
(1996) 09 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12756 of 1996

R. Krishnaiah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 262

Citation : (1996) 4 ALT 175

Hon'ble Judges : P.S. Mishra, C.J.; Syed Saadatulla Hussaini, J

Bench : Division Bench

Advocate : K.R. Prabhakar, for the Appellant; P. Innayya Reddy, Senior Standing Counsel for Respondent Nos. 1, 5 and 6, General for Respondent No. 2, Vijaya Shankar, S.S. Javali for Vilas V. Afzulpurkar, for Respondent No. 3, K. Ananda Rao, for Respondent No. 4, K.G. Kannabiran, 7th Respondent and Party-in-Person, for the Respondent

Judgement

P.S. Mishra, C.J.—These petitions under Article 226 of the Constitution of India are moved by one R. Krishnaiah for reliefs inter alia to forthwith implement the Bachawat Commission Award on inter-State water dispute between the States of Karnataka, Maharashtra and Andhra Pradesh and consequential reliefs. Petitioner has claimed that he is having both personal interest and public interest in the Us as like many other small-farmers, he has claimed, his livelihood, existence and right to life and right to vocation and right to avocation depends upon the sharing of water of river Krishna between the said three riparian States and water's availability for agriculture and other activities. He has brought the historical perspective by stating that the systems of river Krishna and Godavari are sustainers of life for inhabitants of the three States. The rivers are venerated and worshipped as Mother goddess since water they bring to the land sustains both culture and economy. The history of the flow of Krishna river, according to the petitioner.

"is sanctified by tradition venerated by people and used by normal multitudes. Governmental intervention began in 1850 when the British Government even

from the days of East India Company created Krishna ayacut at Bezwada through such benevolent and magnificent builders like Sir Arthur Cotton. This began the tryst with destiny by creating Krishna Anicut at Vijayawada. From 1921 till the third decade of 20th Century control vested with Central Government because it was a Unitary Government and from then onwards "Water" became provincialised. There are administrative understandings in 1944 and again in 1951 after the advent of the Constitution. But they have no legal sanctity but were acted upon with some demur some times but on the whole Krishna River was having the peaceful placid flow. Increased needs of irrigation coupled with advanced technology construction in Projects for irrigation and for Hydro-Power Generation made the citizens and States clamour for more resulting in proprietary claims camouflaged by provincial parochialism."

The Constitution of the Indian Republic included in the Union List of the VII Schedule at item 56 "Regulation and Development of inter-State rivers and river flows" to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest and in the State List "Water" that is to say. Water supplies, irrigation and canals, drainage and embankments water storage and water power subject to the provisions of Entry 58 of List I and thus the law making power in respect of Entry 56 is vested in the Parliament and In respect of Entry 17 in the Legislature of the States. Constitution also envisages a special provision for adjudication of disputes relating to waters of inter-State river or river valleys and has provided in Article 262, as under:

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

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

Exercising law making authority under Entry 56 of List I the Parliament has made the River Boards Act, 1956 (Act 49 of 1956) to provide for the establishment of River Boards for the regulation and development of inter-State rivers and river valleys and for adjudication of disputes relating to waters of inter-State river or river valleys as envisaged under clause (2) of Article 262 as above made the Inter-State Water Disputes Act, 1956 (Act 33 of 1956). Act 33 of 1956 has in clause (c) of Section 2 defined "water dispute" to mean any dispute or difference between two or more State Governments with respect to (i) the use, distribution or control of the waters of, or in, any inter-State river or river valley; or (ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or (iii) the levy of any water-rate in contravention of the prohibition contained in Section 7, which provides that no State Government shall by reason only of the fact that

any works for the conservation, regulation or utilisation of water resources of an inter-State river have been constructed within the limits of the State, impose, or authorise the imposition of, any seigniorage or additional rate of fee (by whatever name called) in respect of the use of such water by any other State or the inhabitants thereof and that any dispute or difference between two or more State Governments with respect to the levy of any water-rate in contravention of the prohibition contained in sub-section (1) shall be deemed to be a water dispute. The Act has contemplated that the State Governments may in such form and manner as may be prescribed complain to the Central Government that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State or of any of the inhabitants thereof in the waters of an inter-State river or river valley have been or are likely to be affected prejudicially by (a) any executive action or legislation taken or passed or proposed to be taken or passed, by the other State; or (b) the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters; or (c) the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters, and when any request is received from any State Government in respect of any water dispute and the Central Government is of the opinion that the water dispute cannot be settled by negotiations it shall by notification in the official Gazette constitute a Water Disputes Tribunal for the adjudication of the water dispute. The Act has contemplated the composition of the Tribunal to consist of a Chairman and two other members nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court and for appointment of two or more persons as assessors to advise it in the proceeding before it. The Tribunal is given the power to investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it. The Central Government or any State Government, if upon consideration of the decision of the Tribunal is of opinion that any thing therein contained requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, may within three months from the date of the decision again refer the matter to the Tribunal for further consideration and on such reference, the Tribunal may forward to the Central Government a further report giving such explanation or guidance as it deems fit and in such a case the decision of the Tribunal shall be deemed to be modified accordingly. Section 6 of the Act provides for the publication of the decision of the Tribunal in these words:

"The Central Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them."

The Act, however, was silent and it contemplated no schemes for implementation of the decision of the Tribunal. By the Inter-State Water Disputes (Amendment) Act, 1980, Section 6A has been introduced which empowers the Central

Government without prejudice to the provisions of Section 6 to frame a scheme or schemes, by notification in the Official Gazette, whereby provision may be made for all matters necessary to give effect to the decision of a Tribunal. This provision reads as follows:

"6-A. Power to make schemes to implement decision of Tribunal-(1) Without prejudice to the provisions of Section 6, the Central Government may, by notification in the Official Gazette, frame a scheme or schemes whereby provision may be made for all matters necessary to give effect to the decision of a Tribunal.

(2) A scheme framed under sub-section (1) may provide for-

(a) the establishment of any authority (whether described as such or as a committee or other body) for the implementation of the decision or directions of the Tribunal;

(b) the composition, jurisdiction, powers and functions of the authority, the term of office and other conditions of service of, the procedure to be followed by, and the manner of filling vacancies among, the members of the authority;

(c) the holding of a minimum number of meetings of the authority every year, the quorum for such meetings and the procedure thereat;

(d) the appointment of any standing, adhoc or other committees by the authority;

(e) the employment of a Secretary and other staff by the authority the pay and allowances and other conditions of service of such staff;

(f) the constitution of a fund by the authority, the amounts that may be credited to such fund and the expenses to which the fund may be applied;

(g) the form and the manner in which the accounts shall be kept by the authority;

(h) the submission of an annual report by the authority of its activities;

(i) the decisions of the authority which shall be subject to review;

(j) the constitution of a committee for making such review and the procedure to be followed by such committee; and

(k) any other matter which may be necessary or proper for the effective implementation of the decision or directions of the Tribunal.

(3) In making provision in any scheme framed under sub-section (1) for the establishment of an authority for giving effect to the decision of a Tribunal,¹ the Central Government may, having regard to the nature of the jurisdiction, powers and functions required to be vested in such authority in accordance with such decisions and all other relevant circumstances, declare in the said scheme that such authority shall, under the name specified in the said scheme, have capacity to acquire, hold and dispose of property, enter into contracts, sue and be sued

and do all such acts as may be necessary for the proper exercise and discharge of its jurisdiction, powers and functions.

(4) a schema may empower the authority to make, with the previous approval of the Central Government, regulations for giving effect to the purposes of the scheme,

(5) The Central Government may, by notification in the Official Gazette, and to, amend, or vary, any scheme framed under sub-section (1).

(6) Every Scheme framed under this Section shall have effect notwithstanding anything contained in any law for the time being in force (other than this Act) or any instrument having effect by virtue of any law other than this Act.

(7) Every scheme and every regulation made under a scheme shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session of the successive sessions aforesaid, both Houses agree in making any modification in the scheme or the regulation or both Houses agree that the scheme or the regulation should not be made, the scheme or the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme or regulation."

As envisaged in clause (2) of Article 262 of the Constitution this Act also provides, " notwithstanding anything contained in any other law, neither the Supreme Court nor any other Court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act."

2. The petitioner has stated that use and sharing of Krishna water which at one time was subject matter of a dispute between the States of Andhra Pradesh, Maharashtra and Karnataka was referred to a Tribunal constituted under Sec 5(3) of the Inter-State Water Disputes Act, 1956. The Tribunal investigated the matter as contemplated under the Act and forwarded its unanimous decision and report to the Government of India on the 24th December, 1973, The Government of India and the States of Andhra Pradesh, Karnataka and Maharashtra filed references u/s 5(3) of the Act and replies to the reference and the Tribunal heard elaborate arguments of the counsel for the parties and answered the references and finally the Central Government published the decision of the Tribunal in the official Gazette on 31-5-1976. Since there was no provision like one u/s 5A of the Act at the time of the publication of the award there was some attempt to evolve a mechanism for the implementation of the decision of the Tribunal by creating an authority for the said purpose. This attempt, however, could not receive the finality. Parties, however, generally accepted the decision of the Tribunal and appropriated water allocated to their respective share in accordance with the

provisions in this behalf as specified in the decision of the Tribunal. Petitioner, however, has stated that in the State of Karnataka in execution of Upper Krishna Project Almatty Dam is being constructed which has the effect of impounding 400 T.M.C. of water whereas as per the allocated quota of Karnataka 540 T.M.C. are to be used for approved small medium and lift irrigation projects and 160 T.M.C. for major projects. According to the petitioner quota for major projects of Karnataka is 160 T.M.C. Almatty alone being one of the major projects of the State of Karnataka is meant for using 400 T.M.C. of water. Karnataka according to the petitioner, has already appropriated under Ipparagi Barriage and Narayanpur project 42 T.M.C. and only 118 T.M.C. of water is available which can be used for major projects. Petitioner has further stated as follows:

"Actually Almatty Dam was designed in the beginning in keeping with the legal and constitutional requirements of Commission Award. Now lately the Karnataka State changed the design to store 220 T.M.C., of water apart from making a further provision of utilising and storing 358 T.M.C. Originally the Almatty Project Dam height was 1680 feet giving a storage capacity of Reservoir upto 102 T.M.C. Now the masonry Dam height is planned, raised and completed more than 1720 feet and with the provision and addition of installation of Crust Gates taking the Dam beyond 1740 feet. Actually the masonry Dam is now complete upto 1734 feet and spill- way gates are being installed at 1720 feet. This contract is being executed with remarkable accelerated rapidity.

This project is going to be completed by 1998 as per the reported statement of the Hon"ble Irrigation Minister of Karnataka Sri K.N.Naga Gouda recently. Actually Almatty Dam which is part of Upper Krishna Project was originally estimated at a cost of Rs. 346 Crores. Now the revised estimate is Rs. 1800 Crores with Rs. 564 Crores and 1236 Crores for both the Phases. Even though the World Bank agreed to assist this Project as originally planned and released a token sum of Rs. 30 Crores, it stopped the aid since it has no Central clearance in view of the Commission award. But the Karnataka State to our utter appreciation and to our total disadvantage and in significant contra-distinction to the State of Andhra Pradesh's failure to raise resources for right causes, our fellow countrymen in Karnataka mobilised large sums of money by way of Bonds to avoid any delay in completing the Project for paucity of funds caused by the discontinuance of assistances by World Bank. Unfortunately the raising of the Dam height and storing of water beyond 118 T.M.C. is utterly illegal, contrary to Award of Commission and devoid of any clearance from the Central Government, Planning Commission and Central Water and Power Commission."

According to the petitioner when actually 155 T.M.C. should be stored by Upper Krishna Project as per the decision of the Tribunal the height of Almatty should be restricted to 1690 feet only. By using the present full capacity of 400 T.M.C. of Krishna water at Almatty Reservoir 34 lakhs of acres of land under Srisailam, Nagarjuna and Prakasam Barriages would become fallow and useless. Even release of water to the first crop would be dependant on the willingness of the

Karnataka Government thereby jeopardising the interest of the people of the State and added.

"The Srisailem Left and Right banks and Telugu Ganga Projects would be in utter confusion and no water can be released except with the consent of Karnataka Government in each water year even by September-October resulting in huge holocaust for Andhra Pradesh. The Karnataka State's exercise on Almatti Dam results in loss and reduction of 282 to 300 T.M.C. in the supply of water to Andhra Pradesh apart from the concept of the "remaining waters" which means that water may be released to the lower riparian users after the needs of upper riparian users are fulfilled. This leads to a further dangerous situation of Andhra Pradesh being starved for water till September /October in each water year (i.e. 1st June to 30th of succeeding year) till all the reservoirs of Karnataka are filled up. There is a risk of Andhra Pradesh not getting of any water by which time even the Planting season for the first crop may be over. The Almatti present Dam is reportedly capable of cultivating 20 lakhs of acres while Karnataka Government stand as reported in me Press by the statement of the Hon''ble Sri K.N. Naga Gouda, the Irrigation Minister is to the effect that it wants to store more water for generation of Hydro Electric Power."

Petitioner has stated about the procedure involved in getting clearances as follows:

"As water including irrigation and water power is a State subject (Entry 17. List II) it is the State Governments which investigate and formulate schemes for; development of water resources and ultimately accord administrative approval to them. However, as economic and social planning is a Concurrent subject (Entry 20, List III), the Union Government as well as the State Governments prepare five year and annual Plans for developing the country's resources. The Union Government has the discretionary power under Article 282 of the Constitution to make grants for any public purpose including grants to. State Governments for financing the State Plans. For obtaining these grants, the State Governments are required to obtain clearance of their projects from me Planning Commissioner. When a scheme has been fully investigated and a project report is prepared, the report is submitted by the State Government to the Central Water and Power Commission. After scrutiny of the technical and economic feasibility of the project the latter makes a report to the Technical Advisory Committee on Irrigation, Flood Control and Power Projects of the Government of India. This Committee advises the Planning Commission and the Ministry of Irrigation and Power on the suitability of the scheme for inclusion in the Plan. The schemes are included in the Plan by the Planning Commission, keeping in view the country's resources and the best method for their effective and balanced utilisation."

and added.

"The hightened Almatti Dam has no such clearances." The petitioner has adverted to the basic findings of the Commission to state as follows:

"(A) The Commission found "we are satisfied prima facie that the reasonable requirements of all Projects in operation or under construction as on September, 1960 should be preferred to the contemplated uses and should be protected."

(B) The Commission found that 2060 T.M.C. of water is available for distribution between the States of Maharashtra, Andhra Pradesh and Karnataka.

(C) The Commission found that Karnataka should use about 695 T.M.C. while Andhra Pradesh is entitled to 800 T.M.C. and State of Maharashtra is entitled to 565 T.M.C.

(D) The Commission found that the excess water available may be utilised by Andhra Pradesh subject to review by 2000 A.D.

(E) The Commission found that the entire water is 2060 T.M.C. available for distribution between the States of Maharashtra, Karnatakvi and Andhra Pradesh basing on 75% dependability Rule."

and added that in the statement filed by Karnataka Government regarding Upper Krishna Project before the Tribunal it was proposed to utilise a demand of 165 T.M.C. for medium and minor projects. 65 T.M.C, for Bhima Project 80 T.M.C, for lower Krishna 240 T.M.C, making a total demand of 550 T.M.C According to the petitioner Bachawat Award has permitted Upper Krishna Project upto a storage capacity of 150 to 160 T.M.C. , only. The Central Government and Water Commission have cleared the Almatty Project only upto that limit for storing 102 T.M.C. and height of 1680 feet for the dam. According to the petitioner the Karnataka Government's act of creating the Dam upto a height of 1.720 feet and the spillway gates to 1740 feet will give to it an opportunity to store water upto 400 T.M.C. which is contrary to the decision of the Tribunal.

3. The State of Andhra Pradesh (the second respondent) has filed more than one returns to the petition and maintained;

"The Government is taking all possible steps and as recently as on 22-3- 1996 and 17-7-1996 the Legislative Assembly of the State has passed unanimous resolutions condemning the action of the third respondent (the State of Karnataka) in raising the height of the Almatty Dam in violation of the decision of the Tribunal and forwarded the same to the Central Government for necessary action."

The Andhra Pradesh Government's stand is that the decision of the Tribunal as notified by the Central Government on 31-5-1976 u/s 6 of the Inter- State Water Disputes Act, 1956 has proceeded on the basis of the 75% dependable flow of the river Krishna upto Vijayawada and that 2060 T.M.C of water was available for distribution between the States of Maharashtra., Karnataka and Andhra Pradesh, Additional quantities of water, the Tribunal has mentioned, will be added to the 75% dependable flow of the river Krishna upto Vijayawada on account of return flow and will be available for distribution between the States of Maharashtra, Karnataka and Andhra Pradesh. After giving how shares are being allotted for

utilisation of water for various purposes by the three riparian States, the affidavit filed on behalf of the Government has alleged that it has been reliably learnt that Government of Karnataka is planning to raise the height of Almatty Dam upto + 1720 feet (524.26 M) providing an enormous storage capacity of 227 T.M.C. and added.

"This capacity along with the available capacity at Narayanpur (38 T.M.C) would enable Karnataka to utilise as much as 401) T.M.C. against the allocation of 155 T.M.C. This will vitally affect flow of river water down- stream to Andhra Pradesh which is the terminal State, during the mansoon period. In terms of the award all beneficial uses of water including use"s for production of Hydro Power are permitted to the extent of allocation only."

It is also alleged in this affidavit.

"On the specific question being raised by the Government of India for clarification, the Tribunal made a clarification in I (b) of Chapter II of the Tribunal Report as follows:

"At page 447 of Vol .II of the Report we have observed that where the tail-race water after generation of electricity is returned to the river, the hydro-electric use is non-consumptive, except for losses in the water conductor system and storages.

All beneficial uses of water including uses for production of hydro-power are permitted to the extent specified in Clause V and subject to the conditions and restrictions mentioned in the Final Order. No State is entitled to use water in excess of the limits specified in the Final order. Consequently the explanation asked for in this clarification does not arise."

The State Government had maintained that what is being done in respect of the Dam by the Karnataka Government will have disastrous consequences and devastating effect upon the water that Andhra has to receive under the decision of the Tribunal. The State Government has given quite a few informations about the steps taken by it objecting to the conduct of the Karnataka Government at several Forums like She Central Government and its Agencies as well as political platforms.

4. State of Maharashtra has filed an affidavit and almost supported the stand of the State of Kamataka by stating that what it is doing is not the concern either of the Government of Maharashtra or that of the Government of Andhra Pradesh and no one has any right to question how one or the other State is going to use its share of water under the decision of the Tribunal.

5. Karnataka has, however, filed more than one counter to state that out of the quantity of 2060 T.M.C. of water determined at the 75 per cent dependable flows, the Tribunal allocated an aggregate quantity of 1693.36 T.M.C. to the three States towards the existing utilisation by way of protected use. This consisted of 749.16 T.M.C. to Andhra Pradesh, 439.65 T.M.C. to Maharashtra and 504.55

T.M.C. to Karnataka as and by Way of protected uses. The Tribunal has held:

"from the point of view of irrigable area, population or contribution to the total flow, the State of Andhra Pradesh for historical reasons is enjoying the benefit of river Krishna to an extent which may appear to be disproportionate".

Even so, the Tribunal considered the claims of Andhra Pradesh for further allocation from the balance waters out of 2060 T.M.C. on grounds of special consideration and allocated an additional quantity of 50.84 T.M.C. for its contemplated uses. Karnataka and Maharashtra were allocated 190.45 T.M.C. respectively towards contemplated uses. Thus the 75 per cent dependable flows of 2060 T.M.C, were distributed as follows:

Andhra Pradesh 800 T.M.C. Karnataka 696 T.M.C. Maharashtra 565 T.M.C. The Tribunal declined to distribute the remaining waters (the difference between the average flows and the 75% dependable flows). It did not also decide the allocation of additional waters in the event of augmentation of the waters in the Krishna River system by diversion of the Godavari waters or any other river.

6. Referring to the references u/s 5(3) seeking explanation/ clarification from the Tribunal the Karnataka Government's affidavit states:

"The Tribunal by its Further Report dated 27-5-1976 modified the allocation of waters in the case of Karnataka raising it from 695 T.M.C. to 700 T.M.C. and in the case of Maharashtra reducing it from 565 to 560 TMC while retaining the allocation of 800 T.M.C. to the State of Andhra Pradesh."

According to this affidavit the original report of the Tribunal considered the issues concerning equitable distribution of waters and also the agreement of party States adopting a common draft of a scheme for the distribution of not only the 75% dependable flows but also the surplus waters comprising the difference between the average flows and the said 75% dependable flows as also for setting up of a Krishna Valley Authority for the implementation of the Scheme, which the Tribunal described as Scheme-B and added.

"The said Scheme-B was, however, not made an order of the Tribunal, since the State of Andhra Pradesh did not ultimately agree for making it an order of the Tribunal."

Further case of the Karnataka Government is that the Tribunal allowed additional quantities to States by utilising the return flows accruing from the new annual utilisation from its own projects using 3 T.M.C. or more annually over the utilisation for such irrigation in the water year 1968-69 from such projects, estimated as 10% thereof. The share of Karnataka from return flow works out to 34 T.M.C. in addition to 700 T.M.C. allocated to it out of 75% dependable flows, taking the total entitlement to Karnataka under the Report of the Tribunal to 734 T.M.C. and that Karnataka has also the right to receive additional quantity of not less than 21 T.M.C. of water by reference to the diversion of water from the Godavari river to Krishna basin through the Polavaram project in Andhra Pradesh.

Speaking specifically in respect of Upper Krishna Project of Karnataka after giving details as to how the Tribunal has considered Karnataka's case, the affidavit spells out as follows:

"(a) out of its allocated share of 734 T.M.C.(mentioned above) - under Scheme-A- Karnataka had planned a utilisation of 173 T.M.C. for Upper Krishna Project in two stages, 119 T.M.C, under the first stage which was already under execution and 54 T.M.C. in the second stage. The said project is presently under execution.

(b) Stage-I is confined to the construction of Narayanpur dam, Almatty dam (partially) and Narayanpur left Bank Canal and Almatty Left Bank Canal (lift) to irrigate 4.25 lakhs ha. In Stage-II, it is proposed to bring an additional area of 1.97 lakh ha. by completing Almatty dam fully and constructing Narayanpur Right Bank Canal, Mulwad lift and Almatty Right Bank Canals from foreshore of Almatty reservoir, Rampur lift canal from foreshore of Narayanpur Reservoir, Indi lift canal from Narayanpur left bank canal and extension of Almatty Left Bank Canal.

(c) The Stage-I of the said project had been originally approved by the Planning Commission under letter No. 2 (10) 63-ICP dated 20-12-63 for an estimated cost of Rs. 58.20 crores with an annual utilisation of 103 T.M.C. The project was revised during 1976 and was again approved by the Planning Commission in No. II-20 (6)/77-I and CAD dated 22-4-1978 for Rs. 283. 63 crores with a cropped area of 4.585 lakh ha (11.34 lakh acres) with an utilisation of 119 T.M.C."

Going to the controversy, the Karnataka Government's affidavit proceeds to state that after the Tribunal's decision the State of Karnataka (as also other States) had to readjust allocated waters amongst its projects within the scope of 734 T.M.C, so as not to exceed the totality awarded to each of the States. Accordingly, the Project Report for Upper Krishna Project had necessarily to be modified for the new allocation and submitted for fresh sanction, without in any way altering the height of the dam (either the FRL or top of dam). The second revised estimate of Stage-I was duly sanctioned on 24th September,1990, vide Planning Commission letter No. 2(10)/89-I&CAD dated 24th September, 1990. According to Karnataka, Project report has been sent to Central Water Commission for Stage-II for the first time in November, 1993 and after queries from the Central Water Commission the State had (in letter No. ID 55 WUD 93 dated 20-4-1996) proposed the final FRL of Almatty Dam as 524.256 m proposing the project as a multipurpose Project and accordingly a further revised project report on this basis was resubmitted to the Government of India in April, 1996. The case of Karnataka in respect of Almatty Dam is as follows:

"The storage level at Almatty dam from 519.6 M to 524.25 M is not at all an increase, ie., beyond what is permitted by the Tribunal. The Tribunal expressly recognised the contemplated completion of "the Almatty dam to the full height"- i.e., the height in Exhibit MYPK-3, i.e., 524.25 M. FRL and 529.256 M top of dam. The storage level of the dam to 524.25 M. makes no variation in the utilisation of

the allocated waters. There would be no prejudice and or adverse effect on the lower users in Andhra Pradesh.

In this regard the Central Water Commission in January, 1994 had made inter alia the following observations:

(a) Since the power generation is also contemplated under the project by way of utilising the extra storage of water between 519.60 M and 521 M, the project may be treated as a multi-purpose project (the level required to utilise 173 TMC of water for irrigation is 519.60 M)

(b) In order to ensure that Karnataka would not utilise more than 173 T.M.C. of water (since more storage is contemplated than required) for irrigation an inter-State monitoring mechanism will have to be set up.

(c) As already stated, the modified project report which was then prepared for Stage-II and sent by the Government of Karnataka in letter No-ID 55 WUD 93 dated 20-4-1996 proposed the final FRL of the Almatti dam as 524-256 M. The scheme, thus comprised the construction of the solid crest upto RL 509 M and installation of crest gates of 15.2 M. In the letter dated 20-4-1996 of Government of Karnataka, it was clearly mentioned as follows:

"As per the project report for Stage-I cleared by Government of India, the FRL is at R.L.512.2m for Almatti Dam and the crest gates height is 3.2m. However, Government of India has also given clearance for construction of dam to its final height of 528.25 m and to raise the piers to the full height with embedded parts as advance investment for II Stage.

As suggested by Central Water Commission in its letter (3) under reference (i.e., letter of 30-1-1994) the project report is modified for the final FRL of Almatti Dam i.e., RL 524.256 m as multipurpose project, utilising the storage capacity upto R.L.519.60 m for irrigation and storage capacity between R.L. 519.60 m and R.L. 524.256 m for power generation.

It is to state that, even though the dam is raised to its final level of 524.256 m the quantity of water that could be utilised for irrigation is only 173 TMC as per allocation made in the award and any additional quantity over and above 173 TMC will be let out into the river after generating power."

(d) Central Water Commission in its letter No.II/3/96-PA(S)/602 dated 4th July, 1996 has cleared the gate design aspect, "subject to compliance of certain observations" - which are in respect technical aspects regarding design of gates.

(e) Presently, work is in progress for the construction of the spillway solid crest. It has only reached an average level of 506 M well within the sanctioned project and the terms of the Award. The erection of crest gates can come up only after the solid spill way reaches the uniform level of 509 M in all the blocks of the spillway - and this also will be well within permitted limits. No cause of action has arisen because the work undertaken and proposed is as per sanction and totally

consistent with the Award of the Tribunal."

7. An affidavit has been filed on behalf of the fifth respondent, the Central Water and Power Commission, in which it is stated that the Krishna Water Disputes Tribunal has not imposed project-wise restrictions in its final order and has clarified in its report that subject to the conditions and restrictions placed, each State shall have the right to make beneficial use of water allocated to it in any manner it thinks proper. According to this respondent, the Government of Karnataka has accordingly in September, 1993 made project-wise allocations for comprising a quantum of 700 TMC allocated by the Tribunal to that State out of the 75% dependable flow of 2060 TMC of River Krishna at Vijayawada and the regeneration of 34 TMC. The upper Krishna Project at Stage-I has been allocated 119 TMC and Stage-II 54 TMC giving a total utilisation of 173 TMC. The Karnataka Government has submitted to the Central Water Commission the Upper Krishna Project Stage-II a multipurpose project proposal envisaging raising of the Full Reservoir Level at Almatti Dam from the present 512.2 to 524.256 m to enable utilisation of 54 TMC for irrigation and other purposes as envisaged in Stage II. The top of the gate has been kept at 524.256 m and an indication has been made that the additional storage is for power generation. As per the project report, the total storage at Almatti and Narayanpur with level of 524.256 m at Almatti works out to 226.96 TMC and total utilisation proposed is 173 TMC (for irrigation + industrial + Drinking water + evaporation). The affidavit has added, this project is under examination in the Commission and indicated that the Government of Karnataka cannot be denied a higher storage for power generation but added.

"However, since a storage larger than that required for 173 TMC utilisation does create a physical capability to utilise more, especially if power generation is shutdown, the Central Water Commission may agree for an inter-State monitoring mechanism for the project is established to ensure that utilisation is as per the award."

The affidavit also states.

"As such the present position is that clearance has been given to Stage I of the project only and Stage II of the project is still under examination in the Central Water Commission. Central Water Commission will examine the project strictly in accordance with the provisions of the Krishna Water Disputes Tribunal Award".

This affidavit further states that at official level inter-State meeting of Krishna Basin States by Chairman of the Commission on 28th July, 1995, it was suggested by the Chairman that in view of overall basin development Krishna Valley Authority may be constituted as per Scheme "B" of the award it agreed to by all States and added,

"general consensus emerged in the meeting in this regard was that question of sharing surplus Krishna Waters in the light of the Tribunal Report and setting up of the authority could be settled amongst three States at political level."

8. Parties have placed before the Court several other informations and facts in dispute are so many that a detailed examination of all of them would need many hundred pages of the judgment. Steering clear from the maze of facts what has transpired is that (1) all parties accept the Tribunal's decision is final and binding insofar as sharing of Krishna Water between the three States i.e., the State of Andhra Pradesh, the State of Karnataka and the State of Maharashtra is concerned, and (2) that the State of Karnataka has chosen to revise the Upper Krishna Project and has proceeded accordingly to raise the height of Almatti Dam. According to the State of Karnataka and the fifth respondent the final decision as published u/s 6 of the Water Disputes Act has not put any conditions or restrictions upon any of the States and each State is thus free to make beneficial use of water allocated to it in any manner it thinks proper as the water has been allocated to each of the three States en bloc. The stand of the Petitioner and that of the Government of Andhra Pradesh is that the total amount of water for each State has been calculated and determined on the basis of such distribution and mechanising of utilisation by minor and major projects which on the basis of the dependable flow of water each State presented before the Tribunal and any variation thus in the above by disproportionate Utilisation in one or the other project will cause direct violation of the award. Raising the height of Almatti Dam and revised scheme of the Upper Krishna Project are one such move of the Karnataka Government which shall adversely affect the interest of the ryots of Andhra Pradesh. The 5th respondent has accepted the stand of the State of Karnataka with respect to the utilisation of the allocated quantity of water to it but has felt, a storage larger than that required for 173 TMC utilisation does create a physical capability to utilise more, especially if power generation is shut down.

9. It is to the credit of the three States and the Union of India and the 5th respondent that they have placed their respective case before the Court although learned counsel appearing for the State of Karnataka have chosen to address the Court at this stage of the proceeding on the maintainability of the writ petition. Learned counsel for all the parties have mainly been heard by us on the question of maintainability of the petition. The learned Additional Solicitor General who has appeared for the Central Government (Union of India) has made before the Court categorical statement that (1) the Central Government shall not let down any of the three States and shall see that they fully abide by the decision of the Tribunal and do nothing which would cause any injury to the interest of the other States. The Central Government, learned Additional Solicitor General has stated, is aware of its constitutional and statutory obligations and has done nothing which has caused or would cause any injury to the interest of any of the three States. Intervening by a petition the President of Peoples Union of Civil Liberties has expressed the concern of the people of the riparian States who for the reason of the quarrel between the States on utilisation of water allotted to them are likely to suffer whose interest only, according to him, the States have to represent and protect.

10. The main question agitated before us at the Bar has been whether Section 11 of the Inter-State Water Disputes Act is a bar to the jurisdiction of the Court. Learned counsel for the petitioner as well as learned counsel for the State of Andhra Pradesh have submitted that the words in the said Section,

"... in respect of any water dispute which may be referred to a Tribunal under this Act".

clearly envisage that a matter which can be referred to a Tribunal constituted u/s 4 of the Act and which can be adjudicated by the Tribunal alone is barred and not any dispute even if it is referable to water when water dispute has already been adjudicated upon by the Tribunal and it has given its decision, which decision has been published u/s 6 of the Act. Learned counsel for the State of Karnataka has, on the other hand, contended that the finality of the decision of the Tribunal and it being binding on the parties to the dispute are sufficient indications that the authority which is vested in the Central Government by the Act extends to such ancillary powers which are necessary for giving effect to the decision of the Tribunal. Learned counsel for the Karnataka State has, in this connection, pointed out that the Central Government's rule making power is not limited to provide for the form and manner in which complaint as to any water dispute has to be made by any State Government or the matter in respect of which a Tribunal may be vested with the powers of a Civil Court or the procedure to be followed by the Tribunal under the Act etc., but also to provide for such mechanism or to exercise such further power to carry out the purposes of the Act so that Tribunal's decision is not flouted by any of the parties. Learned counsel for the petitioner on the other hand has contended that the executive power of the Union Government which is co-extensive with its legislative power is not available to it as the Inter-State Water Disputes Act is occupying the field and since no scheme or mechanism to meet the unusual situation which has been created on account of one of the States allegedly doing such acts which show defiance of the decision of the Tribunal is provided for the Court must read the provisions in the Inter-State Water Disputes Act limited to the water dispute which has since been decided by the Tribunal and that its jurisdiction is not at all inhibited by anything done by the law made under Clause II of Article 262 of the Constitution of India.

11. In Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam Vs. Union of India and others, the Supreme Court has considered an application by a registered Society under Article 32 of the Constitution before it for direction to refer an Inter-State Water Dispute to a Tribunal. The State of Tamil Nadu had effectively joined the dispute by supporting and adopting the stand of the petitioner- Society in toto. The Supreme Court in the said case, however, has recorded that the Inter-State Water Disputes Act, 1956, is a legislation within the meaning of Article 262 of the Constitution and that Section 11 of the Act bars the jurisdiction of all Courts including the Supreme Court to entertain adjudication of disputes which are referable to a Tribunal u/s 3 of the Act After stating as above, the Court has observed,

"No serious dispute, however, has been raised before us challenging our jurisdiction to consider the claim in the writ petition confined to the question of a reference of the dispute to a tribunal within the meaning of Section 3 of the Act."

The Court has then proceeded to take notice of Section 4 of the Act which vests power in the Central Government for setting up a Tribunal and the fact that the dispute was pending for a long time and recorded as follows:

"17. We are cognizant of the fact that the matter is a very sensitive one. Judicial notice can be taken of the fact that the Government at the Centre is by one political party while the respective Governments in the two States are run by different political parties. The dispute involved is, however, one which affects the Southern States of Kerala, Karnataka and Tamil Nadu and the Union territory of Pondicherry. The disputes of this nature have the potentiality of creating avoidable feelings of bitterness among the peoples of the States concerned. The longer the disputes linger, more the bitterness. The Central Government as the guardian of the interests of people in all the States must, therefore, on all such occasions take prompt steps to set the constitutional machinery in motion. Fortunately, the Parliament has by enacting the law vested the Central Government with the power to resolve such disputes effectively by referring the matter to an impartial Tribunal. There was no reason, therefore, for the dispute to protract for such a long time. Any further delay in taking the statutorily mandated action is bound to exasperate (sic exacerbate) the feelings further and lead to more bitterness. It is, therefore, necessary that the legal machinery provided by the statute is set in motion before the dispute escalates. A stitch in time saves nine. What is true for an individual is perhaps more true for the nation.

18. Section 4 indicates that on the basis of the request referred to in Section 3 of the Act, if Central Government is of the opinion that the water dispute cannot be settled by negotiation, it is mandatory for the Central Government to constitute a Tribunal for adjudication of the dispute. We were shown the Bill where in Section 4 the word "may" was used. Parliament; however, substituted that word by "shall" in the Act. Once we come to the conclusion that a stage has reached when the Central Government must be held to be of the opinion that the water dispute can no longer be settled by negotiation, it thus becomes its obligation to constitute a Tribunal and refer the dispute to it as stipulated u/s 4 of the Act. We therefore, direct the Central Government to fulfil its statutory obligation and notify in the official Gazette the constitution of an appropriate tribunal for the adjudication of the water dispute referred to in earlier part of this judgment. We further direct that the same should be done within a period of one month from today."

Learned counsel for the State of Karnataka, however, has drawn our attention to the use of the auxillary verb "shall" in Section 4 of the Act and the observations of the Supreme Court that the word "may" in the Bill was substituted by word "shall" in Section 4 in the Act to create obligation to constitute a Tribunal once

the Central Government is of the opinion that the water dispute cannot be settled by negotiations, and to the word "may" in Section 6A and contended that retention of the auxiliary verb "may" in Section 6A indicates that framing of a scheme or schemes to make provisions for all matters necessary to give effect to the decision of a Tribunal is not obligatory. Learned counsel for the State of Karnataka as well as learned counsel for the State of Andhra Pradesh have concurred to the argument that even if Inter-state Water Disputes Act is not found adequate to deal with the situation like one before us that one State has allegedly chosen to violate the decision of the Tribunal, the executive power of the Union is still available to deal with the situation and the Government of India is required in such situation to exercise its administrative control in respect of use, distribution and allocation of the waters of the inter-State rivers. To explain the above, learned counsel for the State of Andhra Pradesh have referred to the judgment of the Supreme Court *Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd. Vs. State of Karnataka*, . The State of Karnataka purportedly under Entry 17 as well as Entries 14 and 18 of List II in the VII Schedule of the Constitution had exercised its power under Article 213(1) of the Constitution of India and promulgated an Ordinance called the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991. The Supreme Court in the said case has observed;

48. The distribution of legislative powers is provided for in Chapter I of Part XI of the Constitution. Article 245, inter alia states that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the legislature of the State may make laws for the whole or any part of the State. Article 246 provides, among other things, that subject to clauses (1) and (2) of the said article, the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in the State List in the Seventh Schedule. Clauses (1) and (2) of the said article refer to the Parliament's exclusive powers to make laws with respect to any of the matters enumerated in the Union List and the power of the Parliament and the legislature of the State to make laws with respect to any of the matters enumerated in the Concurrent List. Article 248 gives the Parliament exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or the State List.

49. Entry 56 of the Union List reads as follows:

"56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

50. A reading of this entry shows that so far as inter-State rivers and river valleys are concerned, their regulation and development can be taken over by the Union by a parliamentary enactment. However, that enactment must declare that such regulation and development under the control of the Union inexpedient in the public interest.

51. Entry 17 in the State List reads as follows:

"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."

52. An examinations of both the entries shows that the State has competence to legislate with respect to all aspects of water including water flowing through inter State rivers, subject to certain limitations, viz., the control over the regulation and development of the inter-State river waters should not have been taken over by the Union and secondly, the State can not pass legislation with respect to or affecting any aspect of the waters beyond its territory. The competence of the State legislature in respect of inter-State river waters is, however, denuded by the parliamentary legislation only to the extent to which the latter legislation occupies the field and no more, and only if the parliamentary legislation in question declares that the control of the regulation and development of the inter-State rivers and river valleys is expedient in the public interest, and not otherwise. In other words, if a legislation is made which fails to make the said declaration it would not affect the powers of the State to make legislation in respect of inter- State river water under Entry 17.

53. Entry 14 of List II relates, among other things, to agriculture. In so far as agriculture depends upon water including river water, the State legislature while enacting legislation with regard to agriculture may be competent to provide for the regulation and development of its water resources including water supplies, irrigation and canals, drainage and embankments, water storage and water power which are the subjects mentioned in Entry 17. However, such a legislation enacted under Entry 14 insofar as it relates to inter-State river water and its different uses and the manners of vising it, would also be, it is needless to say, subject to the provisions of Entry 56. So also Entry 18 of List II which speaks, among other things, of land improvement which may give the State legislature the powers to enact similar legislation as under Entries 14 and 17 and subject to the same restrictions,

54. Entry 97 of the Union List is residuary and under it the Union has the power to make legislation in respect of any matter touching inter-State river water which is not enumerated in the State List or the concurrent List. Correspondingly, the State Legislature cannot legislate in relation to the said aspects or matters.

55. Article 131 of the Constitution deals with original jurisdiction of the Supreme Court and states as follows:

"131 Original jurisdiction of the Supreme Court:- Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and

one or more other States on the other; or

(c) between two or more states;

if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sand or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

56. It is clear from the article that this Court has original jurisdiction, among other things, in any dispute between two or more States where the dispute involves any question whether of law or fact on which the existence and extent of a legal right depends except those matters which are specifically excluded from the said jurisdiction by the proviso. However, the Parliament has also been given power by Article 262 of the Constitution to provide by law that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any dispute or complaint with respect to the use, distribution or control of the water of, or in, any inter State river or river valley. Section 11 of the Act, namely, the Inter-State Water Disputes Act, 1956 has in terms provided for such exclusion of the jurisdiction of the Courts. It reads as follows:-

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

57. This provision of the Act read with Article 262 thus excludes original cognizance or jurisdiction of the inter-State water dispute which may be referred to the Tribunal established under the Act, from the purview of any Court including the Supreme Court under Article 131."

The Supreme Court has in the said case proceeded further to speak in respect of various Entries and Article 262 of the Constitution in these words:

"62. It cannot be disputed that the Act, viz., the Inter-State Water Disputes Act, 1956 is not a legislation under Entry 56. In the first instance, Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes between the riparian States with regard to the same and adjudication thereof. Secondly, and even assuming that the expression "regulation and development" would in its width, include resolution of disputes arising therefrom and a provision for adjudicating them, the Act does not make the declaration required by Entry 56. This is obviously not an accidental omission but a deliberate disregard of the entry since it is not applicable to the subject matter of the legislation. Thirdly, no entry in any of the three lists refers specifically to the adjudication of disputes with regard to inter-State river waters.

63. The reason why none of the Entries in the Seventh Schedule mention the topic of adjudication of disputes relating to the inter-State river waters is not far to seek. Article 262 of the Constitution specifically provides for such adjudication. The article appears under the heading "Disputes relating to Waters", and reads as follows:

"262. Adjudication of disputes relating to waters of inter-State rivers or river valleys:-

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

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

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

65. We have already pointed out another important aspect of Article 262 viz., clause (2) of the article provides that notwithstanding any other provision in the Constitution, Parliament may by law exclude the jurisdiction of any Court including the Supreme Court in respect of any dispute or complaint for the

adjudication of which provision is made in such law. We have also noted that Section 11 of the Inter-State Water Disputes Act makes such a provision.

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

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

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

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

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

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

67. Section 3 of the Act states that if it appears to the Government of any State that the water dispute with the Government of another State of the nature stated therein, has arisen or is likely to arise, the State Government may request the Central Government to refer the water dispute to a Tribunal for adjudication. Section 4 of the Act provides for the constitution of a Tribunal when a request is received for referring the dispute to a Tribunal and the Central Government is of the opinion that the water dispute cannot be settled by negotiations. Section 5 of the Act requires the Tribunal to investigate the matter referred to it and forward to the Central Government, the report of its findings and its decision. The Central Government has then to publish the decision u/s 6 of the Act which decision is final and binding on the parties to the dispute and has to be given effect to by them. These dominant provisions, among others, of the Act clearly show that apart from its title, the Act is made by the Parliament pursuant to the provisions of Article 262 of the Constitution specifically for the adjudication of the disputes between the riparian States with regard to the use, distribution or control of the waters of the inter- State rivers or river valleys. The Act is not relatable to Entry 56 and, therefore, does not cover either the field occupied by Entry 56 or by Entry 17. Since the subject of adjudication of the said disputes is taken care of specifically and exclusively by Article 262, by necessary implication the subject stands excluded from the field covered by Entries 56 and 17. It is not, therefore, permissible either for the Parliament under Entry 56 or for a State legislature under Entry 17 to enact a legislation providing for adjudication of the said disputes or in any manner affecting or interfering with adjudication or adjudicatory process of the machinery for adjudication established by law under Article 262. This is apart from the fact that the State legislature would even otherwise be incompetent to provide for adjudication or to affect in any manner

the adjudicatory process or the adjudication made in respect of the inter-State river waters beyond its territory or with regard to disputes between itself and another State relating to the use, distribution or control of such waters. Any such action on its part will be extra-territorial in nature and, therefore, beyond its competence.

68. Shri Venugopal has in this connection urged that it is Entry 97 of the Union List which deals with the topic of the use, distribution and control of waters of an inter-State river. The use, distribution and control of the waters of such rivers, by itself is not a topic which is covered by Article 262. It is also, according to him, not a topic covered by Entry 56 which only speaks of regulation and development of inter-State rivers and river valleys meaning thereby the entirety of the rivers and river valleys and not the waters at or in a particular place. Further, the regulation and development, according to him, has nothing to do with the use distribution or allocation of the waters of the inter-State river between different riparian States. That topic should, therefore, be deemed to have been covered by the said residuary Entry 97.

69. With respect to the learned counsel, it is not possible to accept this interpretation of Entry 97. This is so firstly because, according to us, the expression "regulation and development of inter-State rivers and river valleys" in Entry 56 would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the intention of the Constituent Assembly to provide for the Union to take over the regulation and development under its control makes no sense and serves no purpose. What is further, the River Boards Act, 1956 which is admittedly enacted under Entry 56 for the regulation and development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys. This shows that the expression "regulation and development" of the inter-State rivers and river valleys in Entry 56 has legislatively also been construed to include the use, distribution or allocation of the waters of the inter-State rivers and river valleys between riparian States. We are also of the view that to contain the operation of Entry 17 to the waters of an inter-State river and river valleys within the boundaries of a State and to deny the competence to the State legislature to interfere with or to affect, or to extend to the use, distribution and allocation of the waters of such river or river valley beyond its territory, directly or indirectly, it is not necessary to fall back on the residuary Entry 97 as an appropriate declaration under Entry 56 would suffice. The very basic of a federal Constitution like ours mandates such interpretation and would not bear an interpretation to the contrary which will destroy the constitutional scheme and the Constitution itself. Although, therefore, it is possible technically to separate the "regulation and development" of the inter-State river and river valley from the "use, distribution and allocation" of its water, it is neither warranted nor necessary to do so.

70. The above analysis of the relevant legal provisions dealing with the inter-

State rivers and river valleys and their waters shows that the Act, viz., the Inter-State Water Disputes Act, 1956 can be enacted and has been enacted only under Article 262 of the Constitution. It has not been enacted under Entry 56 as it relates to the adjudication of the disputes and with no other aspect either of the inter-State river as a whole or of the waters in it"

The Supreme Court in the above judgment has also stated: (1) the Inter- State Water Disputes Act, 1956 has been enacted only under Article 262 of the Constitution, it has not been enacted under Entry 56 as it relates to the adjudication of the disputes and with no other aspect either of the inter-State river as a whole or of the waters in it, and (2) the right to the use of flowing water is publici juris and common to all the riparian proprietors; it is not an absolute and exclusive right to all the water flowing past their land so that any obstruction would give a cause of action; but it is a right to the flow and enjoyment of the water, subject to a similar right in all the proprietors to the reasonable enjoyment of the same gift of providence.

12. It is urged thus before us on behalf of the State of Karnataka and to a substantial extent on behalf of the State of Andhra Pradesh that where the issue of implementation or interpretation of the award/decision of the Tribunal is involved, the Central Government has to exercise its executive power and since the River Boards Act, 1956 has not yet created the authority to which any such dispute can be referred to, the Union Government has to see whether as envisaged under the award/decision of the Tribunal the riparian States have confined the use and control within the limits of water allotted to them and are doing nothing which would interfere with such control upon the water allotted to the other States. This, the Central Government would do, according to the learned counsel, by exercising the option of framing a scheme or schemes as envisaged u/s 6A of the Act or without it by establishing the Board to advise it for the regulation and development of inter-State river or river valley or any specified part thereof and empowering it to act as the authority to implement the award /decision of the Tribunal. The executive power of the State under Entry 17 of List II in the VII Schedule, does not extend to regulation and development of inter-State rivers and river valleys. The Inter-State Water Disputes Act h;is envisaged an independent mechanism of adjudication of water disputes. Learned counsel appearing for all the parties have accepted that they are bounded by the decision of the Tribunal and insofar as allocation of water is concerned there is no dispute. Water dispute has thus been resolved between the States. Petitioner's grievance is that the water which is exclusive for the ryots of the State of Andhra Pradesh is wrongly appropriated by the State of Karnataka. There is, thus, a dispute whether the State of Karnataka has interfered with the water which under the decision of the Tribunal has been allocated to the Suite of Andhra Pradesh. It is possible in such a situation to say that there is no water dispute as envisaged u/s 11 of the Inter-State Water Disputes Act, 1956 and thus the jurisdiction of the Supreme Court or any other Court is not barred u/s 11 of the Inter-State Water Disputes Act i.e., the law made under clause II of Article 262

of the Constitution as there is no scheme settled by the Central Government for implementation of the award or the decision of the tribunal. When a complaint has been made that one of the riparian States has violated the award there has to be some personnel or authority to decide whether any such violation has taken place and whether any injury has been caused to the beneficiaries of the award /decision of the Tribunal and how the said injury would be repaired? It is possible, however, to read in the scheme of the Inter-State Water Disputes Act and the object for which by an amendment Section 6A has been introduced that there is a duty upon the Central Government to ensure that the award/decision of the Tribunal is implemented and that no State violates it. It may in such a situation exercise its discretion to make a scheme or schemes for the implementation of the award / decision of the Tribunal. Even without a scheme or schemes it has the executive power to keep the States which are bound by the award/decision of the Tribunal in check and within the bounds of the award/decision of the Tribunal. The Supreme Court or any other Court, if its jurisdiction is not otherwise barred, can always issue a direction to the Central Government to perform its duty and to restrain other States who are likely to violate the award/decision of the Tribunal.

13. Constitution's intention in Article 262(2) is clear and loud enough to know that clause (1) thereof enables the Parliament to provide by law for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of or in any inter-State river or river valley and clause (2) confers upon the Parliament the power to make law to exclude the jurisdiction of the Supreme Court or any other Court in respect of any such dispute or complaint. Any law made by the Parliament for the exclusion of the jurisdiction of the Supreme Court or any other Court under Article 262(2) cannot, however, be put on any higher pedestal than a bar imposed upon the jurisdiction of the Court such as one under Article 212 of the Constitution or under Article 243O or Article 323A(ii)(d) of the Constitution. A full Bench of this Court in *Sakinala Hari Nath and Others Vs. State of Andhra Pradesh and Others*, has observed that the power of judicial review is a basic feature of the Constitution and an integral part of our constitutional system. The independence of the Constitutional Courts- the Supreme Court and the High Courts - is assured by the Constitution and the power of judicial review is vested in them. A Special Full Bench consisting of five Judges of this Court in *S. Fakruddin and Others Vs. The Govt. of A. P. and Others*, had the occasion to consider the bar under Article 243O of the Constitution and has observed as follows:

"Even the conservative view that if there is an alternative effective and efficient mechanism for judicial review which is as independent as the High Court, its power under Article 226 of the Constitution will not be available leaves scope for the Court to see whether the mechanism is such that the constitution's Court should refrain and not exercise its jurisdiction.- the consensus of the opinion is that judicial review is a basic feature except in respect of matters which are specifically excluded by the Constitution as originally enacted and that Courts act

as the real interpreters of the real will of the people - they perform an essential judicial function - the basic features of the Constitution stand protected, for Article 32 the power of the Supreme Court cannot be taken away and its power under Article 136 can be a proper safeguard of judicial review of any adjudication by the alternative authority or forum provided, however, it is an effective alternative institutional mechanism or arrangement of judicial review. 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."

Considering the bar under Article 212 of the Constitution a Full Bench of this Court in *N.T. Rama Rao Vs. His Excellency the Governor of Andhra Pradesh and Others*, has referred to the various authorities of the Supreme Court and held that a superior Court however, decides upon its own jurisdiction and matters which do not exactly fall within the exclusive jurisdiction of the alternative mechanism are always within the jurisdiction of Courts. Various judgments of the Supreme Court such as the one *Mahinder Singh v. Chief Election Commissioner* AIR 1978 SC 51 and one of the earliest judgments of the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, which are referred to in the aforementioned judgments of this Court carve out or outline the parameters for the exercise of jurisdiction of the Court under Article 226 of the Constitution in case a constitutional bar upon exercise of jurisdiction comes in the way and it is pointed out that existence of an alternative mechanism or an authority which is created in lieu of the Court of competent jurisdiction is not a sure ground for the Court to refuse a petition and the Court would exercise jurisdiction in case it is found that the remedy is not efficacious or is such that it is illusory or not available to the petitioner. Although the petitioner has chosen to question the vires of Section 11 of the Act and attempted to take us further to examine that the bar to the jurisdiction of the Supreme Court and any other Court can at best be limited to the exercise of ordinary jurisdiction of the Supreme Court or the High Court and not the Court's power of judicial review under Article 32 or 226 of the Constitution, we have good reasons to exercise refrain and go by the well understood rule of prudence that when any efficacious and effective mechanism is available, the Court's power of judicial review should not be exercised. In the instant case, however, since we have found that the Tribunal u/s 11 of the Inter- State Water Disputes Act, 1956 is no longer available to the disputants, the said Section 11 shall not operate as a bar to the maintainability of the instant writ petition.

14. When the instant petitions were entertained by the Court we were conscious that Article 131 of the Constitution of India has given to the Supreme Court exclusive jurisdiction to the exclusion of any other Court in respect of any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States if and in so far as the dispute involves any question whether of law or fact on which the existence or extent of

a legal right depends. We have referred to the judgment of the Full Bench of this Court in W.P.I 7664/89 in which judgment reliance is placed upon the judgment of the Supreme Court in Union of India and Others Vs. State of Mysore, in which it is held.

For the purpose of Article 131, the dispute must directly arise between the Central Government as the repository of the executive power of the Union of the State Government and the State Government as the repository of the executive power of the State or between two States or more than one State on the one side and one or more States on the other side or the Union Government in their sovereign capacity as the repository of respective executive powers.

It has also been pointed out in She said judgment that if the petitioner is other than the Government of the States or the Central Government, even if one or more Governments are impleaded as party-respondents, the dispute being not one between the Government, of India and any State or States on one side and one or more other States on the other or between two or more States the jurisdiction of the Court under Article 226 is not barred.

15. Learned counsel for the State of Karnataka has, however, contended that whatever may be the initial position, when the State of Andhra Pradesh and the State of Karnataka have taken the opposite stand, while the former is supporting the case of the petitioner the latter is opposing his case, the lis particularly because the petitioner is representing the same interest which the State of Andhra Pradesh is representing against the interest of the State of Karnataka, is between two State Governments and the Court should treat the instant petition as a dispute between the State of Andhra Pradesh and the State of Karnataka and decline to entertain the petition on the ground that such a dispute falls within the exclusive jurisdiction of the Supreme Court under Article 131 of the Constitution. He has drawn our attention to the scheme under Article 262 of the Constitution and the provisions under the Inter-State Water Disputes Act, 1956 and contended that the Constitution and the law made under it has recognised the special nature of the inter-State water dispute and the representation of the cause of people of the State by the State in its sovereign capacity. He has drawn our attention to the judgment of the Supreme Court of United States in State of New Jersey v. State of New York, 376 U.S. 398 (1964) in which it has been pointed out that a suit in law or equity is not entertained by a citizen of another State vide 11th amendment to the Constitution of United States and independent of it considered the argument based on *Parens patriae* and observed as follows:

"The "*parens patriae*" doctrine however, has aspects which go beyond mere restatement of the Eleventh amendment; it is a recognition of the principle that the State, when a party to a suit involving a matter of sovereign interest "must be deemed to represent all its citizens".

It is pointed out in the said judgment that *parens patriae* is a necessary recognition of sovereign dignity as well as the working rule of good judicial

administration; other wise the State might be judicially impeached on matters of policy by its own subjects and there would be no practical limitation of the number of citizens as such who would be entitled to be made parties. The U.S Court has also pointed out that an introvenor whose State is already a party should have the burden of showing some compelling interest in his own right apart from his interest in a class with all other citizens and creatures of the State, which interest is not properly represented by the State.

16. We have heard learned counsel for the State of Andhra Pradesh and examined its affidavits before us and have noticed that the State of Andhra Pradesh has maintained as vigorous if not more vigorous position as the petitioner has maintained before us in questioning the changes introduced by the State of Karnatka in Upper Krishna Projects and raising of the height of AlmattyDamand while it may not be altogether insensible act of the petitioner in moving the Court in public interest in the situation as one before us when the Government has taken up the cause of its people in its sovereign capacity it may not be desirable for the Court to proceed with the petition unless the Government of the State is held either incompetent to represent the cause of its people or is found not representing the cause of the people. Exercise of sound judicial discretion would prompt She Court to leave the cause of the citizens/people of the State in the hands of the Government of the State as its arms are not limited to only a few representations of the public but extend to the whole populous of the State and as a party to the award/decision of the Tribunal when allegedly its rights are infringed by the State of Karnataka it has more competence than any citizen to demand for the implementation of the award and restrain upon any violations of the decision of the Tribunal by the other two States, i.e., State of Karnataka and the State of Maharashtra.

17. Parens Patriae status of the Government of the State under the scheme of our Constitution is indeed recognised as water disputes are not always raised on a just a cause and people arrayed on both sides take on many occasions very hard and uncompromising stands. While State Governments in their sovereign capacity are expected to protect and represent the interests of all its people they do not act as at adversories in the usual sense. As Governments in our democratic set up they do represent interests of the people of their respective States within the sphere of their executive functions and the Union Government represents the interest of the people of not one State but all the States. It is in this sense that the Union Government's executive powers to regulate and develop inter-State rivers and river valleys have to be understood. If the States of Andhra, Karnataka and Maharashtra have the status of Perens patriae for the people in the respective States, the Union Government has the parens patriae status for all the people whether they are in the State of Andhra Pradesh, the State of Karnataka, the State of Maharashtra or in any other State.

18. We have not been expressly addressed by any counsel that no cause of action wholly or in part has arisen for the exercise of the power under Article 226

of the Constitution by this Court at the instance of the petitioner or that the petitioner has no cause of action within the territorial jurisdiction of this Court for the present action. Learned Counsel for the State of Karnataka has, however, submitted that the petitioner has not been able to bring to the notice of this Court any failure on the part of the Central Government which Government, according to him, has to exercise its sound discretion to decide whether to constitute an authority or invoke its law making power u/s 6A of the Inter-State Water Disputes Act, that it has failed to perform its duty. He has submitted that although the powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice, the Courts have accepted that as a general rule no writ or order will be granted unless the party complained of has known what it was required to do so that it had the means of considering it whether or not it should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the writ wanted to enforce and that that demand was met by a refusal.

19. The petitioner has submitted that the State of Andhra Pradesh has made demands with Central Government to exercise its executive power and restrain the State of Karnataka; but the Central Government has not done so and has further submitted that since in the conduct of the State of Karnataka there are such elements present which show that it has violated the award/decision of the Tribunal, there is no reason why this Court should not be moved for issuing necessary directions both to the Central Government and the State of Karnataka.

20. We have given our anxious considerations to all aspects of the matter. Accepting that as a Court to administer justice we have no reason to say that the petitioner has no cause of action or that the Court has no jurisdiction to entertain the petition, we see, however, that the Government of Andhra Pradesh is conscious of its duty and the Central Government has no reluctance to act as required by law. Many issues which can be dealt with in accordance with law and settled by decrees, awards or orders of the Courts or competent authorities enter into emotional spheres and it becomes difficult for the disputants to be rational and objective and even though they do not have any substantial differences, they think they stand as ad versories. Since in our view the cause has to be taken up by the States and States have to represent the interests of the people within their territories and the Union Government has to see the interests of the people of all the riparian States involved in the dispute, we have good reasons to think that the Court should leave raising of the dispute if at all necessary by the State of Andhra Pradesh before the appropriate forum and indicate, of course, for a clarification of the legal position that Central Government's executive power in the matter is not limited to the agreement of the parties and that the Central Government has a duty to protect the interests of the people of all the riparian States and to ensure that none of the three riparian States is involved in violating the award/decision of the Tribunal. Since its executive power in this behalf is referable to the legislative power of the Union as well as to the provisions of the

Inter-State Water Disputes Act and disputants before it whether they have made formal applications or not are the Governments of the States within the Union it has to give them all necessary- information in respect of the projects whether in one State or the other State and opportunity of being heard, of course not the hearing as understood in a proceeding in a Court of law, but limited to the representation of the case in all aspects, and to decide by a specific order/ direction the disputes and implement the decision of the Tribunal or alternatively to frame a scheme or schemes as envisaged u/s 6A of the Inter-State Water Disputes Act and refer all matters to any authority created under the scheme to execute the award/ decision of the Tribunal which has been published u/s 6 of the Act.

21. For the reasons as above, we hold that the present controversy has to be resolved mainly between the State of Andhra Pradesh and the State of Karnataka. The petitioner's interest shall not be in jeopardy as the State of Andhra Pradesh has taken up the cause of the people of the State of Andhra Pradesh and a categorical statement has been made before us on behalf of the Central Government that it shall not let down people of either State. We hold accordingly that the Court in such a situation shall exercise the refrain of not entertaining the writ petition at the instance of the petitioner at this stage. The petitions are accordingly disposed of.

22. Leave for appeal for Supreme Court is rejected.