights to water are subject to the

requirements of the City of Madras.

In the present case, it is not in dispute that the Petitioners had no supply of water for irrigation prior to the introduction of the Parambikulam-Aliyar

Project.

22. The question of the obligation of the government to supply water for irrigation to Wet lands was considered in detail by Viswanatha Sastri, J. in

Lachuma Goundan v. Pandiyappan (1950) II M.L.J. 658. The learned Judge said:

The Government in exercising its prerogative right of distribution of water flowing in Government channels should not inflict sensible injury on

ryotwari proprietors who have been accustomed to receive a supply of water sufficient for the purpose of irrigating their wet lands. Subject to the

aforesaid conditions, it has been recognised by decisions that the Government has the right to change the source of irrigation or the method of

distribution by which ryotwari proprietors have been supplied with water and also to regulate the use of the waters flowing in artificial channels

constructed by or belonging to the Government so as to ensure a fair and equitable distribution of water among all the ryotwari proprietors

depending on the ayacut of the channel. A ryotwari proprietor could not plead, as against the Government that he has an absolute right to all the

volume of water flowing through a particular channel acquired either by grant or by prescription; nor can he object to the Government allowing

other ryotwari proprietors to utilise the water of a Government channel unless the usual supply of water necessary and sufficient for the cultivation

of the wet lands of the farmer, is prejudicially interfered with. It may here be observed that though the ryotwari proprietor is ordinarily spoken of as

being entitled to the usual and accustomed supply of water, there is no corresponding obligation on the part of the Government to find the required

supply of water at any cost on pain of being held liable in damages for default.

The obligation of the Government is to supply water necessary and sufficient for the accustomed requirements of the ryotwari proprietor so long as such supply is not adversely affected by natural causes such as deficiency of rainfall or scarcity of water in the rivers from which the supply channels take off,. From this it follows that the ryotwari proprietor has a claim against the Government only when the Government diverts, to his prejudice, water which is available in the channel so as to materially diminish the supply of water that he had been accustomed to receive from the channel for the cultivation of his wet lands. In other cases the interference by the Government with the existing rights of irrigation from artificial channels constructed by Government is not an actionable wrong and the ryotwari proprietor is not entitled to insist that the entire volume of water which had been flowing through the artificial channel should, for all time, be allowed to run along the channel without diminution or diversion by the Government. In other words, damage to the ryotwari Proprietor, actual or inevitable, is the gist of the action as well as the basis of Government's liability.

There again the lands were wet lands.

23. Reliance was placed upon the judgment of Ramaswami, J. in *Duraiswamy Udayar v. Venkatachala Reddiar* 71 L.W. 707 : AIR 1960 Mad

385. Our attention is drawn to the following passage:

Where a channel has been constructed by the Government, acting as agent of the community to increase the well-being of the country by extending the benefit of irrigation and in pursuance of that purpose the flow of water is directed to the villages designed to be benefited, the rights of the owners of the fields registered under that source of irrigation are co-extensive with the natural rights of riparian Owners. Thus, it would appear that though the right relating to an artificial stream are not natural rights, they may be acquired under such circumstances and even so used as to be co-extensive with the natural rights of riparian owners. (See the catena of decisions cited in Katiar's Law of Easements and Licenses in India, Third edition (1955) at pages 530-31).

We are unable to accept the correctness of the proposition so widely stated in the above passage. But it is not necessary for us to discuss the same in the present case in view of the facts of this case.

24. An unreported judgment of a learned single Judge of this Court in Ponnu Thevar and Ors. v. Arokia Nadar and Ors. S.A. Nos. 839 and 1864

of 1961 - judgment dated 29-3-1965 has been referred by learned Senior Counsel for the Petitioners. After discussing the entire case law on the

subject, the learned Judge summed up the propositions as follows:

(1) The ryotwari proprietor has no right of property in the irrigation channels supplying water for his wet cultivation either in respect of the bed of

the channel or in respect of the flow of water.

(2) The ryotwari proprietor has no enforceable legal right to compel the Government to maintain the status quo in the matter of the source or

distribution and supply of water; such a right cannot be acquired by prescription or by any other mode known to law by reason only of the long

customary use of the water in the same manner, through the same machinery or contrivance.

(3) There is no vested right in the ryotwari proprietor in the registered source or in the accustomed medium of supply so as to prevent other ryots

from interfering with them.

(4) His only right is to expect and be assured of the supply of water which is essential and necessary for irrigating his WET ayacut provided water

is available and the Government are in a position to make the supply. Any diminution in the supply of water would be an actionable wrong and

aggrieved ryot can seek the appropriate remedy not merely against the government but also against other ryots who have been instrumental or

responsible in causing such injury. If this be the true position in law as I conceive it to be it seems to be obvious that the Plaintiffs cannot maintain a

suit for declaration of rights for the exclusive user of water through Vadakal channel and to sue for a permanent injunction restraining the ryots of

Nagamugundankudi from any way interfering with the flow of water along that channel.

25. We have already stated that the Petitioners got the benefit of supply of water for irrigation only under the project in accordance with the

Parambikulam-Aliyar Project Water Cess Rules, 1965. We have also extracted the relevant conditions under which permits were granted to the

Petitioners. Under the said conditions, the permit-holder was bound to take water only in accordance with any system that may be fixed by the

authorities and the State Government had reserved to themselves the full right to refuse or restrict temporarily or permanently the supply of water

for irrigation. The State Government had also reserved to themselves right of notifying the crops to be grown from time to time in the ayacut lands.

It is not in dispute that the State Government permitted only the raising of dry crops such as maize, sunflower, ragi, groundnut, cotton and sorghum.

Having obtained the permits subject to the above conditions specifically imposed, the Petitioners cannot claim any right against the Government to

have water supply similar to that of ryotwari-holders of wet lands. The mere fact that the irrigation cess is being collected from the Petitioners as

per the rules referred to above or the payment of betterment levy by the Petitioners will not confer any right to the accustomed user of the water.

We have also referred to the fact that Petitioners have been admittedly using the water for raising coconuts and plantains contrary to the conditions

under which they obtained permits. In the above background if the provisions of the Act are looked into, there will be no difficulty whatever in

holding that there is no adjudication on the part of the Legislature on the rights of the Petitioners. There is no question of the Legislature

overstepping its legislative powers and exercising judicial powers of adjudication. In *Kavalappara Kottarathil Kochuni and Others Vs. The State of*

Madras and Others, a similar contention was put forward by the Petitioner with reference to *Madras Marumakkathayam (Removal of Doubts) Act*

(32 of 1955). Sarkar, J. stated the law thus:

(76) Next it is said that the Act is bad as it is really an exercise by the legislature of judicial power which it does not possess and not an exercise of

a legislative power at all. We are unable to hold that this is so. There are two things in the Act on which this contention has been based. The first is

that the Act has been given a retrospective operation. It is quite clear to us that that by itself does not make the Act a thing done in the exercise of

judicial power. The Legislature has the power to give retrospective operation to an Act. That of course interferes with vested rights but the

legislature can interfere with such rights in the exercise of its Legislative power. That is not adjudicating between parties affected by the Act. It is

laying down the law to be followed by Courts in future. It is so nonetheless that the law is altered as from a past date.

(77) Then it is said that the Act provides that it is to have effect notwithstanding any decision of the Court contrary to its provisions. That the Act

no doubt does. Can it be said that it thereby adjudicates and not legislate? In AIR 1944 1 (Federal Court) it was pointed out that in India the

Legislature very often in the enactments that it makes sets aside decisions of Courts. In America rule appears to obtain that ""Legislative action

cannot be made to retroact on act controversies and to reverse decisions which the courts in the exercise of their undoubted authority have made"":

Cooleys" Constitutional Limitation, 8th Ed. P. 190. It was held in AIR 1944 1 (Federal Court) that this rule had no application in India. The

observation there made may be set out:

It is clear from the American authorities that this limitation has been derived from the interpretation placed by the American Courts on what are

known as the Fifth and Fourteenth Amendments which provide against any person being ""deprived of life, liberty or property without due process

of law"". The expression ""due process of law"" has been interpreted as referring only to ""judicial process"" and as not including legislation,....

As this requirement had been made part of written -constitution, it followed that no enactment passed by a Legislature limited by that Constitution

could authorize anything in violation of it... Hence the rule (stated by Cooley) that ""it would be incompetent for the Legislature, by retrospective

legislation, to make valid any proceedings which had been had in the courts but which were void for want of jurisdiction over the parties. The

constitutional position in India is different.

(78) It seems to us that this observation of the Federal Court which no doubt was made with reference to the Government of India Act, 1935,

applies with equal force to the position obtaining under our Constitution. It has been held by this Court that there is no scope under our

Constitution for the application of the American concept of ""due process of law"". The American cases cited in support of the contention that a

legislation cannot override judicial decisions therefore afford no assistance in our country. Article 31B itself provides that it would apply

notwithstanding any judgment, decree, or order of any court to the contrary and it had been enacted by an Act passed by the Parliament. There

have been many Acts passed since the Constitution came into force which

contained similar provisions. In no case has it ever been contended that such an Act amounted to an exercise of the judicial function by the legislature. The Act before us lays down a law to be applied by courts in future in the adjudication of disputes between parties. It also says that the courts shall apply the law notwithstanding that there is an earlier decision on the rights of the parties which are being litigated upon in a subsequent proceeding. The Act does not itself annul any decision of any court. All that it says is that the law laid down is to be applied by courts irrespective of any previous decision. It does not in any sense adjudicate between parties. It, therefore, seems to us that the contention that the impugned Act is really an exercise of judicial power is ill-founded.

No doubt the Act was declared void and ultra vires the Constitution by the majority judgment: but on other grounds. The majority did not hold that the Act was adjudicatory in nature and that the Legislature performed a judicial function.

26. Another limb of the argument advanced on behalf of the Petitioners is that the Act excludes the jurisdiction of Courts completely and has not provided for any machinery to decide the dispute which may arise between the ayacutdars and the State. We are unable to accept this contention.

We are not inclined to read Section 4 of the Act as ousting the jurisdiction of the Courts in entirety. The language of the Section is restricted only to

a particular type of suit and application. It prevents the Court from entertaining a suit for the issue of any injunction or an application for the issue of

any interim order restraining any proceeding which is being or about to be taken u/s 3 or the Rules made thereunder for regulating the supply of

water by the Government or by any officer authorised u/s 5 in the Parambikulam Aliyar Project. Suits for other reliefs based on the rights of parties

can certainly be entertained by Courts and they are not covered by Section 4. In our opinion, the Section is mainly intended to prevent the Courts

from stopping the implementation of the project by an interlocutory order even before the determination of rights of parties. It is somewhat similar

to Section 70(I) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, corresponding to Section 57 of the predecessor Act

of 1951. A Division Bench of this Court dealing with the provision in the Act of 1951 held that the jurisdiction of the Court to grant an

injunction was not ousted as the Section only referred to "stay". The Bench pointed out that if the ordinary jurisdiction of the civil Court is to be ousted, it must be by express words or necessary intendment of the relevant statutory provision and it must be construed strictly and applied only to the extent warranted by the language thereof. (Vide Muthuswami Gurukkal Vs. Ayyasami Thevan and Others, . In view of the limited scope of Section 4 of the Act, we are unable to accept the contention that the Courts are barred from entertaining any type of suit at the instance of the aggrieved party, (b) Overruling the Judgments of this Court:

27. The next limb of the argument is that the Legislature has chosen to exercise judicial powers by overruling the judgments of this Court in the

three writ petitions referred to already. The law on this subject is by now well settled. We have earlier referred to Kavalappara Kottarathil

Kochuni and Others Vs. The State of Madras and Others, , where it had been held that the provision that the statute will operate notwithstanding

any decision of any Court contrary thereto will not amount to an exercise of judicial power by the Legislature. The question has often arisen in

cases of Validation Acts whereby the legislature nullified the effect of judgments of Courts by changing the basis of the law which was held to be

invalid by Courts it has been held in such cases that where the enactments changed the basis of the law, they are valid though the Legislature

cannot directly override the decisions of courts. In the The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock

Spg. and Wvg. Co. Ltd. etc. etc., , the Court while striking down the provision in Sub-section (3) of Section 152A of the Bombay Provincial

Municipal Corporation Act as amended by Gujarat Amending and Validating Ordinance, 1969, as ultra vires the Constitution, observed as

follows:

(7) This is a strange provision. Prima facie that provision appears to command the Corporation to refuse to refund the amount illegally collected

despite the orders of this Court and the High Court. The State of Gujarat was not well advised in introducing this provision. The provision attempts

to make a direct inroad into the judicial powers of the State. The Legislatures under our constitution have within the prescribed limits, powers to

make laws prospectively as well as retrospectively. By exercise of those powers,

the Legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective. But no Legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by courts.

After referring to some earlier decisions, the following passage in the judgment of Shah, J, in Janpada Sabha, Chhindwars v. Central Provinces

Syndicate Ltd. Civil Appeal Nos. 125-133 of 1967, dated 23-2-1970 (S.C.) was extracted:

On the words used in the Act, it is plain that the Legislature attempted to overrule or set aside the decision of this Court. That in our judgment, is

not open to the Legislature to do under our constitutional scheme. It is Open to the Legislature within certain limits to amend the provisions of an

Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a court

properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of

the law shall be otherwise than as declared by the Court.

28. In Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, the Court said on this aspect of the matter as follows:

(137) The constitutional validity of a statute depends entirely on the existence of the legislative power and the express provision in Article 13.

Apart from the limitation the Legislature is not subject to any other prohibition. The amendments made to the 1951 Act by the Amendment Acts,

1974 and 1975 are to give effect to certain views expressed by this Court in preference to certain views departed from or otherwise to clarify the

original intention.

(138) The conclusive evidence or conclusive proof clause is an accepted legislative measure. Similarly, giving retrospective effect to legislative

amendment is accepted to valid exercise of legislative power. The well-known pattern of all Validation Acts by which the basis of judgments or

orders of competent Courts and Tribunals is changed and the judgments and orders are made ineffective is to be found in M.P.V. Sundararamier

and Co. Vs. The State of Andhra Pradesh and Another, . The power of the Legislature to pass a law includes a power to pass it retrospectively.

An important illustration with reference to retrospective legislation in regard to

election is the decision of this Court in Srimati Kanta Kathuria Vs.

Manak Chand Surana, . Kanta Kathuria was disqualified by reason of holding an office of profit. First the Ordinance and later the Act was passed

to nullify the decision of the High Court. The Ordinance as well as the Act stated that notwithstanding any judgment or order of any Court or

Tribunal, the officer shall not be disqualified or shall be deemed never to have disqualified the holders thereof as a member of the Legislative

Assembly. The rendering of a judgment ineffective by changing the basis by legislative enactment is not encroachment on judicial power because

the legislation is within the competence of the Legislature.

29. The question was again considered in I.N. Saksena v. State of Madhya Pradesh AIR 1976 S.C. 2250 and the law was stated thus:

(22) While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly

overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of

the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing

with retrospective, curative or neutralising effect the conditions on which such decision is based. As pointed out by Ray C.N. in Smt. Indira Nehru

Gandhi Vs. Shri Raj Narain and Another, the rendering ineffective of judgments or orders of competent courts and tribunals by changing their basis

by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or

invalidity of actions or proceedings is not an encroachment on judicial power.

23. In Hari Singh and Others Vs. The Military Estate Officer and Another, a Bench of seven learned Judges of this Court laid down that the

validity of a validating law is to be judged by two tests. Firstly, whether the legislature possesses competence over the subject-matter, and,

secondly, whether by validation the legislature has removed the defect which the courts had found in the previous law. To these we may add a

third: Whether it is inconsistent with the provisions of Part III of the Constitution.

30. Learned Counsel for the Petitioners has drawn our attention to judgment in Madan Mohan Pathak and Another Vs. Union of India (UOI) and

Others, . The question was whether a writ of Mandamus issued by the Calcutta

High Court directing the Life Insurance Corporation to pay cash

bonus for the year 1975-76 to its Class III and Class IV employees in terms of the settlement dated 24-1-1974 which was allowed to become

final, could be disturbed by the Parliament by enacting the Life Insurance Corporation (Modification of Settlement) Act. Construing the provisions

of the Act, the Court held that it did not interfere with the mandamus issued by Calcutta High Court and the Act was operative only prospectively.

The ruling does not help the Petitioners in any manner.

31. In State of Haryana and others Vs. The Karnal Co-op. Farmers' Society Limited, etc. etc. and others, , the Court said that a Legislature has

the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law

on which such decisions were founded, even retrospectively; but it does not have the power to render ineffective the earlier judicial decisions by

making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative

power but a judicial power, which cannot be encroached upon by a Legislature under the Constitution. In that case, by the Amendment Act of

1981, the State Legislature had not made any provision to include the lands and immovable properties which were the subjects of the Civil Court's

decrees, in "shami-lat deh" so as to bring them within the purview of the principal Act. But, the provision merely directed the Assistant Collector of

First Class, in effect, to disregard or disobey the earlier civil Courts' decrees and judicial orders by which it had been held that certain lands and

immovable properties fell outside "shalmilat deh" regulated by the principal Act. Such provisions were held to be unconstitutional. If the ruling is

applied to the facts of the present case, it is clear that the impugned Act has included all the lands of the Petitioners within its purview and the

Legislature is, therefore, competent to pass the enactment with retrospective effect nullifying the orders passed by the Courts.

32. The matter can be viewed differently from another angle also. The Legislature has only changed the mode of distribution of water for irrigation

purposes. What was previously three zone pattern, under which the registered ayacut-dars got supply of water once in 18 months, has now been

changed into a four zone pattern under which the ayacutdars would get supply of

water once in 24 months, the very basis of the system is changed

and there is no question of the legislation merely overruling the decisions of this Court. This is not a case of the Legislature exercising a judicial

power. On the other hand, the Legislature has only exercised its legislative power to distribute water equitable to all the agriculturists who are in

need of the same and who have been suffering from drought and famine for nearly two centuries.

33. In the present case the learned Senior Counsel for the Petitioners contends that the orders passed in the writ petitions, though based on

consent of parties, will have the same force as orders passed by Courts after due consideration of the points involved. Reliance is placed on Raja

Kumara Venkata Perumal Raja Bhadur v. Thatha Ramasamy Chetty and Ors. ILR 35 Mad 75, where it was held that a compromise decree

would operate as resjudicata and the parties thereto are bound thereby. It is also held that a compromise decree may, in some respects, have a

greater validity than one passed after contest between the parties as such a decree has all the force of a compromise or a species of contract which

is highly favored by the Courts. It is pointed out that the ruling has been referred to by the Supreme Court with approval in Raja Sri Sailendra

Narayan Bhanja Deo Vs. The State of Orissa, . Our attention is also drawn to the judgment of the Supreme Court in Sunderabai Deshpande and

Another Vs. Devaji Shankar Deshpande, which holds that even if the bar of res judicata would not apply to a compromise decree, the principle of

estoppel is applicable and the parties will be estopped from contending contrary to the said decree. A distinction has, however, been made by the

Supreme Court in Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta AIR 1967 S.C. 996 between a

decision made on a concession made by the parties and a decision rendered after a careful consideration of the question raised. The Supreme

Court indicated that the latter will have more value than the former. But, it is not necessary for us to delve deep in this matter in view of the fact that

the orders on which reliance is placed by the Petitioners were made in proceedings in which neither the Legislature nor the new ayacutdars were

parties. The fact that the Government will be barred by res judicata or bound by the principle estoppel will not prevent the Legislature from passing

an enactment for the benefit of large number of agriculturist.

It cannot be said that the impugned Act is directly overruling any decision of a Court. It has only changed the pattern of distribution of water among

the ayacutdars in exercise of its plenary powers. Hence, we reject the first contention urged on behalf of the Petitioners.

(2) VIOLATION OF ARTICLES 14, 19 AND 21 OF THE CONSTITUTION.

34. Under this head, the contentions of the Petitioners are that the provisions of the Act are violative of Article 14 of the Constitution inasmuch as

they are arbitrary and violative of Article 19 of the Constitution as they impose an unreasonable re-striction on the fundamental right of the

Petitioners to carry on the occupation of agriculture. It is further contended that the provisions of Article 21 of the Constitution are violated

inasmuch as it deprives the Petitioners of their livelihood. It is contended that the Act is not an agrarian reform as proclaimed in the Preamble to the

Act and it cannot claim the protection of Article 31C as it was not reserved for the consideration of the President. It is submitted that the dominant

purpose of the Act is only to nullify the orders passed by this Court in the writ petitions upholding the right of the Petitioners to accustomed supply

of water though the Act proclaims that it is in the interest of the general public for bringing prosperity to the backward and drought-prone areas

and bring about an increases in the agricultural production by regulating the irrigation system in the Parambikulam-Aliyar Project. Reference is

made to the judgments of the Supreme Court in Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others, and Maharashtra State

Electricity Board Vs. Thane Electric Supply Co. and others, in support of the propositions that declaration contained in a legislation is open to

judicial review and that an express declaration in law is not a condition precedent to validate the Act. In our opinion, it is unnecessary to refer to

either of the judgments as in the present case, the President's assent has not been obtained and the State Government does not claim the

protection of Article 31C of the Constitution.

35. In answer to the contention that the Act does not bring about any agrarian reform though the Preamble refers to the same, the learned

Advocate General invited our attention to the judgment of the Supreme Court in Prem Nath Raina and Others Vs. State of Jammu and Kashmir

and Others, and Madhusudan Singh and Others Vs. Union of India (UOI) and Others, . In the former case, the Court held that the dominant

purpose of the statute was to bring about a just and equitable redistribution of lands, which was achieved by making the tiller of the soil the owner

of the land Which he cultivates and by imposing a ceiling on the extent of the land which any person, whether landlord or tenant; can hold. In the

latter case, the Court classified the broad objectives of any legislation relating to agrarian reform as follows:

- (1) to maximise the agricultural output and productivity;
- (2) a fair and equitable distribution of agricultural income;
- (3) increase in employment opportunities; and
- (4) a social or ethical order.

There can no doubt whatever that the impugned Act in this case falls within the first class mentioned above. We are also of the view that the Act is

to give effect to the directive principles contained in Article 48 of the Constitution; but that is certainly not very material as the Act has not received the assent of the President.

36. Learned Counsel for the Petitioners has placed reliance on the judgment of the Supreme Court in *Km. Nelima Misra Vs. Dr. Harinder Kaur*

Paintal and others, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and contended that even administrative action should

be fair and just and that should not be arbitrary. We are unable to accept the contention that the provisions of the Act are arbitrary or unfair or

unjust. The materials placed before us by the Respondents are sufficient to prove that the four zone pattern which is being introduced by the Act

for the purpose of irrigation is certainly beneficial to large number of agriculturists. The records show that more area of dry lands in the drought-

prone zones will be brought under cultivation. By the new pattern there will be continuous flow in all the canals throughout the year which will result

in the increase in ground-water table and build up more ground-water potentials. All the wells in the ayacut areas and adjacent areas will get

indirect benefit of groundwater recharge, which will help the people to utilise the well water during the non-irrigation period also for domestic as

well as irrigation purposes. The present pattern is such that the flow of water in the canals is to their full length throughout the year.

37. We find that under the four zone pattern of irrigation, the entire extent of 2,03,299 acres in the old ayacut has been distributed over all the four

zones in the following manner:

Zone Old New

Ayacut Extension

Zone I 70,308 28,250

Zone II 43,851 54,567

Zone 54,537 39,487

III

Zone 34,603 51,549

IV

A look at the plants filed by the Government will show that the area is divided into four zones in such a manner that the water shall flow from the

head to the tail end every time. That will undoubtedly result in keeping high percentages of humidity in the atmosphere. In short, no one can take

any exception to the irrigation of 3,77,000 acres as against 2,03,000 acres on the ground that the original ayacutdars have a vested right to get a

particular quantum of water., Even if they had such a right, it can be restricted to a reasonable extent by an appropriate legislation. It is quite

obvious, however, that the Act is only regulating the distribution of water in an equitable manner. It is a measure of agrarian reform to bring more

lands under cultivation and increase the agricultural production.

38. There is no merit in the contention that the Act imposed an unreasonable restriction on the rights of the Petitioners. The extent and scope of the

rights of the Petitioners has already been discussed by us. In this connection our attention is drawn to the following passage in the judgment of the

Supreme Court in *Pathumma and Others Vs. State of Kerala and Others*, :

5. Before however taking up the other two points raised by counsel for the Appellants which were pressed before us in this Court it may be

necessary to set out the approach which a Court has to make and the principles by which it has to be guided in such matters. Courts interpret the

constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing

requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the Legislature in its wisdom, through beneficial legislation seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends of economic thought, the temper of the times and the living aspirations and feelings of the people, this Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike just balance between the fundamental rights and the larger and broader interests of society so that when such a right clashes with the larger interest of the country, it must yield to the latter.

The Court referred to its judgment in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, at p.148 : AIR 1961 S.C. 1602 at

p.1613 and extracted a passage therefrom to the effect that the tests of reasonableness have to be viewed in the context of the issues which face

the Legislature and the Courts have to necessarily approach from the point of view of furthering the social interest which is the purpose of the

legislation to promote. The following passage was also extracted:

6. It is obvious that the Legislature is in the best position to understand and appreciate the needs of the people as enjoin by the Constitution to

bring about social reforms for the upliftment of the backward and the weaker sections of the society and for the improvement of the lot of poor

people. The Court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III

of the Constitution or when the Act is beyond the Legislative competence of the legislature or such other grounds. It is for this reason that the

Courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on

the party which assails the same. In the case of *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, while adverting to this aspect Das, C.J.

as he then was, speaking for the Court observed as follows (at pp.740-741 of AIR:

The pronouncement of this Court further establishes amongst other things, that there is always a presumption in favour of the constitutionality of an

enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The Courts,

it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to

problems made manifest by experience and that its discriminations are based on adequate grounds.

It is in the light of these principles that we have to approach the impact of the Act on the fundamental rights of the citizen conferred on him by Part

III of the Constitution.

39. The Court proceeded to consider the scope of Article 19(1)(f) of the Constitution and pointed out the various tests laid down for judging the

reasonableness of the restriction imposed. One of them was that the Court should bear in mind the Directive Principles of State Policy. The second

was that the restrictions should not be arbitrary or of an excessive nature so, as to go beyond the requirement of the interest of the general public.

The third was that in order to judge the quality of the reasonableness, no abstract or general pattern or a fixed principle can be laid down so as to

be of universal application and the same will have to vary from case to case and with regard to changing conditions, the values of human life, social

philosophy of the Constitution, prevailing conditions and the surrounding circumstances all of which must enter into the judicial verdict. The fourth

test was to examine the nature and extent, the purport and content of the right, nature of the evil sought to be remedied by the statute, the ratio of

harm caused to the citizen and the benefit to be conferred on the person or the community for whose benefit the legislation is passed, urgency of

the evil and necessity to rectify the same. The fifth test was the prevailing social values whose needs are satisfied by restrictions meant to protect

social welfare. We have no doubt that if the tests referred to above are applied in this case, the so called restrictions of the rights to the Petitioners

are absolutely reasonable.

40. In *Razakbhai Issakbhai Mansuri and Others Vs. State of Gujarat and Others*, , the Court said:

10. It has been repeatedly observed by this Court that the test of reasonableness should be applied to each individual statute impugned. No

abstract standard, or general pattern of reasonableness can be laid down as

applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent of the evil sought to be remedied thereby, the disproportion of the imposition, the relevant prevailing conditions, should all enter into the judicial verdict. The limitations in enjoyment of the right should not, however, be arbitrary or of an excessive nature. In other words it should not be more than what is essential in the interests of the public.

11. Although the Directive Principles of State Policy as contained in Part IV of the Constitution are not enforceable by Courts, nonetheless it is the duty of the State to give effect to shoe principles by making appropriate laws. It has been described as matters of constitutional obligation of the State to do so in the public interest. A large body of legislation under Article 19(1) (g) when challenged, has been upheld by courts, as being in furtherance of such policy, as valid on the ground of the Directive Principle. So far the intoxicating drinks are concerned their evil effects are well established specially for the Indian society. This was why the framers of the Constitution considered it fit to include it, in expressed terms, in Article 47 while indicating the duty of the State to raise the standard of living and to improve the public health. It is, therefore, within the authority of the State to prohibit consumption of intoxicating liquor and the State of Gujarat was fully justified when if adopted the policy of prohibition. In order that this policy may succeed, it is not sufficient to merely ban manufacture and consumption of alcoholic drinks. To render it really effective further measures became essential in order to defeat the illegal activities of the antisocial elements engaged in illicit manufacture and illegal distribution of the liquor in the market. It, therefore, became obligatory for the State to take all such steps as found necessary for implementing the prohibition policy, by not only placing restrictions on the manufacture, sales and consumption of liquor but also by adopting such other regulatory measures, essential to achieve the objective.

41. It is not as if the Petitioners are completely deprived of water for irrigation. Instead of supplying water to them once in 18 months, as per the previous system, water will be supplied as per the Act once in 24 months. The quantity of water will undoubtedly be sufficient for raising dry crops as directed by the Government. The Petitioners cannot violate the rules under

which water was supplied to them by raising coconut and plantains

and claim now that the same will wither away for want of sufficient water. They were never entitled to get water for raising coconuts or plantains.

42. There is no merit in the contention that Article 21 of the Constitution is violated. Reference is made to the judgment in Mrs. Maneka Gandhi

Vs. Union of India (UOI) and Another, and the judgment in State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, , In the

later case it was held that residents in hilly areas are entitled to have proper roads and if they are not provided, it will amount to violation of Article

21 of the Constitution.

Neither of the above rulings will help the Petitioners in the present case. The impugned Act does not take away the Petitioners' right to livelihood

as contended by them. There is no merit in the second contention urged on behalf of the Petitioners and it is hereby rejected.

(3) MALICE:

43. It is the contention of the Petitioners that the Act is vitiated by malice as it has been passed with a view to win the bye-election for Palani

Parliamentary constituency. It is stated that an extend of 84000 acres out of the new ayacut of 1,75,000 acres is situated in Vellakoil and

Kangeyam within the Parliamentary Constituency of Palani for which bye-election was announced in March, 1993 and actually held in September,

1993 on account of postponement. It is argued that in the two assembly constituencies of Vellakoil and Kangeyam the AIADMK party secured

more percentage of votes than in the other four constituencies and that the Act is nothing but a measure to attract large number of voters in the

constituency. Factually there is no merit in this contention. As stated already the work of extension of the ayacut was taken up several years back

and after acquisition of lands, construction of canals and embankments was carried out at huge cost. Representations were being repeatedly made

by the agriculturists in that area and the Government had been consulting technical experts and considering the reports of the officials. It is humanly

impossible to extend the ayacut overnight or even in a few months by making an election promise and trying to fulfill the same. This is only a case of

the Sanskrit maxim

Kakathaliya Nyaya"" ""which takes its origin from the unexpected fall of a palm-

fruit upon the head of a crow at the very moment of its sitting on a branch of that trees. The weight of the crow could not have caused the fall of the fruit. It so happened in this case that the long standing need of the drought stricken area is satisfied by the passing of the legislation after the announcement of the election.

44. Apart from that, no malice can be attributed to the Legislature even if the motive of the government was to secure more votes in the election. A

similar question has been considered by the Supreme Court in K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, . The court said:

36. The argument of mala fides advanced by Shri A.T. Sampath, and adopted in passing by some of the other counsel, is without any basis. The

burden to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior

motive cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously absent in those writ petitions. Besides,

the ordinance-making power being a legislative power, the argument of mala fides is misconceived, the legislature, as a body, cannot be accused of

having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are

so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a

legislation, that motive cannot render the passing of the law mala fide. This kind of transferred malice is unknown in the field of legislation.

45. In the present case also the averments in the affidavits are vague. Nothing has been alleged against the Legislature as a body. The purpose of

the legislation as evident from the Statement of Objects and Reasons and the provisions of the Act is to provide irrigation to drought-prone lands in

the maximum area possible and make an equitable distribution. There is no doubt that it is a sociowelfare measure. Hence, we reject this

contention also.

(4) ESTOPPEL.

46. Apart from contending that the orders of this Court in the three writ petitions are judicial decisions binding on the Government, the Petitioners

have also argued that the said orders are based on consent and they are like compromise decrees binding on the Government as such. It is the

contention of the Petitioners that even if the requirements of Article 299 of the constitution were not fulfilled and the orders of this Court refer only

to the consent of the Additional Government Pleader and the Government Advocate respectively, they would give rise to binding contracts

between the parties. Such contracts would entitle the Petitioners to claim the benefit of rule of estoppel which will invalidate the Act. Arguments

are advanced at length on both sides on the applicability of Article 299, Constitution of India and on the question whether the consent given by the

Additional Government Pleader and the Government Advocate is binding on the State Government. In that connection the following rulings are

referred to by counsel:

1. Bhutnath Sarkar v.- Decisions

Ramlal Sarkar (6 based on

C.W.N. 82) 2. consent of

Askaran Choutmal party or

Vs. E.I. Ry. and Co.,counsel.

3. H. Clark

(Doncaster). Ltd. v.

Wilkinson (1965) 1

All E.R. 934

1. State of West - Article

Bengal Vs. B.K. 299 of the

Mondal and Sons, 2. Constitution.

The New Marine

Coal Co. (Bengal)

Private Ltd. Vs.

Union of India (UOI),

3. Lalji Khimji and

Others Vs. State of

Gujarat,

The learned Advocate General has drawn our attention to the judgment in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, wherein a

distinction is made between a concession across the bar made by the Advocate General and that made by the Government Pleader. While the

Respondents have argued that the consent orders passed by this Court in the three writ petitions can be only with reference to the Petitioners

therein and not the other ayacutdars, learned senior Counsel for the Petitioners countered it by contending that those Petitioners represented all the

old ayacutdars and the principle of representation recognised in N.K. Mohammad Sulaiman Vs. N.C. Mohammad Ismail and Others, will apply.

We are of the view that the ruling in that case has no relevance here. That was a case of some of the legal representatives of a deceased

Mohammedan representing the entire estate of the deceased and thereby the non-impleaded legal representatives also. That principle of

representation cannot be invoked here as in all the three writ petitions, the prayer was expressly limited to the respective Petitioner in each writ

petition. It is also argued by the Petitioners that the order passed by the Court in W.P. Nos. 575 and 1309 of 1978 was based on the consent

given by the Government Pleader after the Additional Government Pleader was directed by this Court in its Aide Memoir dated 25-3-1982 to get

instructions from the Government. It is also argued that the Government had in any event ratified the contract and acted upon it even if it is assumed

that the Additional Government Pleader gave consent on his own without getting instructions from the Government. In our opinion it is wholly

unnecessary to consider all the above contentions in this case. Even assuming that there was a binding contract between the Government and the

old ayacutdars, it has been terminated by the Legislature by passing the impugned Act in exercise of its plenary powers. We have already found that

the Act is constitutionally valid.

47. The only question which remains to be considered is whether the principle of estoppel can be invoked by the Petitioners. It is too well settled

by now that the doctrine of estoppel is not available against the Legislature. Suffice it to refer to the judgments of the Supreme Court in

1. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,
2. Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and
3. Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, .

48. In the first case the Court said,

There can also be no promissory estoppel against the exercise of legislative power. The Legislature can never be precluded from exercising its

legislative function by resort to the doctrine of promissory estoppel. Vide *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing*

(Wvg.) Co. Ltd. etc., .

49. In the next case, the Court referred to the first case and said:

14. Of course we must make it clear, and that is also laid down in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,* ,

that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority

be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel

the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power

of the officer of the Government or of the public authority to make.

50. In the third case a two judge Bench of the Supreme Court traced the entire case law on the subject commencing from *Indo Afghan Agencies*

case AIR 1968 S.C. 718 and ending with *Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading*

Company and Others, and reiterated that the principle of estoppel is not available against the Legislature. The Bench proceeded further and said:

12. It is equally settled law that the promissory estoppel cannot be used compelling the Government or a public authority to carry out a

representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public

authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if

larger public interest so requires, and if it can be shown by the Government or public authority, for having regard to the facts as they have

transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on

satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce

the promise or representation against Government or the public authority.

Though Executive necessity is not always a good defence, this doctrine cannot be extended to legislative acts or to acts prohibited by the statute.

51. Learned Senior Counsel has made a faint attempt to contend that the Legislature would also be bound by estoppel and invited our attention to

the following passage in *Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir*, :

25. Petitioners in Writ Petition No. 794/86 had claimed that pursuant to the arrangement entered into between them and the State following the

invitation by the State they had invested Rs. 1.68 crores in shape of plant and machinery and 63 lacs of rupees by way of land and buildings. The

Petitioner in the other two cases stated that investments had been made by them as well. The Petitioners were invited to set up industries by

assuming them supply of the raw material. They changed their position on the basis of representations made by the State and when the factories

were ready and they were in a position to utilise the raw material, the impugned Act came into force to obliterate their rights and enabled the State

to get out of the commitments. We are inclined to agree with the submissions made on behalf of the Petitioners that the circumstances gave rise to

a fact situation of estoppel. It is true that there is no estoppel against the legislature and the vires of the Act cannot be tested by invoking the plea

but so far as the State Government is concerned the rule of estoppel does apply and the precedents of the Court are clear. It is unnecessary to go

into that aspect of the matter as in our considered opinion the impugned Act suffers from the vice of taking away rights to property without

providing for compensation at all and is hit by Article 31(2) of the Constitution.

52. We are unable to accept the contention that the Court was prepared in that case to apply the principle of estoppel against the Legislature if it

was necessary. No inference can be drawn from the above passage that the Court was prepared to overthrow a principle of law well settled by a

long line of decisions.

53. On the facts of the case we hold that the equity, if any, in favour of the Petitioners must yield to the greater equity necessitated by larger public

interest. Even the executive Government would not be barred by the principle of estoppel from implementing the four zone pattern whereby water

is supplied for irrigation to total extent of 3,75,000 acres of lands, Moreover, the

Petitioners having violated the conditions of the permit and raised coconut, plantain and sugarcane, are not entitled to claim any equity, Hence, we reject this contention also.

V. CONCLUSION

54. In the result, the writ petitions are dismissed. There will be no order to costs in W.P. No. 12581 of 1993. The other two writ petitions have

been filed unnecessarily though the association representing them also along with the other members has already filed W.P. No. 12581 of 1993

and it was pending. Hence, the Petitioners in W.P. Nos. 19922 of 1993 and 2158 of 1994 must pay the costs of the respective Respondents.

Counsel's fee Rs. 5000/- in each Writ Petition.

55. Learned Counsel for the Petitioners in the three writ petitions pray orally for grant of leave to appeal to the Supreme Court. In our opinion, the

case involves a substantial question of law of general importance and that has to be decided by the Supreme Court. Hence, we grant leave to

appeal to the Supreme Court under Article 133(1) of the Constitution of India.