

(2002) 01 SC CK 0151
In the Supreme Court Of India
Case No : Original Suite No. 6 of 1996

State Of Haryana

APPELLANT

Vs

State Of Punjab And Anr

RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Constitution Of India, 1950 — Article 21, 131, 262, 262(1), 262(2), 355, 365
Limitation Act, 1963 — Article 112
Code Of Civil Procedure, 1908 — Order 23 Rule 1
Supreme Court Rules, 1966 — Order 2 Rule 32
Punjab Reorganisation Act, 1966 — Section 78, 78(1), 80
Interstate River Water Disputes Act, 1956 — Section 2(c), 2(c)(i), 5(3), 6, 7, 11, 14, 14(1), 14(3)

Citation : AIR 2002 SC 685 : (2002) 1 SCR 227 : (2002) 2 SCC 507 : (2002) 1 JT 123 : (2002) 1 Scale 238

Hon'ble Judges : G.B. Pattanaik, J;Ruma Pal, J

Bench : Division Bench

Advocate : J.P. Dhanda, K.P. Singh, D.S. Nagar, Ezaz Maqbool, R.S. Suri, Jagjit Singh Chhabra, S.W.A. Qadri, S.N. Terdal, Sushma Suri

Judgement

G.B. Pattanaik, J.

1. The State of Haryana has filed the present suit, under Article 131 of the Constitution of India, impleading the State of Punjab as Defendant 1 and the Union of India as Defendant 2, for the following reliefs:

"(a) pass a decree declaring that the order dated 24-3-1976, the agreement of 31-12-1981 and the settlement of 24-7-1985 are final and binding inter alia on the State of Punjab casting an obligation on Defendant 1 to immediately restart and complete the portion of the Sutlej-Yamuna Link Canal Project as also make it usable in all respects, not only under the aforesaid order of 1976, agreement of 1981 and settlement of 1985 but also pursuant to a contract established by conduct from 1976 till date;

(b) pass a decree of mandatory injunction compelling Defendant 1 (failing which

Defendant 2 by or through any agency) to discharge its/their obligations under the said notification of 1976, the agreement of 1981 and the settlement of 1985 and in any case under contract established by conduct, by immediately restarting and completing that portion of the Sutlej-Yamuna Link Canal Project in the State of Punjab and otherwise making it suitable for use within a time-bound manner as may be stipulated by this Hon'ble Court to enable the State of Haryana to receive its share of Ravi and Beas waters;

(c) award costs of the present suit to the plaintiff and against Defendant 1; and

(d) pass such other or further order or orders to such directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice."

It has been averred in the plaint that Sutlej-Yamuna Link Canal is in fact, the lifeline of the farmers of Haryana and the livelihood of the farmers depends on the water, which is not only a natural resource, but a valuable national asset and completion of the aforesaid canal, would enable the State of Haryana to receive its share of waters of Rivers Ravi and Beas. The plaintiff-State has averred that after the partition of India in 1947, the emergence of two independent countries - India and Pakistan, division of the waters of River Indus and its tributaries became an international issue and in the year 1960, the Government of India signed a treaty with Pakistan called the Indus Water Treaty of 1960. Under the aforesaid Treaty, the waters of the three eastern rivers, namely, Sutlej, Beas and Ravi were acquired for unrestricted use in India, to the exclusion of Pakistan and towards consideration, the Government of India agreed to make a fixed contribution of Pounds Sterling 62.06 million (equivalent to about 110 crore rupees) to Pakistan. In a meeting of the beneficiary States, namely, the State of Punjab, as it existed then, the State of Kashmir, the State of Rajasthan and the State of PEPSU, which meeting had been convened by the Government of India on 29-1-1955, a workable agreement was arrived at for development and utilization of the waters of Rivers Ravi and Beas and under the said agreement, the share of the undivided Punjab was 5.90 MAF. When there was a bifurcation of the erstwhile State of Punjab into two separate States of Punjab and Haryana w.e.f. 1-11-1966 under the Punjab Reorganisation Act of 1966, special provisions had been made with regard to the rights and liabilities of the successor States in relation to the water from the Bhakra Nangal Project and the Beas Project. Section 78 of the Punjab Reorganisation Act, 1966, deals with such rights and liabilities of the successor States. Dispute arose between the two States of Punjab and Haryana as to their respective share of water which had earlier been allocated to the erstwhile State of Punjab and in the meeting called by the Government of India, a decision was taken on ad hoc basis that 35% of water would go to Haryana and 65% to Punjab, pending finalisation of the dispute. The State of Haryana approached the Government of India in October 1969, invoking its jurisdiction under Section 78 of the Punjab Reorganisation Act, 1966. A committee was appointed by the Central Government, which reported that

Haryana would be entitled to 3.78 MAF. Even the then Deputy Chairman of the Planning Commission had examined this question and had recommended that Haryana would get 3.74 MAF and Punjab would get 3.26 MAF, while Delhi would get 0.20 MAF. A notification, ultimately was issued on the 24-3-1976, allocating the surplus Ravi-Beas waters between the two States of Punjab and Haryana. Under this order, 3.5 MAF had been allotted to the plaintiff-State. The State of Haryana, not being a riparian State, the water allocated to it has to be drawn by digging a canal. By the existing arrangement for carrying waters of River Sutlej through the Bhakra Main Line Canal, it is not possible to draw water allocated to the State of Haryana under the order of the Government of India dated 26-3-1976. The State of Haryana proposed that a link canal called the Sutlej-Yamuna Link Canal be constructed in the territories of the State of Punjab and Haryana, so that the State of Haryana could draw its allocated share of water. The plaintiff-State has averred that the length of Sutlej-Yamuna Link Canal was 214 kilometres out of which 122 kilometres is in the territory of Punjab and 92 kilometres is in the territory of Haryana. The alignment of the proposed canal was alongside the Nangal Hydel Channel and the Bhakra Main Line Canal. The Chief Minister of Haryana had requested the Prime Minister of India by his letter dated 23-4-1976 that the Sutlej-Yamuna Link Canal should be completed by June 1978. After several rounds of discussion, the two States had agreed upon the alignment of 30 kilometres of SYL Canal adjoining Haryana within the territory of Punjab and in fact the State of Punjab accepted money for that purpose. The State of Punjab issued various notifications for the acquisition of the land for the purposes of constructing the canal. The State of Haryana, on its part started construction of the canal in its territory. The Haryana portion of the canal stood completed in June 1980 but the State of Punjab adopted dilatory tactics on the construction of the canal on one pretext or the other. As the canal within the State of Punjab had not been constructed, the State of Haryana filed a suit in the Supreme Court in the year 1979, being Suit No. 1 of 1979. The State of Punjab filed a suit in this Court under Article 131 of the Constitution, challenging the validity of the orders of the Government of India dated 24-3-1976 and also challenged the vires of Section 78 of the Punjab Reorganisation Act, which was registered as Suit No. 2 of 1979. During the pendency of the aforesaid two suits, an agreement was entered into between the States of Haryana, Punjab and Rajasthan in the presence of the Prime Minister of India on 31-12-1981. Under the said agreement, the net surplus of Ravi-Beas waters were estimated at 17.17 MAF and that stood allotted as 4.22 MAF to Punjab, 3.50 MAF for Haryana, 8.60 MAF for Rajasthan, 0.20 MAF for Delhi water supply and 0.65 MAF for Jammu and Kashmir. Clause (IV) of the said agreement provided:

"(IV) The Sutlej-Yamuna Canal Project shall be implemented in a time-bound manner so far as the canal and appurtenant works in the Punjab territory are concerned within a maximum period of two years from the date of signing of the agreement so that Haryana is enabled to draw its allocated share of waters. The canal capacity for the purpose of design of the canal shall be mutually agreed

upon between Punjab and Haryana within 15 days, failing which it shall be 6500 cusecs, as recommended by the former Chairman, Central Water Commission."

The said clause also provided that the suits filed by the State of Haryana and the State of Punjab should be withdrawn, without any reservations whatsoever but subject to the terms of the agreement and accordingly both the State Governments applied for withdrawal of the suits. This Court allowed the suits to be withdrawn by order dated the 12th of February, 1982. The alignment of the canal within the State of Punjab was proposed to be changed, to which the State of Haryana also agreed. The State of Punjab started construction of canal but the progress was rather slow. The State of Punjab also released a white paper on the 23rd of April, 1982, highly appreciating the agreement which had resulted in an increase of 1.32 MAF of the water to the share of Punjab. On 5-11-1985, the Punjab Legislative Assembly passed a resolution, repudiating the agreement of 31-12-1981. On the 24th of July, 1985, a settlement was arrived at between the then Prime Minister of India and late Sant Harchand Singh Longowal, the then President of Akali Dal, commonly known as the "Punjab Settlement", and the said settlement also contained an express provision that the construction of SYL Canal would be continued and completed by the 15th of August, 1986. In accordance with the terms of the settlement, more particularly clause 9.1, the issues relating to the usage, share and allocation of the Ravi-Beas waters were referred to the adjudication of a Waters Tribunal, under the notification dated 2-4-1986. The Tribunal submitted its report to the Central Government on the 30th of January, 1987 and the Tribunal also indicated in its report that Punjab should complete its portion of SYL Canal expeditiously. In July 1990, the construction of the canal within the State of Punjab was completely stopped but by then, over 90% of the construction had stood completed. Failure on the part of the State of Punjab to construct SYL Canal within its territory, has prevented the State of Haryana from utilizing the water allocated to its share. The plaintiff State has further averred that more than Rs 600 crores have been spent on the construction of SYL Canal in the Punjab territory, which is in addition to Rs 250 crores spent for the construction of the canal within the Haryana territory. Non-completion of SYL Canal has debarred over three lakh hectares of irrigation potential created in the State of Haryana and the said State is losing agricultural production of over eight lakh tonnes per annum. According to the plaintiff, if the canal would have been completed in 1983, as envisaged, then the State of Haryana would have been in a position to produce an additional 100 lakh tonnes of foodgrains, the value of which would work out to Rs 5000 crores. When the State of Punjab did not carry out the construction of SYL Canal, the State of Haryana sought for intervention of the Union of India and the Prime Minister of India convened a meeting on the 20th of February, 1991. In the said meeting, the Prime Minister directed that arrangements should be made for the Border Roads Organisation to take over the work in the minimum time possible and the work should be dealt with on an emergency footing. At that point of time, there was no political government in the State of Punjab and it was under the

President's Rule. In July 1995, the State of Punjab circulated a white paper, clearly expressing its intention not to proceed with the work of the construction of SYL Canal and took a stand that Haryana's share of the water should be delivered through the existing Bhakra Canal System, which is an absolute impossibility. The plaintiff, thereafter filed the present suit for the relief as already stated.

2. Defendant 1 State of Punjab had filed its written statement, raising several preliminary objections. It is contended that the dispute clearly falls within the scope of the Inter-State Water Disputes Act, 1956 and consequently the jurisdiction of the Supreme Court is barred on a combined reading of Section 11 of the Inter-State Water Disputes Act and Article 262 of the Constitution of India. It is further contended that the validity of the order dated the 24th of March, 1976 as well as agreement dated 31-12-1981 has been challenged before the Ravi-Beas Waters Tribunal and the report of the said Tribunal has not become final inasmuch as the application filed by the State of Punjab under Section 5(3) of the Act has not yet been disposed of. It has been further stated that the plaintiff-State has no legal right to invoke Article 131 of the Constitution and further, the suit must be held to be barred by limitation. The further stand of Defendant 1 is that the earlier suit filed in the year 1979, having been withdrawn without leave of the Court, the present suit is barred under Order 23 Rule 1 of the Code of Civil Procedure as well as under Order 2 Rule 32 of the Supreme Court Rules. According to Defendant 1, no legal right can be said to have accrued to the State of Haryana under the notification dated 24-3-1976 and further the agreement dated 31-12-1981 is invalid. It is also contended that the said agreement of 1981 stands superseded by the settlement of 24-7-1985. According to Defendant 1, the terms and conditions contained in paragraph 9.3 of the Punjab Settlement was only a unilateral concession made by Sant Harchand Singh Longowal, and it was never intended to be a legal obligation, binding on the State of Punjab. Defendant 1 admitted in the written statement that the issues arising from paragraphs 9.1 and 9.2 of the self-same Punjab Settlement were referred to the adjudication of the Ravi-Beas Waters Tribunal. But paragraph 9.3 had not been referred to any Tribunal and it was merely a concession given by the said Harchand Singh Longowal. Defendant 1 does not dispute the observations of the Tribunal in its report dated 30-1-1987, relating to the aforesaid paragraph 9.3, but contends that such observations were in fact beyond the jurisdiction of the Tribunal. According to Defendant 1, the plaintiff's claim to have share from the Beas Project would not exceed 0.9 MAF and that quantity of water would always be made available through the main canal, which is in existence and functioning. The said Defendant 1 also averred that the State of Haryana is getting an additional water supply through River Yamuna under the agreement dated 12-5-1994, between the States of Uttar Pradesh, Haryana, Rajasthan, Delhi and Himachal Pradesh and, therefore, there is no need for SYL Canal in any event. It has been further averred that Haryana is already getting 1.62 MAF of water in Ravi-Beas waters through the existing canal system of

Bhakra Main Line/Narwana Branch and the present system is fully capable of conveying the said quantity of water. Consequently, there is no need for SYL Canal. Defendant 1 further contends that in Section 78 of the Punjab Reorganisation Act, there has been no reference to River Ravi and, therefore, question of conveying any water from River Ravi through SYL Canal does not arise. According to this defendant, the claim of the State of Haryana, over and above the allocations made in the Beas Project were neither legal nor proper and were only for extraneous considerations. According to the State of Punjab, water of River Ravi does not find mention in any scheme resulting from the Beas Project and, therefore, any order containing allocation of Ravi water to the plaintiff-State is invalid. Defendant 1 has also averred that only the supplies from River Beas are being transferred to Bhakra reservoir. According to Defendant 1, the allocation of 3.5 MAF to Haryana would deprive the State of Punjab of irrigation facilities to lakhs of acres of land, which are being irrigated in the State of Punjab. So far as the issuance of a white paper is concerned, Defendant 1 has averred that the same was a political decision of the Chief Minister at that time and did not bind the State and at any rate, the subsequent resolution of the Punjab Legislative Assembly, repudiating the earlier agreement clinches the matter. So far as the construction of SYL Canal already undertaken in the State of Punjab is concerned, it has been averred that the State had to undertake the same under duress and the said work was stopped because of turmoil in the State and when the militants killed a Chief Engineer and Superintending Engineer. Defendant 1 admitted that there has been an expenditure of Rs 520 crores on the construction of SYL Canal in the Punjab portion and further admitted that there has been a recurring expenditure on establishment, which money the Government of India pays to the State of Punjab. According to Defendant 1, no cause of action has accrued to the plaintiff to file the present suit, invoking Article 131 of the Constitution and at no stage, the State of Punjab committed itself to the construction of SYL Canal.

3. Defendant 2 Union of India in its written statement, took the stand that relief claimed by the plaintiff can be only against the State of Punjab and there is no obligation on the part of the Government of India to take up the construction work of SYL Canal. According to Defendant 2, the Union of India had already discharged its obligation by pursuing and directing the Government of Punjab for early completion of the Punjab portion of the canal. It has been further averred that the Union of India had constituted the Ravi and Beas Waters Tribunal, which gave its interim report on the 30-1-1987 and the final report of the Tribunal is awaited. It has also been reiterated in the written statement that the Ravi and Beas Waters Tribunal in its interim report had observed that this canal is the lifeline of the farmers of Haryana and unless it is expeditiously completed, Haryana will not be in a position to utilize the full quantum of water allocated to it. The said defendant has also averred that the concept of a carrier for Haryana's share in surplus Ravi-Beas waters was envisaged in the inter-State agreement of 1981. Further, the Central Government determined the rights and liabilities of the

successor States in accordance with Section 78 of the Punjab Reorganisation Act, 1966 and allocated 3.5 MAF of surplus Ravi-Beas waters to Haryana as per the Government of India notification dated 24-3-1976. The said defendant has stated in the written statement that the Union of India made its best efforts to settle the issue. On the question of amount of money, Defendant 2 has averred that the Union of India has provided Rs 499.12 crores to the Government of Punjab till March 1994 for completion of the Punjab portion of SYL Canal. It has also been stated that due to non-completion of SYL Canal by Punjab, the State of Haryana is not able to utilize its full share of Ravi-Beas waters. The Union Government has also stated that it is essential that the Punjab portion of SYL Canal is completed at the earliest. The said defendant has further averred that construction of SYL Canal is solely the responsibility of the Government of Punjab and the Union of India has made all efforts including the financial assistance to the State of Punjab for early completion of the canal. The said defendant has finally stated that while the Government of India will continue to play its role for the settlement of dispute between the two States, the alternative relief claimed in para (b) of the plaint against the Government of India is not tenable and the same is liable to be rejected.

4. On the aforesaid pleadings, by the order dated 15-12-1997, the Court settled the following agreed issues:

"1. Whether in the facts and circumstances of the case, Defendant 1 (the State of Punjab) and alternatively, Defendant 2 (the Union of India), were and are bound to construct and complete in a time-bound manner, the Sutlej-Yamuna Link Canal Project, in the Punjab portion/territory and whether the plaintiff (State of Haryana) is entitled to the reliefs prayed for against the defendants?

2. Is the suit not maintainable as contended in the written statements?

3. Is the suit barred by limitation?"

Thereafter, parties have filed several documents which have been exhibited without objection and interrogatories have been served and answered. The plaintiff's documents, Exhibits P-1 to P-26 have been marked on admission of Defendant 1 and documents, Exhibits P(D)-1 to P(D)-8 have not been admitted by Defendant 1. The documents filed on behalf of Defendant 1, Exhibits D-1 to D-9 have been admitted by the plaintiff. Documents, Exhibits D(D)-1 to D(D)-5 of Defendant 1, have not been admitted by the plaintiff. Though initially an order had been passed to decide Issues 2 and 3 as preliminary issues but that order stood modified by the subsequent order dated 5-9-2000, as it was found that the preliminary issues cannot be disposed of without examining the relevant records and without going into the rival contentions in detail.

ISSUE NO. 2

5. This issue on the question of maintainability of the suit arises because of the stand taken by the State of Punjab in the written statement. According to

Defendant 1, Article 262 of the Constitution is specifically designed, authorising Parliament to provide for adjudication of any water dispute in relation to any inter-State river by making a law in that regard and sub-article (2) of Article 262 authorises Parliament to make law, ousting the jurisdiction of the Supreme Court or any other court in respect of any dispute or complaint coming within Article 262(1). Parliament having enacted the Inter-State Water Disputes Act, 1956 and the said Act having ousted the jurisdiction of the Supreme Court and any other court from exercising jurisdiction in respect of any water dispute, which may be referred to a Tribunal under the Act as provided under Section 11 of the said Act, the present dispute is not amenable to the jurisdiction of this Court under Article 131 and consequently, the suit must fail.

6. The stand of the State of Haryana, on the other hand is that the dispute relating to the digging of SYL Canal, pursuant to the earlier agreement between the parties, cannot be termed to be a dispute, relating to sharing of water of a river and, therefore, neither Article 262 of the Constitution nor Section 11 of the Inter-State Water Disputes Act would be a bar for this Court to exercise jurisdiction under Article 131 of the Constitution. According to Mr Bobde, the learned counsel appearing for the plaintiff-State, the expression "water dispute" having been defined in Section 2(c) of the Act, the present dispute and the relief sought for by the plaintiff, cannot be held to be a water dispute and as such the jurisdiction of the Court cannot be held to be ousted.

7. The moot question that requires to be considered in answering this issue is whether the dispute in the case in hand, can at all be held to be a water dispute, as defined in Section 2(c) of the Inter-State Water Disputes Act. There cannot be any dispute with the proposition that in the event the present dispute between the two States would come within the definition of "water dispute" in Section 2(c) of the Act and as such is referable to a Tribunal under Section 11 of the Act, then certainly the jurisdiction of this Court would be barred, in view of Article 262 of the Constitution read with Section 11 of the Act. Section 2(c) defines the "water dispute" thus:

"2. (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."

Out of the three clauses mentioned above, we would be concerned with clauses (i) and (ii) inasmuch as clause (iii) deals with the levy of water rate in

contravention of the prohibition contained in Section 7. Clause (i) of Section 2(c) deals with a dispute concerning the use, distribution or control of the waters of, or in any inter-State river or river valley, whereas clause (ii) deals with the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement. Essentially, therefore, the dispute would be a water dispute within the meaning of Section 2(c) when the dispute is in relation to the use, distribution or control of the waters of any inter-State river or interpretation of the terms of an agreement, relating to the use, distribution or control of such water or implementation of such agreement. The averments in the plaint and the relief sought for by the State of Haryana are not in any way related to the use, distribution or control of the water from the Ravi-Beas Project. The entire dispute centres round the question of the obligation on the part of the State of Punjab to dig the portion of SYL Canal within its territory, which canal became necessary for carrying water from the Project to the extent the said water has already been allocated in favour of the State of Haryana under the provision of the Punjab Reorganisation Act and the subsequent agreement between the parties. Dr Dhavan, appearing for the State of Punjab, forcefully argued that the construction of SYL Canal is inextricably linked to allocation of distribution of water from the Ravi-Beas Project and that being the position, it would be difficult to take the dispute out of the purview of the definition of dispute in Section 2(c). It is in this connection, Dr Dhavan pointed out the assertions made in the plaint, wherein it has been averred that this portion of Sutlej-Yamuna Link Canal is the lifeline for the farmers of the State of Haryana inter alia for carrying its share of Ravi-Beas waters and the farmers of Haryana would not be in a position to utilize the full quantum of waters allocated to it. According to Dr Dhavan, the allocation of water of Rivers Ravi and Beas is the basis which necessitates the construction of SYL Canal and its completion and consequently the two are inextricably interlinked. Dr Dhavan also pointed out to that part of the plaintiff's case where the plaintiff has averred that the said canal was to receive supply from the tail end of the Anandpur Hydel Channel and the canal must be completed to enable Haryana to draw its share of water from the river. He also pointed out to the assertions made in paragraph 61 of the plaint whereunder it had been averred that it is necessary to complete SYL Canal, not only for carrying this share but also to serve as an alternative carrier system for the waters already being drawn by Haryana. The question whether the dispute raised and the relief sought for is essentially a water dispute or not, has to be answered on an analysis of the averments in the plaint as a whole and it is not possible to consider some averments in isolation and then come to a conclusion one way or the other. If the plaint is read as a whole, it appears to us that the State of Haryana has made out a case that when the State of Haryana was carved out from the erstwhile State of Punjab under the provisions of the Punjab Reorganisation Act, the Union of India, in exercise of its power under Section 78 of the said Act issued a notification on 24-3-1976. Under the said notification, taking note of the fact that Haryana has large arid tract and several drought-prone areas and the

development of irrigation in the State of Haryana is substantially less as compared to that in the State of Punjab and further the water is needed in a large quantity for irrigation in the State of Haryana and there is limited availability of water from other sources in the said State, the Union Government allotted 3.5 MAF in favour of the State of Haryana. The said notification further contained a stipulation that in the event, water in Beas at Mandi is more or less in a particular year, the share of the State of Haryana would be increased or decreased pro rata. It is nobody's case that water in River Beas has decreased in the meanwhile. The existing canal system not being capable of utilizing 3.5 MAF of water allocated to the State of Haryana, the idea of having SYL Canal was mooted and ultimately agreed to. Thus the construction of SYL Canal is essentially one for the purpose of utilizing the water that has already been allotted to the share of Haryana and consequently, cannot be construed to be in any way interlinked with the distribution or control of water of, or in any inter-State river or river valley. In the Constitution Bench decision of this Court in the case of State of Karnataka v. State of A.P. [(2000) 9 SCC 572] this Court considered the provisions of Article 262(2) of the Constitution and Section 11 and Section 2(c) of the Inter-State Water Disputes Act and its impact on a suit filed under Article 131 of the Constitution. It was held that the question of maintainability has to be decided upon the averments made by the plaintiff and the relief sought for and taking the totality of the same and not by spinning up one paragraph of the plaint and then deciding the matter. What is necessary to be found out is whether the assertions made in the plaint filed by the plaintiff-State and the relief sought for, can be held to be a water dispute, which could be referred to the Tribunal, so as to oust the jurisdiction of the Supreme Court under Article 131. It must be borne in mind that after allocation of the water between the two States in exercise of power under sub-section (1) of Section 78 of the Punjab Reorganisation Act, 1966 under the notification dated the 24th of March, 1976, it is the State of Punjab, which had sought for a review of the notification, claiming increased share of water for Punjab and linked the matter of construction of SYL Canal with the same. While the request of the Punjab Government was pending before the Union Government, the State of Haryana had filed a suit in this Court for a direction to the State of Punjab for expeditious digging of the Sutlej-Yamuna Link Canal in the Punjab territory and the Punjab Government had also filed a suit, challenging the competence of the Central Government to make any allocation under Section 78 of the Punjab Reorganisation Act. During the pendency of these two suits, an agreement was arrived at between the two plaintiff-States viz. the State of Haryana and the State of Punjab as well as the State of Rajasthan under the intervention of the then Prime Minister of India and that agreement was arrived at on 31-12-1981. The terms of the agreement were signed by the Chief Ministers of the three States as well as the then Prime Minister of India. Under the said agreement, the mean supply of 17.17 MAF was allocated as under:

Share of Punjab

: 4.22 MAF

Share of Haryana

: 3.50 MAF

Share of Rajasthan

: 8.60 MAF

Quantity earmarked for Delhi Water Supply

: 0.20 MAF

Share of J& K

: 0.65 MAF

Clause (IV) of the aforesaid agreement was to the effect:

"(IV) The Sutlej-Yamuna Link Canal Project shall be implemented in a time-bound manner so far as the canal and appurtenant works in the Punjab territory are concerned within a maximum period of two years from the date of signing of the agreement so that Haryana is enabled to draw its allocated share of waters. The canal capacity for the purpose of design of the canal shall be mutually agreed upon between Punjab and Haryana within 15 days, failing which it shall be 6500 cusecs, as recommended by the former Chairman, Central Water Commission."

On the basis of the aforesaid agreement between the parties, the two suits that had been filed before this Court were withdrawn and under the agreement, the notification dated the 24th of March, 1976 stood modified to the extent varied under the agreement. It would thus be apparent that so far as the State of Haryana is concerned, the earlier allocation of 3.5 MAF of the water remained the same and it became necessary to construct another canal, almost parallel to the main canal, as the existing canal system was not capable of utilizing the allocated share of water to the extent of 3.5 MAF in favour of the State of Haryana. The order of this Court dated 12-2-1982 in these two suits filed, so far as relevant, is quoted hereinbelow:

"... The prayer of the plaintiffs for withdrawal of suits is allowed and the suits are dismissed as withdrawn in view of the agreement dated 31-12-1981 between the parties to the suits. There will be no order as to costs."

It is a well-known fact that the State of Punjab, soon got plunged into militancy and it has been averred in the written statement in the present suit that the work of construction of the canal within Punjab was stopped, when militants killed a Chief Engineer and a Superintending Engineer. According to the defendant-State of Punjab, there was severe resentment in the State, which culminated in the unfortunate event leading to serious law and order problem in the said State and ultimately on the 24-7-1985, an accord was arrived at

between the Prime Minister of India and Sant Harcharan Singh Longowal, commonly called the "Punjab Settlement". It is no doubt true that the aforesaid settlement cannot be said to be a settlement on behalf of the State of Punjab, as Longowal had no constitutional authority to enter into any agreement. But the terms of that settlement, more particularly, paragraph 9 thereof were given effect to, by appointment of a Tribunal to be presided over by a Judge of the Supreme Court. Paragraph 9 of the said accord is extracted hereinbelow in extenso:

"9. Sharing of River Waters

9.1. The farmers of Punjab, Haryana and Rajasthan will continue to get water not less than what they are using from the Ravi-Beas system as on 1-7-1985 waters used for consumptive purposes will also remain unaffected. Quantum of usage claimed shall be verified by the Tribunal referred to in para 9.2 below.

9.2. The claims of Punjab and Haryana regarding the shares in their remaining waters will be referred for adjudication to a Tribunal to be presided over by a Supreme Court Judge. The decision of this Tribunal will be rendered within six months and would be binding on both parties. All legal and constitutional steps required in this respect be taken expeditiously.

9.3. The construction of SYL Canal shall continue. The canal shall be completed by 15-8-1986."

Paragraph 9.1 of the accord reaffirms the share which the States were getting from the Ravi-Beas system on 1-7-1985. Paragraph 9.2 relates to the claim of both the States regarding their share in the remaining water which was sought to be referred for adjudication to a Tribunal to be presided over by a Judge of the Supreme Court and paragraph 9.3 was in relation to the construction of SYL Canal. The terms and conditions of the settlement contained in paragraph 9 were recognized by Parliament and an amendment was inserted to the Inter-State Water Disputes Act, 1956 by Act 20 of 1986, under which Section 14 was added to the said Act. Section 14 with its Explanation may be extracted hereinbelow in extenso:

"14. Constitution of Ravi and Beas Waters Tribunal.-

(1) Notwithstanding anything contained in the foregoing provisions of this Act, the Central Government may, by notification in the Official Gazette, constitute a Tribunal under this Act, to be known as the Ravi and Beas Waters Tribunal for the verification and adjudication of the matters referred to in paragraphs 9.1 and 9.2, respectively of the Punjab Settlement.

(2) When a Tribunal has been constituted under sub-section (1), the provisions of sub-sections (2) and (3) of Section 4, sub-sections (2), (3) and (4) of Section 5 and Sections 5-A to 13 (both inclusive) of this Act relating to the constitution, jurisdiction, powers, authority and bar of jurisdiction shall, so far as may be, but subject to sub-section (3) hereof, apply to the constitution, jurisdiction, powers,

authority and bar of jurisdiction in relation to the Tribunal constituted under sub-section (1).

(3) When a Tribunal has been constituted under sub-section (1), the Central Government alone may suo motu or at the request of the State Government concerned refer the matters specified in paragraphs 9.1 and 9.2 of the Punjab Settlement to such Tribunal.

Explanation.-For the purposes of this section, 'Punjab Settlement' means the Memorandum of Settlement signed at New Delhi on the 24th day of July, 1985."

Parliament itself, therefore, under Section 14(3) unequivocally indicated that a Tribunal having been constituted under sub-section (1) of Section 14, the matters specified in paragraphs 9.1 and 9.2 of the Punjab Settlement could be referred to by the Central Government suo motu or at the request of the State Government concerned but not the matters specified in paragraph 9.3 which relate to the construction of SYL Canal. The expression "Punjab Settlement" has been defined in the Explanation to mean the memorandum of settlement signed on 24-7-1985. In the teeth of the legislation referred to above, it is difficult for us to accept the contention of Dr Dhavan, appearing for the State of Punjab that the so-called settlement of 24-7-1985 is nothing but a piece of paper without any sanctity and is not enforceable. Pursuant to the provisions contained in sub-section (1) of Section 14, a Tribunal has been constituted and the dispute in relation to the additional share of water from the Ravi-Beas Project and its allocation between the States of Punjab and Haryana has been referred to the Tribunal, which has passed an interim award and no final decision has been given. Parliament, therefore, having referred the matters of dispute under paragraphs 9.1 and 9.2 to a Tribunal under the Inter-State Water Disputes Act and refraining from referring the dispute of construction of SYL Canal contained in paragraph 9.3 of the settlement, is indicative of the fact that the construction of SYL Canal has absolutely no connection with the sharing of water between the States and as such is not a "water dispute" within the meaning of Section 2(c) and consequently the question of referring such dispute to a Tribunal does not arise. In this view of the matter, howsoever wide meaning the expression "water dispute" in Section 2(c) of the Inter-State Water Disputes Act be given, the construction of the canal which is the subject-matter of dispute in the present suit cannot be held to be a "water dispute" within the meaning of Section 2(c) of the Act and as such, such a suit is not barred under Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act. The aforesaid issue must be answered against the defendant and in favour of the plaintiff-State.

ISSUE NO. 3:

8. Though this issue had been framed because of the stand taken by Defendant 1 in the written statement, but in course of hearing of the suit, Dr Dhavan, appearing for the State of Punjab did not seriously press the same. It is also

apparent from the written submissions filed on behalf of the said Defendant 1, wherein as many as seven submissions have been enumerated in paragraph 1.5 of Part A and the question of limitation had not been raised therein.

9. Mr Bobde, the learned counsel appearing for the plaintiff, however urged that though Article 112 of the Limitation Act relating to suits by or on behalf of the Central Government or any State Government is 30 years but the suits filed before the Supreme Court are specifically excluded from the purview of the same. According to Mr Bobde, the legislature, in its wisdom, left matters of limitation to be prescribed by the court and this Court in turn, though provided a period of limitation in Part VIII Order 40(2) and also so far as applications on the certificate by the High Court are concerned under Order 15(2) but did not provide any limitation for suits under Article 131, possibly because such matters are usually of grave public importance. Mr Bobde also urged that there has been no delay or laches on the part of Haryana in approaching this Hon'ble Court in view of the fact that the cause of action is a continuous one and even continued till date, as averred in the plaint.

10. In our considered opinion, the present suit cannot be thrown away, either on the ground of limitation or laches on the part of the plaintiff in approaching the Court, but we are not required to make an in-depth inquiry on the question of limitation, since the defendant-State of Punjab did not press the issue seriously. This issue accordingly is answered in favour of the plaintiff and against Defendant 1.

11. This issue which in fact is the main issue and which covers within itself all the arguments, both in favour and against, requires a thorough scrutiny of the materials on record and an in-depth study of the rival submissions made on behalf of the parties. Before we embark upon an inquiry on this issue, we think it appropriate to notice at this stage, that when the arguments were closed on 9-8-2001, we passed the following order:

"This suit by the State of Haryana is for issuance of a mandatory injunction to the State of Punjab and/or the Union of India (UOI) to complete construction of the unfinished SYL Canal. In the written statement filed by the Union of India, there is a positive averment that construction of SYL Canal is solely the responsibility of the Government of Punjab and the Union of India has made all efforts including financial assistance to the State of Punjab for early completion of the canal and further the Government of India will continue to play its role with the settlement of the disputes between the two States. In course of his submissions, learned ASG appearing for the Union of India on instructions states, that the UOI is still willing to negotiate for arriving at a settlement between the two States. In view of the several agreements between the two States, at the intervention of the Prime Minister of India, and SYL Canal having been substantially completed for which more than Rs 600 crores of taxpayers' money has been spent and in view of offer made by the learned ASG, we observe that notwithstanding hearing of the suit and keeping it reserved for judgment, the

Union Government through the Ministry of Water Resources and with the blessings of the Prime Minister may continue the negotiations with the Chief Ministers of the two States, namely, Punjab and Haryana and we hope that if the Prime Minister intervenes in right earnest, then the dispute with regard to the construction of canal could be amicably settled and the Court will not be required to issue any order either way. The so-called settlement, if any, may be made within four weeks from today and if any settlement is arrived at then the same may be intimated to the Court. A copy of our order may be handed over to the learned ASG."

Having waited for the period of four weeks, when no intimation was received from the Union of India, we have proceeded to the judgment painfully, as in our view, it was indeed for the Central Government to see that the canal is excavated and the recalcitrant State should have been prevailed upon. In a semi-federal system of Government, which has been adopted under the Indian Constitution, all the essential powers, both legislative and executive have been conferred upon the Central Government. True federalism means the distribution of powers between a Central authority and the constituent units. Dicey's concept of federalism is a national constitution for a body of States, which desire union and do not desire unity. According to him, a federal State is a political contrivance intended to reconcile national unity and power with the maintenance of State rights. The essence of a federation is, therefore, existence of a Union and its States and the division of power between the Union and the States. If the component parts of a State have no power of policy decision in any field, but are confined to carrying out the Central Government directives through the medium of an institutional fabric of federal form, it is not a federal but a unitary State. Political integrity of the Union and each State seems to be essential to the federal concept. Authors, therefore, described our Government to be one which is federal in structure but somewhat unitary in spirit. The Constitution of India, defines the political authority, locates the sources of political power and indicates, how the power has to be exercised, setting out the limits on its own use. Our Constitution is more than fifty years old and during this half century, several developments have taken place, which have moulded the working of the Constitution and brought out several difficulties in its working and has provoked a number of controversies. In the pre-independence politics in this country, the Congress party was committed to securing more powers for the provinces. But soon after independence, the political scenario changed and the need for power-sharing devices was subordinated to the imperatives of the State's security and stability. Weakness and lack of confidence propelled the thrust towards centralisation. Unity of the country was perceived as a paramount need. The partition of the country and the events that followed in its aftermath, were events between commencement and completion of work of the Constituent Assembly. These events have left indelible imprint in several of its provisions, including the scheme of distribution of legislative power. The second report of 5-7-1947 of the Union Constitution Committee having taken note of the facts

then prevalent, unequivocally recorded that a weak Centre would be injurious to the interests of the country. The said report states:

"We have accordingly come to the conclusion - a conclusion which was also reached by the Union Constitution Committee - that the soundest framework for our Constitution is a federation with a strong Centre."

It is in this context, Mr Bobde appearing for the plaintiff-State of Haryana urged that if a State does not abide by the discipline of the Constitution and goes to the extent of flouting its basic structure, it is the duty of the Union of India to set things right and where the Union fails in its duty, the Supreme Court must intervene to correct the situation. According to the learned counsel, if balance of our federalism is upset by a recalcitrant State which proceeds to act as if it has no obligations to other States or to the nation as a whole and the Union remains a mute spectator either for the lack of political will or any reason whatever, then the Supreme Court will have to step in and preserve the basic feature of federalism. According to the learned counsel, the principle of "cooperative" federalism has been accepted in all modern democracies and we in India have a strong unitary tilt in the Constitution, where unlike the United States of America, the Constitution points to the primacy of the Union. The learned counsel further urged that the Constitution has conferred power on Parliament to alter the boundaries and territories of all States and the Union can never allow secession. It is further imperative that in every matter that concerns the interests of the nation, the Union has to ensure that the Constitution is faithfully observed in letter and spirit by the States. Mr Bobde urged that the Union cannot allow any State to act in a manner that is hostile towards another State or the Union nor would it allow a State to renege on its commitments. Mr Bobde went a step ahead to urge that the State represents its inhabitants. If the rights of the inhabitants under the Constitution gets adversely affected by any action or inaction of another State or the Union, then those rights are enforceable. According to the learned counsel, the need of the State of Haryana to have SYL Canal being for the purpose of utilizing the quantity of water that has already been allocated in its favour by the Government of India under the provisions of the Punjab Reorganisation Act and the State of Haryana has no other source to get water and which was a part of the State of Punjab prior to its formation, any denial to get the allocated quantity of water for being utilized in the State of Haryana would be a deprivation of their rights under Article 21 and the State has been compelled to file the suit mainly because the mighty Union with all its power under the Constitution as well as the power derived from the citizens of the country, has failed to discharge its constitutional obligation either in persuading the recalcitrant State of Punjab to get the canal dug and failing persuasion, to get it executed otherwise.

12. Dr Dhavan, appearing for the State of Punjab in this connection submitted that the digging of SYL Canal is a highly sensitive political issue, connected to the conditions of turmoil and uncertainty which prevailed in the State of Punjab as

already stated in the written statement. According to him ever since the day of inauguration of digging of the canal by the then Prime Minister Mrs Indira Gandhi, the farmers of Punjab boiled with resentment and physically interfered with the digging of canal. Such popular resentment still prevailed in the State of Punjab which culminated in the unfortunate event leading to serious law and order problem in the State of Punjab. The simmering discontentment which prevailed amongst the people of Punjab, got further aggravated on account of the so-called settlement signed by the then Prime Minister of India and Late Sardar Harchand Singh Longowal on 24-7-1985 and even the forcible digging of canal was ultimately stopped. This being the position, it would not be in the interest of any concern or in the interest of the nation to issue any direction for digging of the canal. According to the learned counsel, India no doubt has a strong centralized centripetal system, which can bring recalcitrant States into line by a combined use of Articles 355 and 365, but the Indian federal system is also based upon certain admitted features like territorial vulnerability; empowerment to the Union; State autonomy; a complex set of institutions and process to resolve disputes and enable governance; and the judiciary's inclusion and exclusion from many areas depending on the nature of the issue. Federalism no doubt is the part of the basic structure of the Constitution and the processes which are specifically designated by the Constitution for specific purposes. According to Dr Dhavan, India's federal system was devised to enable a wide range of distribution of powers, directions, schemes, contractual and non-contractual agreements, in order to facilitate governance. Within this scheme, the judiciary, especially the Supreme Court plays an important role in matters for interpretation and adjudication. But not all aspects of these arrangements were deemed to be legally enforceable or regarded as judicially manageable. According to the learned counsel, some areas of judicial unmanageability are delineated in the Constitution itself. Bearing in mind, the aforesaid principles and taking into account the claim made by the State of Haryana, it must be said that the entitlements of Haryana cannot be treated as private law entitlements with private implications but only as public entitlements with public implications, including the social, economic, political and security implications and, therefore, the Court would be well advised, not to issue any direction in relation to the digging of SYL Canal.

13. Having regard to the submissions made by the counsel appearing for the two neighbouring States, who are fighting tenaciously like two adjacent owners and when the Union Government is keeping silence over the matter, as is apparent from the fact that notwithstanding our order on the close of the arguments, there has been no intimation to us from the Union Government through its counsel, learned Additional Solicitor-General, we will be failing in our duty if we do not notice faithfully what transpired in the course of hearing. Initially, to our query as to the role and the stand of the Union Government, the counsel who was appearing for the Union Government candidly stated that the Union has no role to play in the dispute between the two States and such a stand on the part of the

Union Government would not be appreciated by the Court while hearing the matter. It is only when the Court expressed its disapproval to the stand taken by the Union Government, the learned Additional Solicitor-General appeared and initially prayed for an adjournment of hearing of the suit so as to enable the Union Government to play its role effectively. As we had already started hearing of the suit and had by then heard for a considerable period, when we found it not possible to adjourn the matter, we heard learned Additional Solicitor-General and then at the conclusion of the hearing, passed the order, which we have already quoted earlier. But nothing appears to have happened and to us, it appears that in the controversy between the two States, the Union Government is feeling embarrassed to take any positive decision, which in our view is not in the interest of the nation. The founding fathers of the Constitution, advocated for a strong Central Government, so that there would not be any disintegration of the States and the Central power would be able to keep the States within its limits and will be able to force the States, in the matter of good governance of the States, which would benefit the inhabitants of the States, the inhabitants of the neighbouring States and the country as a whole.

14. Within India, the Indus basin lies in Jammu and Kashmir, Himachal Pradesh, Punjab, Haryana and Rajasthan. Most of the basin in Pakistan lies in the North-West Frontier Province, namely, Punjab and Sind. According to the pre-1947 political sub-divisions, the Indus basin in India comprised the British Provinces of Punjab, NWFP and Sind, as well as the then princely States of Jammu and Kashmir, Patiala, Nabha, Faridkot, Jind, Kapurthala, Bikaner, Bahawalpur, Jaisalmer, Khairpur, Bilaspur, Mandi, Chamba and several other small States in the Punjab hills, the North-West Frontier States and tribal areas, together with parts of the British Province of Baluchistan and of the Indian States of Jodhpur and Jaipur. Approximately 46 million people lived in this basin in 1947 with agriculture as the pivot of their economy. The northern and western boundaries of the Indus basin are clearly marked by mountains and hills; towards the south, however the limits of the basin are relatively obscure. The north-west mountain wall, comprising the Himalayan Ranges and Siwaliks, has a great influence on the physiography of the Indus region and the hydrology of the region. The partition between India and Pakistan in 1947, which created a new political boundary in fact cut across the Indus system of rivers and canals from which 26 million acres of irrigated agriculture had already been established and from which rivers many million acres of arid lands were still waiting to be developed in turn. The Indus basin, a geographical entity, as patent as anywhere else in the world, was divided between two henceforth sovereign nations. Several proposals for sharing of water had been mooted, but ultimately the proposal for a partition with a territorial division of rivers, giving to India the exclusive use of the three eastern rivers (Sutlej, Beas and Ravi) and to Pakistan the use of the waters of the three western rivers was accepted, and an Indus Water Treaty was entered into between India and Pakistan. The Government of India had to pay a contribution which was fixed at 62.5 million pounds to Pakistan. Development of river water

resources for purposes of irrigation and generation of hydroelectric power has been progressing steadily since independence. Many multi-purpose river valley schemes have been executed on inter-State rivers. In many of these projects the States have cooperated in jointly developing the river concerned in an integrated manner, thus deriving the optimum benefits out of a river. But notwithstanding the same the existence of friction amongst the States, through which river flows continues and such friction between two States or two or more States has been continuing on account of lack of political will at the Central level to deal with the problem with determination. The lack of inter-State cooperation is the main factor leading to such dispute for sharing the water of a river. Even as between two States of Punjab and Haryana, which at one point of time constituted only a single State, the dispute for additional allocation of water from this Ravi-Beas basin is still pending unresolved before a Tribunal, which had been constituted way back in the year 1986 in pursuance of the so-called "Longowal Agreement". We are not concerned in the present suit with regard to the award that has been passed by the said Tribunal on 30-1-1987; but we are certainly concerned with the continuance of such a Tribunal presided over by a retired Judge of this Court, who is sitting idle as the other members of the Tribunal had not been appointed or for some other reason, and continuance of such a Tribunal has become a source of drainage from the public exchequer without getting any returns. It transpires, after the Tribunal passed the award on 30-1-1987, an application under Section 5(3) of the Inter-State River Water Disputes Act was filed by the State of Punjab on 19-8-1987, and no final decision has been taken on that application as a result of which the Central Government has not published the decision of the Tribunal in the Official Gazette, as required under Section 6 of the Inter-State River Water Disputes Act. We really fail to understand why such a high-powered Tribunal supposed to decide a water dispute referred to it, between the States of Punjab, Haryana and Rajasthan in relation to use, distribution or control of extra water from the Ravi-Beas system, which Tribunal in terms of paragraphs 9.1 and 9.2 of the Longowal Agreement dated 24-7-1985, would be permitted to just sit idle and why the Central Government and the appropriate Ministry has not bestowed any attention on the proper functioning of such Tribunal. A Judge by virtue of his training, always acts in a manner so as to avoid public criticism for his conduct. A retired Supreme Court Judge, who has been appointed as the Chairman of a Water Disputes Tribunal, would certainly not like to sit idle at the cost of huge drainage from the public exchequer and even otherwise, it would be beneath his dignity to continue as the Chairman, without doing any work. The manner in which this Tribunal headed by a retired Judge of the Supreme Court has been allowed to continue, has already been a matter of severe public criticism. To avoid any further embarrassment and criticism we expect that the Central Government would do well in filling up the vacancies in the Tribunal and the Tribunal also would do well in concluding the proceedings before it, as expeditiously as possible.

15. Coming to the question of construction of SYL Canal, it appears that way

back in 29-1-1955 in a meeting called by the Government of India of all the States concerned a decision had been taken, allocating 5.90 MAF in favour of the undivided State of Punjab. We are not concerned with the allocation made in favour of other States like Rajasthan, Kashmir and PEPSU. Several projects had been taken like Madhopur-Beas Link, Madhopur Headworks with the idea that the water from River Beas is diverted and is available for the utilisation to the States of the undivided Punjab and Rajasthan at Harike. The Government had also proposed Beas Project Unit I and Unit II which comprised of Beas-Sutlej Link and this project had started much before reorganisation and division of the undivided Punjab. Since no river was flowing within the State of Haryana and the State had no other water resources, even before the creation of the Haryana Development Committee had been set up, which Committee had submitted its report recommending the surplus Ravi-Beas waters for Haryana region, as is apparent from Exhibit P-21. The undivided State of Punjab was bifurcated into two States of Punjab and Haryana with effect from 1-11-1966, under the parliamentary Act, called the Punjab Reorganisation Act, 1966. Under the parliamentary legislation a provision had been engrafted providing that rights and liabilities of the existing State of Punjab in relation to the Bhakra Nangal Project and the Beas Project, shall on the appointed day, be the rights and liabilities of the successor State in such proportion, as may be fixed and subject to such adjustment, as may be made by an agreement entered into by the said States, after consultation with the Central Government, or if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the projects. The aforesaid section of the Punjab Reorganisation Act stipulated that the order so made by the Central Government could be varied by any subsequent agreement entered into by the successor State after consultation with the Central Government. In exercise of the aforesaid power, the Government of India in the Ministry of Irrigation, determined the rights and liabilities in relation to the Beas Project as the two States, namely, Punjab and Haryana could not reach an agreement and a notification was issued on 24-3-1976. It would be appropriate at this stage to extract a portion of the aforesaid notification for better appreciation of the controversy in issue:

"NOW THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 78 of the Punjab Reorganisation Act, 1966 (31 of 1966), the Central Government hereby makes the following determination, namely:

Taking note of the facts that Haryana has large arid tract and also several drought-prone areas and the present development of irrigation in the State of Haryana is substantially less as compared to that in the State of Punjab, and further taking into consideration that comparatively large quantity of water is needed for irrigation in the State of Haryana and there is limited availability of water from other sources in the State, the Central Government hereby directs that out of the water which would have become available to the erstwhile State of Punjab on completion of the Beas Project (0.12 MAF whereof is earmarked for

Delhi water supply), the State of Haryana will get 3.5 MAF and the State of Punjab will get the remaining quantity, not exceeding 3.5 MAF. When further conservation works on Ravi are completed, Punjab will get 3.5 of 7.2 MAF which is the share of the erstwhile State of Punjab. The remaining 0.08 MAF, out of 7.2 MAF is recommended as additional quantum of water for Delhi water supply for acceptance by both the Governments of Punjab and Haryana.

AND WHEREAS the above allocation on completion of the Beas Project is based on the 1921-45 flow series corresponding to the availability of 11.24 MAF in the Beas at Mandi Plain (after allowing for 1.61 MAF as pre-partition uses) and the availability of 4.61 MAF in the Ravi after allowing for pre-partition uses and losses in the Madhopur Beas Link.

AND WHEREAS the fluctuations in the Ravi flow have a very small effect on the availability of water on completion of the Beas Project;"

16. Even prior to the aforesaid notification issued by the Government of India the concept of having SYL Canal had already emerged, which is apparent from Exhibit P-17, a communication from the Government of Haryana to the Central Government dated 21-10-1969. The relevant paragraphs from the aforesaid communication, Exhibit P-17 are quoted hereunder:

"6. It is also important to point out that the Haryana Government have prepared a scheme linking the Sutlej basin with the Western Yamuna Canal basin for utilising its share of 4.8 MAF when the same is harnessed after the completion of the Beas-Sutlej Link by 1973-74. The project estimate was submitted to the Government of India, Ministry of Irrigation and Power for scrutiny and approval. The Government of India have intimated that the allocation of Ravi-Beas waters may be got finalised before the Scheme is taken up for scrutiny.

7. The Haryana State can have its share out of the Ravi-Beas waters only through Bhakra and it would be a pity if the State is not in a position to utilise its share of waters for want of adequate links. The proposed Scheme is, therefore, very vital for Haryana and accordingly the entire provision for the Scheme costing Rs 27 crores has been recommended by the State Government for being spent during the 4th five-year plan. It is accordingly very essential that the allocation of 7.2 MAF to the erstwhile Punjab State is apportioned between the two successor States without any loss of time so that this State may be able to execute the aforementioned major Scheme during the 4th five-year plan.

8. Since the two successor States have not come to an agreement/decision in the matter, it is requested that the matter may be decided under Section 78 of the Punjab Reorganisation Act, 1966 wherein the Government of India take a decision after the stipulated period of two years which expired on 1-11-1968."

On the demand of the State of Haryana the Central Government appointed a high-level Committee of experts on 24-4-1970, under Exhibit P-18 and the said Committee submitted a report in February 1971 under Exhibit P(D)-3

recommending 3.782 MAF to Haryana and 3.087 MAF to Punjab. But that recommendation was referred by the Planning Commission to the Chairman, Central Water and Power Commission, Shri Y.K. Murthy under Exhibit P-19 and Shri Murthy had submitted a report introducing a concept of "divisible pool" but finally the Government of India made the determination by issuing a notification on 24-3-1976, as already stated. The State of Haryana could draw its share in the surplus Ravi-Beas waters from the Bhakra Nangal complex on River Sutlej where the supplies of Ravi and Beas are available and that is why the proposal for construction of SYL Canal had been mooted, part of the canal being in the State of Punjab. The State of Haryana all along has been insisting for the completion of SYL Canal and has been requesting the State of Punjab and the Central Government reiterating inter alia that the large arid tract of Haryana and several drought-prone areas would need water badly and, therefore unless the allocated share of water is allowed to be diverted by digging an additional link canal, as the existing main line canal will not be in a position to get the water allocated to Haryana, for being utilised through the said canal. Though the State of Haryana started constructing the canal within its territory in 1976 and completed the same by June 1980, and a huge amount has been spent on that score but the construction of canal within the territory of Punjab was a non-starter. When the persuasion on the part of the State of Haryana failed they filed a suit in this Court, which was registered as Suit No. 1 of 1979 for implementation of the order of the Union Government dated 24-3-1976 and for the construction of SYL Canal within the territory of Punjab within a period of 2 years. As a counterblast to the aforesaid suit the State of Punjab also filed a suit in this Court, which was registered as Suit No. 2 of 1979, challenging the validity of the order of the Government of India dated 24-3-1976 and also challenging the validity of Section 78 of the Punjab Reorganisation Act, 1966. While two suits were pending in this Court an agreement was arrived at between the States of Haryana, Punjab and Rajasthan in the presence of the Prime Minister of India on 31-12-1981, vide Exhibit P-2 and on account of the aforesaid agreement the suits filed by the two States stood withdrawn by the order dated 12-2-1982. At this stage, it would be appropriate to extract the relevant portions of the agreement Exhibit P-2 as well as the order of this Court dated 12-2-1982.

Exhibit P-2.-WHEREAS the Punjab Government sought a review of the aforesaid notification for increasing the allocation of Punjab and linked this matter to the construction of the Sutlej-Yamuna Link Canal for Haryana in the Punjab territory, and

WHEREAS the Government of Haryana filed a suit in the Supreme Court praying inter alia that a directive be issued to Punjab for expeditiously undertaking construction of the Sutlej-Yamuna Link Canal in the Punjab territory and for declaring that the notification of the Government of India allocation the waters becoming available as a result of the Beas Project issued on 24-3-1976, is final and binding;

"Now, therefore, we the Chief Ministers of Haryana, Rajasthan and Punjab keeping in view the overall national interest and desirous of speedy and optimum utilisation of waters of Ravi and Beas rivers and also having regard to the imperative need to resolve speedily the difference relating to the use of these waters in a spirit of give and take do hereby agree as under:

'(iv) The Sutlej-Yamuna Link Canal Project shall be implemented in a time-bound manner so far as the canal and appurtenant works in the Punjab territory are concerned within a maximum period of two years from the date of signing of the agreement so that Haryana is enabled to draw its allocated share of waters. The canal capacity for the purpose of design of the canal shall be mutually agreed upon between Punjab and Haryana within 15 days, failing which it shall be 6500 cusecs as recommended by the former Chairman, Central Water Commission.

Regarding the claim of Rajasthan to convey 0.51 MAF of water through the Sutlej-Yamuna Link Bhakhra system, Secretary, Ministry of Irrigation, Government of India will hold discussion with Punjab, Haryana and Rajasthan with a view to reaching an acceptable solution. These discussions shall be concluded within a period of 15 days from the date of affixing signatures herein and before the work starts. If no mutually acceptable agreement is reached, the decision of the Secretary, Ministry of Irrigation to be given within this period shall be binding on all the parties. In case it is found necessary to increase the capacity of the Sutlej-Yamuna Link Canal beyond that decided under above sub-para in any or entire reach thereof, the States concerned shall implement the link canal in a time-bound manner with such increased capacity at the cost of the Rajasthan Government.

The differences with regard to the alignment of the link canal and appurtenant works in the Punjab territory would be discussed by the Haryana and Punjab Governments who should agree to mutually acceptable canal alignment in the Punjab territory including appurtenant works within a period of three months from the date of signing of this agreement. If however, the State Governments are unable to reach complete agreement within this period the matter shall be decided by the Central Government within a period of two weeks. Both the State Governments shall cooperate fully to enable the Central Government to take timely decision in this regard. The decision of the Central Government in this matter shall be final and binding on both the Governments and the canal and the appurtenant works in the Punjab territory shall be implemented in full by the Punjab Government. However, work on the already-agreed reaches of the alignment would start within fifteen days of the signing of the agreement and work within the other reaches immediately after the alignment has been decided. Haryana shall provide necessary funds to the Punjab Government for surveys, investigations and considerations of the link canal and appurtenant works in the Punjab territory. Where as a result of acquisition of land, extreme hardship is caused to the families the Punjab Government shall forward to the Haryana

Government suitable proposals for relieving hardship in line with such schemes in Punjab undertaken in respect of similar canal works in Punjab territory. The Haryana Government shall arrange to bear the cost of such proposals. In the event, however, of any difference of opinion arising on the question of sharing such cost, the parties shall abide by decision of the Secretary, Ministry of Irrigation, Government of India. The progress of the work shall not, however, be delayed on this account. The Central Government will be requested to monitor the progress of the work being carried out in the Punjab territory.

(v) The agreement reached in paras (i) to (iv) above shall be implemented in full by the Government of Haryana, Rajasthan and Punjab. If any signatory State feels that any of the provisions of the agreement are not being complied with, the matter shall be referred to the Central Government whose decision shall be binding on all the States. In this respect the Central Government shall be competent to issue such directions or take such measures as may be appropriate and ensure such compliance.

(vi) The suits filed by the Government of Haryana and Punjab in the Supreme Court would be withdrawn by the respective Governments without any reservations whatsoever but subject to the terms of this agreement.

(vii) The notification of the Government of India allocating the waters becoming available as a result of the Beas Project issued on 24-3-1976, and published in the Gazette of India, Part II, Section (sic) (ii) as well as the 1966 Agreement stand modified to the extent by this agreement and shall be in force as modified herein.

In case of any difference on interpretation of this agreement, the matter will be referred to the Central Government whose decision shall be final."

Order dated February 12, 1982:-

"In these suits, the plaintiffs namely, the Government of Punjab and Haryana have filed petitions for withdrawal of suits as the dispute between the States has been settled between the parties and they are permitted to withdraw the suits in view of the agreement dated 31-12-1981 between the plaintiffs and the State of Rajasthan. The applications for withdrawal have been made on the basis of the agreement dated 31-12-1981 reached between the aforesaid parties.

A number of applications for intervention and impleading parties to the suits have been made, but these applications have been made by the private parties who have absolutely no locus to appear in the suits. This matter has now been concluded by the decision of this Court in *State of Rajasthan v. Union of India* [(1977) 3 SCC 592 : (1978) 1 SCR 1] which followed an earlier decision of this Court in *State of Bihar v. Union of India* [(1970) 1 SCC 67 : (1970) 2 SCR 522] . Moreover, the plain language of Article 131 of the Constitution clearly shows that this Court has only a limited jurisdiction to hear suits filed by the States inter se or suits between States and the Union Government. Article 131, therefore, does

not contemplate any other party to be heard or to intervene in the matter. For these reasons, therefore, the applications for intervention and impleading parties are rejected. The prayer of the plaintiffs for withdrawal of suits is allowed and the suits are dismissed as withdrawn in view of the agreement dated 31-12-1981 between the parties to the suits. There will be no order as to costs."

It may be stated at this stage that this agreement dated 31-12-1981, which resulted in increase in the share of water to Punjab, while keeping the share of Haryana unchanged was very much appreciated by the Government of Punjab, as is apparent from Exhibit P-14. Between 1982 to 1985, SYL Canal within the territory of Punjab was constructed and a major portion had been completed. Subsequent to the insurgency in the State of Punjab and the operation "Blue Star" by the Government of India, the State of Punjab was in turmoil. However under the persuasion of the then Prime Minister of India, late Rajiv Gandhi, the then President of Shiromani Akali Dal, Sant Harchand Singh Longowal entered into an agreement commonly known as the "Punjab Settlement". Exhibits P-3 and P-14 and paragraph 9 of the said agreement were in relation to sharing of river waters. It is significant to notice that while paragraphs 9.1 and 9.2 relating to the sharing of water from Ravi-Beas system were required to be referred for adjudication to a Tribunal, to be presided by a Judge of the Supreme Court, paragraph 9.3 unequivocally indicated that construction of SYL Canal shall continue and shall be completed by the 15-8-1986. It is true, as is contended by Dr Rajeev Dhavan that the aforesaid agreement was entered into by Sant Harchand Singh Longowal, the then President of the Shiromani Akali Dal and as such, has no constitutional sanctity to bind the State of Punjab. But having regard to the fact that in terms of paragraphs 9.1 and 9.2, a Tribunal was constituted and even the provisions of the Inter-State Water Disputes Act were amended, thereby granting parliamentary recognition to the so-called agreement, the terms of the said agreement cannot be thrown out as a piece of paper only. The Tribunal, as stated earlier, submitted its report on the 30-1-1987 and even though the construction of canal was not a matter of reference to the Tribunal, yet the Tribunal took notice of the fact that SYL Canal construction is complete within the State of Haryana and is under construction in the Punjab area and it also noticed the fact that this canal is the lifeline of the farmers of Haryana and unless it is expeditiously completed, Haryana will not be in a position to utilize the full quantum of water allocated to it hereunder. The expression "hereunder" obviously refers to the extra allocation of water under the award of the Ravi-Beas Tribunal, which award has not yet been notified. But at the same time, the importance of the canal even for full utilization of the water that has been already allocated in favour of Haryana, cannot be minimised in any way. It is an admitted fact that for construction of the Punjab portion of SYL Canal, more than Rs 560 crores have already been spent, as is apparent from Ext. P-13 and the entire money has been paid by the Government of India. It is indeed a matter of great concern that while huge amount of public exchequer has been spent in the construction of the canal and only a few portion

of the canal within the territory of Punjab has not been dug, the canal is not being put to use on the mere insistence of the State of Punjab. The attitude of the State of Punjab to say the least, is wholly unreasonable, dogmatic and is against the national interest. It is equally a matter of great concern for this Court that the Central Government is taking an indifferent attitude in the matter and is only trying to while away the time, even though it continues to pay the State of Punjab substantially, even for the maintenance of the operation of canal that has already been dug. From the record, it transpires that in February 1991, the Prime Minister of India has convened a meeting of the authorities concerned of the State of Haryana and Punjab, in which meeting certain decisions had been taken, including a decision to employ the mobilisation of the officers of Border Road Organisation, but even that decision could not be implemented and the Chief Minister of Haryana had been reminding the Prime Minister of India by writing letters, seeking intervention of the Prime Minister for completion of the Punjab portion of the canal. While the matter stood thus, a news item having appeared in a Delhi newspaper, indicated that the Punjab Chief Minister had rejected any move to start reconstruction of SYL Canal, the State of Haryana was compelled to file the present suit. In a matter like this, it is true that a decree of a court in either way is not that effective, as it is the political will of the authorities and the will of the people that matters. But at the same time when the political authority becomes dogmatic, unreasonable and indicates an attitude of irresponsible nature and when the court finds that nothing is moving even though there has been a large-scale drainage of public exchequer and that the decision to have the canal had been reached on an agreement of all concerned, representing the will of the people, the court must pass appropriate orders and directions. What really bothers us most is the functioning of the political parties, who assume power to do whatever that suits them and whatever would catch the vote bank. They forget for a moment that the Constitution conceives of a Government to be manned by the representatives of the people, who get themselves elected in an election. The decisions taken at the governmental level should not be so easily nullified by a change of Government and by some other political party assuming power, particularly when such a decision affects some other State and the interest of the nation as a whole. It cannot be disputed that so far as the policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.

17. Dr Rajeev Dhavan appearing for the State of Punjab referred to the averments made on behalf of the State of Haryana in its replication to the effect: "the existing system through which Haryana received Ravi-Beas waters, namely, the Bhakra Canal can carry only about 1.62 MAF" and submitted that in view of

this statement made by the State of Haryana and there being no further final decision of the Tribunal which had been appointed by the Central Government to determine the share of the respective States from the waters available under the Ravi-Beas basin, the so-called agreement/decision in relation to the construction of SYL Canal, is nothing but a futility and, therefore, this Court should not issue any mandatory order in relation to the digging of the canal in the absence of any right being established by the State of Haryana. According to Dr Dhavan, the future utilization of the water resources not yet been determined, the Court need not embark upon an adjudication relating to construction of the canal. According to Dr Dhavan, the decision taken by the undivided State of Punjab in 1955 and the utilization as proposed in various project reports and acted upon prior to reorganisation of the State of Punjab in 1966, would not have been altered and should not be altered and neither the order of the Central Government in exercise of power under Section 78 of the Punjab Reorganisation Act, 1966 nor the so-called agreement dated 31-12-1981, could be construed to have conferred an enforceable right on the State of Haryana to get a mandatory order of injunction against the State of Punjab for getting the unfinished portion of the canal within the territory of Punjab. According to Dr Dhavan, non obstante clause in Section 78(1) of the Punjab Reorganisation Act as well as the scheme of Section 78 to Section 80 of the said Act, unequivocally indicates that the said power is for distribution of water and power on "projectwise" and "riverwise" basis and the two projects which stood included have been mentioned to be the Beas (Units I and II) and Bhakra Nangal, and therefore, it would not be legal or equitable to bring within its concept any other project or river water for the purpose of the sharing between the two States. The learned counsel also contended that non-mention of the Thien (now Ranjit Sagar) Dam or Madhopur Beas Link, is sufficient to indicate that those projects are to serve different purposes between different States and the same cannot be brought by implication since some aspects of it have been mentioned in the Beas Project. Dr Dhavan concedes that in the project report, the expression "integrated development" has been used but a distinction must be drawn between the allocation of share of water from different rivers and integrated development of the projects. According to the learned counsel, integrated development is distinct from independent allocation of share of water and this being the position, the entire basis on which the State of Haryana has filed the suit for completion of SYL Canal falls through. Dr Dhavan also went to the extent of arguing that an order passed by the Central Government under Section 78 of the Reorganisation Act being outside the scope of the Act itself, must be read down to make it legal and the only way the same has to be read down is that the order is an executive order, not enforceable being beyond the scope of the Punjab Reorganisation Act, 1966. In relation to the so-called agreement entered into by the Chief Ministers of different States and the Prime Minister of India dated the 31st of December, 1981, Dr Dhavan contends that the agreement read as a whole, more particularly, clause 7 thereof unequivocally indicates that it incorporates fresh terms treating the order of the Central Government dated the 24th of March,

1976 as an executive order and reworks a fresh de novo agreement taking into account the agreement of 1955 and that agreement stood repudiated on 5-11-1985. It is further contended that the said agreement is political in nature and thus cannot assume the characteristic of conferring an enforceable right on the State of Haryana. So far as the Punjab Accord of 1985 is concerned, it is contended that the same cannot assume the status of an agreement under the Constitution and on the other hand, it must be held to be a political thicket entered into between the Prime Minister and the head of the political party, who neither was constitutionally entitled to sign any agreement, binding the citizens of the State, and in any event the said terms of agreement were rendered inoperative by the force of circumstances and stood frustrated by the subsequent events. According to Dr Dhavan under the continued threat of militancy and the canal itself being in a totally damaged condition and no legal rights having accrued in favour of the State of Haryana for getting the canal constructed, this Court will not be justified in issuing an order of mandatory injunction, mandating the State of Punjab to construct the unfinished portion of the canal. It is the submission of Dr Dhavan that relief of mandatory injunction being discretionary, the Court while exercising the discretion, must bear in mind all facts and circumstances as well as the consequences thereof and taking into account the fact that Punjab has already passed through one of the dark periods of militancy in the history of the country, it would not be advisable to issue any order of injunction in exercise of the discretionary power of the Court. Dr Dhavan, in course of his oral arguments as well as in his written submissions referred to those averments made in the written statement of the State of Punjab, indicating the turmoil situation through which the State has passed and on that basis tried to emphasise the fact that any order or direction from the Court to construct the canal within the territory of Punjab would again bring an uncanny situation in the State and therefore, this Court should resist from issuing any such order or direction which may not be in the national interest.

18. Having given anxious consideration to the submissions made by Dr Dhavan, appearing for the State of Punjab, we are of the considered opinion that those submissions are of no consequence and there could not be any fetter on the power of this Court to issue appropriate directions. We have already indicated the genesis of the construction of SYL Canal as well as the allocation of water in favour of the State of Haryana and the agreements entered into between the States in the presence of the Prime Minister of India, which ultimately led to the withdrawal of the earlier suits filed in this Court. The State Governments having entered into agreements among themselves on the intervention of the Prime Minister of the country, resulting in withdrawal of the pending suits in the Court, cannot be permitted to take a stand contrary to the agreements arrived at between themselves. We are also of the considered opinion that it was the solemn duty of the Central Government to see that the terms of the agreement are complied with in toto. That apart, more than Rs 700 crores of public revenue cannot be allowed to be washed down the drain, when the entire portion of the

canal within the territory of Haryana has already been completed and major portion of the said canal within the territory of Punjab also has been dug, leaving only minor patches within the said territory of Punjab to be completed. If the apprehension of the State is that on account of digging of canal, the State of Haryana would draw more water than that which has been allocated in its favour, then the said apprehension also is thoroughly unfounded inasmuch as the source for drawing of water is only from the reservoir, which lies within the territory of Punjab and a drop of water will not flow in the canal unless the connecting doors are open. But the quantity of water that has already been allocated in favour of the State of Haryana, must be allowed to be drawn and that can be drawn only if the additional link canal is completed inasmuch as the existing Bhakra Main Canal has the capacity of supplying only 1.62 MAF of water. This being the position, we unhesitatingly hold that the plaintiff-State of Haryana has made out a case for issuance of an order of injunction in the mandatory form against the State of Punjab to complete the portion of SYL Canal, which remains incomplete and in the event the State of Punjab fails to complete the same, then the Union Government-Defendant 2 must see to its completion, so that the money that has already been spent and the money which may further be spent could at least be utilized by the countrymen. We have examined the materials from the standpoint of existence of a prima facie case, balance of convenience and irreparable loss and injury and we are satisfied that the plaintiff has been able to establish each one of the aforesaid criteria and as such is entitled to the injunction sought for. This issue is accordingly answered in favour of the plaintiff and against the defendants. We, therefore, by way of a mandatory injunction, direct the defendant-State of Punjab to continue the digging of Sutlej-Yamuna Link Canal, portion of which has not been completed as yet and make the canal functional within one year from today. We also direct the Government of India-Defendant 2 to discharge its constitutional obligation in implementation of the aforesaid direction in relation to the digging of canal and if within a period of one year SYL Canal is not completed by the defendant-State of Punjab, then the Union Government should get it done through its own agencies as expeditiously as possible, so that the huge amount of money that has already been spent and that would yet be spent, will not be wasted and the plaintiff-State of Haryana would be able to draw the full quantity of water that has already been allotted to its share. Needless to mention, the direction to dig SYL Canal should not be construed by the State of Haryana as a licence to permit them to draw water in excess of the water that has already been allotted and in the event the Tribunal, which is still considering the case of re-allotment of the water, grants any excess water to the State of Haryana, then it may also consider issuing appropriate directions as to how much of the water could be drawn through SYL Canal.

19. The plaintiff's suit is decreed on the aforesaid terms. There will be no order as to costs.