PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 25/04/2000

BENCH:
R.P.Sethi,U.C.Banerjee,V.N.Khare,G.B.Pattanaik,S.B.Majumdar

JUDGMENT:

PATTANAIK, J.

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

(a) declare that the report /decision dated 24.12.1973 and the further report/deecision dated 27.5.1976 of the Krishna Water Disputes Tribunal (KWDT) in their entirety are binding upon the three riparian States of Maharashtra, Karnataka and Andhra Pradesh and also the Union of India; (b) declare that the riparian States are duty bound to fully disclose to each other and also to the Union of India all particulars of all projects undertaken or proposed after December, 1973 and May, 1976 and to direct the defendants to ensure that execution thereof are in conformity with and do not conflict with or violate the decisions of the KWDT and they do not adversely affect the rights of the other riparian States; (c) declare that the party States are entitled to utilise not more than the quantity of water which is allocated or permitted by the decisions of the KWDT for the respective projects of the respective party States before the Tribunal; and that any variation in either storage or utilisation of the waters by each such state in respect of each of such projects could only be with the prior consent or concurrence of the other riparian States; (d) declare that all the projects executed and/or which are in the process of execution by the State of Karnataka which are not in conformity with and conflict with or violate the decisions of the KWDT, as illegal and unauthorised.

(e) declare that approvals /sanctions/ clearances/ in-principle clearances granted by the Union of India on or after KWDT decisions on 24.12.1973 and on 27.5.1976 in

respect of schemes/projects/ undertaken by the Government of Karnataka are invalid and direct the Union Government to review /reconsider all such schemes/ projects proposed / undertaken by Karnataka, afresh, after obtaining the views thereon of the other riparian States;

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

Almatti Dam under UKP

Construction of Canals/Lifts Schemes on Almatti Reservoir.

Upper Krishna Projects in K-2 Sub-basin.

Hippargi Weir/Irrigation Schemes.

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

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

Upper Krishna Projects in K-2 Sub-basin.

Hippargi Weir/Irrigation Schemes.

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

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

Upper Krishna Projects in K-2 Sub-basin.

Hippargi Weir/Irrigation Scheme.

Construction of Indi and Rampur lift schemes on

Narayanpur Reservoir and the canals.

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

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

Though there are as many as 14 reliefs sought for as stated above, but essentially the reliefs relate to the construction of Almatti Dam under Upper Krishna Project by the State of Karnataka to a height of 524.256 M. Though the averments of facts in the plaint have been made in 71 paragraphs, shorn of minute details, the same may be stated as under: That the dispute between the three riparian States namely Maharashtra, Karnataka and Andhra Pradesh with respect to use, distribution and control of the water of inter- State river Krishna stood resolved by the decisions of the tribunal, constituted under Section 4 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as the Act) by the decision rendered in 1973 and the Further decision rendered in 1976. The said decision having been notified by the Central Government under Section 6, became binding on all parties. All the parties-States being constituents of the Federation of Republic of India, the plaintiff expected that each State, while undertaking their projects for utilisation of the quantity of water allocated in their favour by the tribunal would consult with the other concerned States and would so use, which will not be against the decision of the tribunal in any manner. But the State of Karnataka has not been acting in accordance with the letter and spirit of the decision of the tribunal and on the other hand has violated the expressed terms and conditions of the tribunal, which compelled the State of Andhra Pradesh to invoke the jurisdiction of the Supreme Court under Article 131 of the Constitution. After indicating the topography of the river as well as the three riparian States and the disputes which arose between the States that lead the Central Government to constitute the Krishna Water Disputes Tribunal, the plaintiff has stated that the tribunal framed seven main issues and under issue No. II with its eight sub-issues, decided the question of equitable apportionment of the beneficial use of the waters of the river Krishna and the river Valley by evolving Scheme A and making the same as its Final Order or decision, which became binding on all the parties, after the same was notified by the Union Government under Section 6 of the Act. It is not necessary for us to reiterate all the facts leading to the raising of disputes and constitution of the tribunal, which we have already narrated in judgment in O.S.1 of 1997, filed by the State of Karnataka. The plaintiff then has averred as to how on the basis of agreement between the parties, the 75% dependable flow at Vijayawada was found to be 2060 TMC and while considering the case of each State for allocation of their respective share of water in respect of the aforesaid 75% of dependable flow, several projects in the river basin, already undertaken by the States as well as the quantity of water required for the projects were considered by the tribunal on

the basis of which the ultimate figure of allocation were arrived at. According to the plaint, the tribunal, while restraining the States of Maharashtra and Mysore from using more water than allocated in their favour, granted liberty to the plaintiff-State of Andhra Pradesh to use the remaining water with the rider that the State of Andhra Pradesh will not acquire any right to the user of such water except to the extent allocated to it. The plaintiff also averred that while making allocation to the three States, no express provisions were made for sharing of any deficiency and further the tribunal took note of the fact that out of 100 years, deficiency may occur in 25 years. It was also averred that to relieve the State of Andhra Pradesh from the aforesaid difficulty, the tribunal permitted the State of Andhra Pradesh to store water in the Nagarjunasagar Dam and in Srisailam Dam and held that for such storage, there would not be any deduction from its share out of the dependable flow on the ground that if the water is not allowed to be stored by the plaintiff-State, then it would flow down and get submerged in the sea. According to the plaint, the tribunal did consider the different project reports which had been produced before it, in relation to the Upper Krishna Project and allowing the protected utilisation of 103 TMC, it came to the conclusion that the demand of State of Karnataka to the extent of 52 TMC to be utilised by Narayanpur Right Bank Canal is worth consideration. After enumerating the different clauses of the Final Order of the tribunal in its original report of 1973, the plaintiff has averred that though the tribunal has made allocation enbloc in a negative form namely that the State cannot utilise more than the allocable quantity of water in its share in any water year but the said enbloc allocation has to be read in the light of the relevant stand of the parties before the tribunal, the facts and figures produced before the tribunal and the ultimate basis on which the conclusion was arrived at. According to the plaintiff, by taking recourse to the aforesaid method, it would be crystal clear that party-States were restrained from utilising in different sub-basins of river Krishna within their respective territory, beyond what was considered as the protective use and the additional quantity allocated to their share. It has been averred in the plaint that so far as Upper Krishna Project is concerned within the State of Karnataka, the tribunal has allocated only 160 TMC of water for being used and the construction of Almatti Dam to the height of 524 Meters, as indicated by the State of Karnataka, would, therefore, on the face of it, is in violation of the decision of the tribunal. After referring to the different applications for clarifications sought for by different States under Section 5(3) of the Act and the answer of the tribunal on the same, the plaintiff has also averred as to how the tribunal dealt with the contentions raised by the State of Maharashtra before it, in relation to the allocation of 52 TMC of water from Narayanpur Right Bank Canal. According to the plaintiff, though, no doubt in the Final Order of the tribunal, there has been a mass allocation of water in favour of the three riparian States out of the 2060 TMC of water under 75% of dependability at Vijayawada, which figure was arrived at by consent of the parties, but a closer scrutiny of the report in its entirety being examined, it would be apparent that the allocation in respect of different sub-basins had been made on the basis of projects undertaken in those sub-basins and consequently, no State would be entitled to use the entire quantity of water allocated in their favour in any particular sub-basin.

The plaintiff, then has averred that the post award developments undertaken by the State of Karnataka, intending to raise the height of Almatti Dam to 524 Meters is nothing but a gross violation of the decision of the tribunal and, therefore, this Court should injunct the State of Karnataka in going ahead with the Almatti Dam upto the height of 524 Meters, as indicated in its project. The plaintiff then referred to several correspondence made between the State of Karnataka and State of Andhra Pradesh inter se, as well as correspondence between these States and Union Government and Central Water Commission. It has also been averred that allowing the State of Karnataka to construct the dam at Almatti up to a height of 524 Metres would be grossly detrimental to the lower riparian state of Andhra Pradesh inasmuch as for three months in a year from July to September, the State of Andhra Pradesh may go dry and the entire crop in the State would get damaged for paucity of water. The plaintiff also has averred in several paragraphs of the plaint, as to how the plaintiff-State has been demanding from the State of Karnataka to have suitable information in relation to the construction of the dam at Almatti and how the plaintiff-State has been prevented from being favoured with any such information. In paragraph 34 of the plaint, the plaintiff refers to the letter addressed to the Chief Minister of Andhra Pradesh by the then Union Minister for Water Resources, proposing to convene a meeting of Chief Ministers of the Krishna Basin States for discussing Upper Krishna Project Stage-II and along with the said letter, the observation of Central Water Commission, indicating how the project at Almatti creates a physical capability of water utilisation in excess of 173 TMC, which would be possible in view of the proposed top of the radial gate at FRL 521 meters against the required level of 518.7 meters for utilisation of 173 TMC of water. In the subsequent paragraph of the plaint, it has also been indicated as to how the State of Andhra Pradesh has been objecting to the proposals of the State of Karnataka to have the height of Almatti dam at 524 meters under the guise of flood protection measure and then how the plaintiff State requested the Prime Minister of India to intervene in the matter to avoid violation of the award of the Krishna Water Disputes Tribunal. In paragraph 39 of the plaint, it has been averred that the Union Government as well as the Central Water Commission which are responsible for clearance of inter-State Projects, bent upon clearing the Almatti Project up to a dam height of 524 meters without even consulting the State of Andhra Pradesh, though, according to the plaintiff in a Federal Structure of the Government, each constituent State would be entitled to know the progress of any project in relation to inter-State river, since it may have several adverse effects on the other States. The plaintiff also averred that at the behest of the State of Andhra Pradesh, the United Front Government, which was at the Centre, constituted a Committee of four Chief Ministers to examine the issues relating to the construction of Almatti Dam, which committee in turn, decided to constitute an Expert Committee with a representative of the Central Water Commission and Planning Commission, who, however, did not ultimately participate in the proceedings. The said Expert Committee has found that the proposal of the Upper Krishna Project with FRL of 524.256 meters for Almatti Dam is under consideration and has not been approved by the Government of India, though many canals have been designed and constructed for larger capacity meant for future uses and it is not necessary to build a bigger storage of 227 TMC

at Almatti dam with top of shutter at 524.256 meters. The said Committee had also observed that the FRL on the top of the shutter be fixed for the present at 519 .6 meters and the gates be manufactured and erected accordingly and this will be adequate to take care of the annual requirements of 173 TMC presently envisaged under the Upper Krishna Project. The said Committee, therefore, suggested the restriction of the height of the dam at 519.6 meters. The plaintiff however does not accept of the entitlement of the first defendant to use 173 TMC under UKP and the height of the dam at 519.6 meters. From paragraph 52 onwards, the plaintiff then has made averments indicating the negotiations and further developments in the matter and then states that the Ministry of Power, Government of India having indicated that in principle clearance of construction of Upper Krishna Hydro- electric power project at Almatti, contemplating the height of the dam at 524.256 meters was contrary to the award of the tribunal, and therefore, the plaintiff-State lodged its objections by letter dated 18th of October, 1996, to which the reply came that in principle clearance is not a techno- economic clearance and it is purely an administrative action to facilitate developmental activities. The plaintiff, thereafter by its letter dated 18th of December, 1996, requested the Secretary, Ministry of Water Resources, Govt. of India to ensure forthwith the publication in the Gazette of India the decision of the Krishna Water Disputes Tribunal i.e. the report dated 24.12.1973 and the further report dated 27.5.1976 in its entirety. But since it became apparent that the Defendant No. 1 State of Karnataka was not at all inclined to resolve the problem by any amicable discussion nor did it desire any effort for mediation being undertaken by anyone whatsoever, the plaintiff had no other alternative but to approach this Court under Article 131 of the Constitution for declarations and injunctions against the Defendants for protection of the rights of the plaintiff State as well as the rights of its inhabitants flowing from the decision of the Krishna Water Disputes Tribunal. From paragraph 65 onwards, the plaintiff has narrated several facts constituting violations of the decision of the tribunal by the State of Karnataka and from paragraph 69 onwards, the plaintiff has indicated the role played by the Central Government in the matter of allowing the State of Karnataka to raise the height of the dam, which would ultimately lead to violation of the terms and conditions as well as the restrictions in the award of the tribunal and which would infringe the rights of the State of Andhra Pradesh and its inhabitants. The cause of action for filing the suit has been indicated in paragraph 73 of the plaint, namely indulgence of the State of Karnataka in going ahead with the Upper Krishna Project Stage I and II with the construction of the Almatti Dam which is in violation of the decision of the tribunal in letter and spirit.

Defendant No. 1- State of Karnataka in its written statement, took the stand that the tribunal had not made any project-wise allocation and on the other hand, the allocation is enbloc and as such the question of interpreting the decision of the tribunal to the effect that there is restriction in the user of water in any particular Basin is not correct. It has been further averred that the State of Karnataka had contemplated the height of the Dam at Almatti as 524.256 m in the Project Report of 1970 itself and that Report had been filed before the tribunal and had been marked as document MYPK-3. Neither the State of Andhra Pradesh nor any other State had raised any objection to the

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

thereon by the tribunal itself and, therefore, the suit filed under Article 131 is not maintainable. It has been specifically averred that the storage level at Almatti Dam from 519.6 meters to 524.256 meters is not at all an increase, particularly, when the tribunal itself expressly noted the contemplated completion of the Almatti Dam to the full height that is the height in Exhibit MYPK-3. The defendant also referred to the report of the Central Water Commission dated January 30, 1994, whereunder it has been indicated that since the power generation is contemplated under the project at Almatti by way of utilising the extra storage of water between 519.60 meters and 521 meters, the project may be treated as a multi-purpose project (the level required to utilise 173 TMC of water for irrigation is 519.60 meters). The Defendant-State of Karnataka has specifically averred that even though the dam height is raised to this final level of 524.256 meters, the quantity of water that could be utilised for irrigation is only 173 TMC as per allocation made in the Award and any additional quantity over and above 173 TMC will be let out into the river after generating power. It has also been contended that the dispute raised being a water dispute in respect of an inter-State river, the same is governed by Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act, and therefore, suit under Article 131 is not maintainable. All allegations made by the plaintiff about the misuse of position have been denied. It has also been denied that neither there is any requirement of the decision of the tribunal nor any liability which compels any State to consult another State in the matter of planning of the projects for utilisation of its water resources and the contention raised by the State of Andhra Pradesh in this regard is wholly mis-conceived. The defendant further contends that the State of Andhra Pradesh not having utilised the opportunity to seek clarification under Section 5(3) of the Act with regard to the height of or any other specification of the Almatti Dam is not entitled to raise this dispute in this Court by filing a suit under Article 131 of the Constitution. The defendant-State of Karnataka reiterated that the utilisation of water under the U.K.P. first at Almatti and later at Narayanpur downstream, is entirely within the scope of 173 TMC and in any event within the aggregate share of 734 TMC allocated to the defendant Karnataka and the construction of the Upper Krishna Project at Almatti and at Narayanpur is all consistent with the work specifications prescribed by the Expert technical bodies in all respect including the provision for river sluices. In respect of Clause XV of the Final Order of the tribunal, the defendant averred that the quantity of 155 TMC considered in respect of Upper Krishna Project does not restrict the defendant Karnataka from planning increased utilisations by taking into account quantities of 34 TMC regeneration, 23 TMC of water by diversion of Godavari waters and of 50% of the surplus flows becoming available after the adoption of Scheme B devised by the tribunal. It is contended that the tribunal having not provided for allocation or utilisation project-wise, so long as there has been no contravention of the mass allocation made, the plaintiff has no grievance and is not entitled to file the suit. It has been stated in the written statement that in the re-submitted modified proposal dated 21st of April, 1996 for Upper Krishna Project Stage II as multi-purpose project, incorporating compliance of the various comments of CWC and also then again proposing a FRL of 524.256 meters, clearly stating that even though the dam was to be raised to its

final level of 524.256 m, the utilisation for irrigation would be only 173 TMC as per the readjustment of the project-wise allocations in the Master Plan within the scope of the Scheme A allocation of 729 TMC and as such, there has been no deviation, so far as the height of the dam at Almatti is concerned. With regard to the allegations made in the plaint, concerning development seeking a political solution to the dispute, the defendant-Karnataka denies all the averments made in that respect and asserts that execution of projects is within its entitlement and limits permitted by the decision of the tribunal. With regard to the initiative taken by the Prime Minister of India by holding a meeting on 10.8.1996, it has been stated that such initiative was frustrated by the uncompromising and unreasonable attitude of political leaders of Andhra Pradesh. So far as the Committee of four Chief Ministers are concerned, it has been averred that the Committee of Experts, constituted by the four Chief Ministers even did not frame any terms of reference for consideration, though requested by the State of Karnataka and it conducted the proceedings in a summary manner. The Chief Minister of Karnataka in fact had apprised the Chief Minister of West Bengal about the same by letter dated 19.12.1996 and after receipt of the so-called report of the Expert Committee, the Chief Minister of Karnataka had conveyed its reaction to the findings by his letter dated 25.2.1997 to which the Chief Minister of West Bengal had replied that the points are being examined and according to the State of Karnataka, the matter remained inconclusive and as such cannot have any binding effect. In the written statement, the defendant No. 1 also averred that the findings of the said Expert Committee are erroneous. With regard to the allegations in the plaint that storage of huge quantity of water by construction of Almatti Dam would affect the interest of Andhra Pradesh and its inhabitants, the defendant Karnataka denies the same and also stated that the dam is intended to utilise about 173 TMC of water for irrigation and the remaining storage water will be used for non-consumptive purpose i.e., production of power and, therefore, the water will flow down to Andhra Pradesh and the said State will not be affected in any manner. With respect to allegations in the plaint regarding incorporation of Chamundi Power Corporation Ltd., the State of Karnataka has averred that the State is pursuing the matter before the Central Electricity Authority in accordance with law and the question of getting the consent of the plaintiff does not arise. So far as the assertions made in the plaint about the cascading and far-reaching effect on the environment is concerned, the State of Karnataka denies the same. On the question of alleged submergence, it has been averred that the State of Karnataka would take all adequate steps to provide compensation in accordance with law and rehabilitate the displaced population, if any. The assertions that Almatti Dam would render the major projects in Andhra Pradesh redundant, has been denied. So far as the allegation regarding violation of environmental law is concerned, it has been averred in the written statement that the applications for environmental clearance are under process by the Government of India and the State of Karnataka has not done anything without the appropriate clearance from the Appropriate Authorities. According to the defendant-State of Karnataka, the averments in the plaint are mis-leading and lacking of bona fides and all allegations and insinuations against the Chief Minister of Karnataka are denied. All other allegations of illegality

being perpetuated by the State of Karnataka have been denied. So far as creation of Jal Nigam is concerned for effective execution of the Upper Krishna Project, the State of Karnataka contends that the said Nigam is wholly Government owned company and all its activities are controlled by the Department of Irrigation, Govt. of Karnataka and, therefore, the allegation of the plaintiff that the State is abdicating its responsibility for the execution of the project is incorrect and is denied. It has been categorically averred that the Karnataka State would be subjected to irreparable loss if the works at Almatti are stopped and the State of Andhra Pradesh wants to reap the benefit of the liberty to use the surplus water flowing in the river in view of the mass allocation made in favour of the three States. It has been specifically averred that the storage of additional water between the height of 519.6 to 524.256 meters will be used for power production only and not for irrigation till the augmentation of waters by Godavari diversion and surplus waters under Scheme B is made available. It has been specifically averred as to how the Government of Karnataka has sought for approval for taking up the cluster of hydel projects at Upper Krishna Project in phases and how the Central Electricity Authority has accorded in-principle clearance. At the cost of repetition, the State of Karnataka has averred that there has been no deviation of the decision of the tribunal and the Almatti Dam has been planned for utilisation of the allocated water by the tribunal in favour of the State of Karnataka. According to this defendant, the State of Andhra Pradesh being the last riparian State is receipient of abundant waters comprising the un-utilised share of upper riparian States in addition to its allocations made in its own favour and, therefore, no case has been made out establishing any injurious hardships so as to entitle the State to get a discretionary relief of injunction. The defendant also averred that the plaintiff has not placed an iota of evidence based of any acceptable material establishing the alleged loss of drinking water, food grains or unemployment and all such allegations are falacious. According to the State of Karnataka, all the revised schemes at all relevant times had been submitted before the Appropriate Authorities of the Central Government and projects are being taken up only after getting clearance from the competent authorities. It has been averred at the end that the basis of the suit being that the allocation made by the tribunal is project-wise and the said basis being in-correct, the plaintiff is not entitled to the reliefs prayed for by filing the suit under Article 131 of the Constitution.

Union of India defendant no. 2 in its written statement raised the preliminary objection about the maintainability of the suit on the ground that the suit as framed is not maintainable in view of Article 262 of the Constitution of India read with Section 11 of Inter-State Water Disputes Act, 1956. Generally denying the allegations made in the plaint the Union of India took the positive stand that Karnataka multipurpose project Stage II which envisages generation of Hydropower is still under examination and the project report provides for Hydropower generation by storing water at the addition of storage space from 519.6 M to 524.256 M and it has been indicated that after generating the Hydropower the tail race water after power generation will be let into the river Krishna and the utilisation of river Krishna water under UKP will be within

173 TMC. With regard to the plaint allegation that under the Award Tribunal has allocated water projectwise, the Union of India submitted that the allocation of water is gross allocation and not the project wise allocation. It has been further stated that the State is entitled to utilise the gross amount of water for any such projects and so long as utilisation by Karnataka is within 173TMC in upper Krishna project, there is no violation of Krishna Water Disputes Tribunal Award. It has also been indicated that Stage I of UKP has been approved and Stage II is under various examination and not yet been approved. So far as the plaint case that Central Government is required to consult other States while clearing projects of one State, it has been averred that there is no obligation on the Central Government to consult said party State while clearing projects of other party State of Krishna basin when they are within the framework of KWDT Award. The financial assistance by Central Government is being given to the State in the shape of grants and loans. So far as Almatti project in particular is concerned the stand of the Union Government in its written statement is that UKP stage I has already been approved and it was approved by the Planning Commission on 22nd April, 1978 under which the construction of Almatti Dam to a partial height corresponding to FRL 512.2 m with solid spillway crest level at EL 500 m and with 12.2 m high gates. But in view of the technical difficulty of dismentaling and reerecting the radial gates of such height in Stage II, the Government of Karnataka desired to do construction of Almatti dam with full section as required for ultimate stage and solid crest upto 512 m in UKP Stage I itself. The revised proposal of Government of Karnataka was examined by the Central Water Commission and considered by Technical Appraisal Committee in its 20th Meeting held on 12.5.1982. The TAC recommended that the clearance of the Government of India for raising Almatti Dam in full width upto EL 500 m may be accorded subject to the observation that revised estimate be submitted by the State Government. Subsequently, the State Government came up with modified proposals with Almatti spillway crest at EL 509 m and 15.2 high radial gates with a view to reduce submergence under Stage I of the project. This revised stage I estimate got the approval of the Planning Commission on 24.4.1990. According to the written statement of the Central Government, Stage I of UKP was duly approved by the Central Water Commission as well as by the Planning Commission with certain modifications enabling the State Government to take upto Stage II at later stage. It has further been averred that the Karnataka Government has revised Upper Krishna project Stage II (1993) as UKP Stage II Multipurpose project (1996) and that project is under examination. The State of Andhra Pradesh has sent their comments to the said project and various appraising agencies are checking the design of gates from the structural aspect. But no final approval has been given. The allegation of State of Andhra Pradesh that Central Government adopted partisan attitude has been denied and on the other hand it has been stated that the State of Andhra Pradesh has not been able to prove that by constructing Almatti Dam the State of Karnataka will be utilising more water than allocated by KWDT. It is in this context the Central Government has also averred that the State of Andhra Pradesh is constructing Telugu Ganga Project which is an unapproved Project. So far as the allegation in the plaint that State of Andhra Pradesh had not been consulted before the Department of Environment and Forest cleared the Upper Krishna Project, it has been averred that

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

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

The State of Maharashtra Defendant No.3 filed a written statement fully supporting the stand taken by the State of Karnataka and it has been averred in the written statement that the complaint of State of A.P. proceeds on certain assumptions which are not correct. With regard to the main question, namely, whether there was enbloc allocation or project wise allocation the defendant State of Maharashtra categorically avers that the Tribunal equitably allocated the waters of the river Krishna by allocating the quantities enbloc or in mass quantities. Though it has discussed individual projects of each State only for the limited purpose of assessing the needs of each State in accordance with the principles of equitable distribution. It has further been stated in the said written statement that apart from the restrictions expressly stated in the final order of the Tribunal which has been notified by the Central Government no other restrictions have been imposed on the method of use by each State within the allocated share of the State concerned and Tribunal has not put any restriction on the storage by each State and according to Clause VII of the final order the storage of water by each State would not be considered as use of water by the State concerned. In the very written statement several paragraphs of the Report of the Tribunal have been quoted to indicate that the ultimate allocation was enbloc and not projectwise and further there has been no restriction or restraint placed by the Tribunal with regard to storage, size and height of dams in the Krishna Basin. The State has also referred to the subsequent conduct, that after the submission of original report and the decision of the Tribunal the State of Andhra Pradesh infact filed clarification note 9 and 10 on 7.5.1975 and 8.5.1975 raising objection to the storage but ultimately withdrew those notes and did not want any clarification on the subject of storage which fortifies stand of the State of Maharashtra that there is no restriction on any State in respect of storage of water within the Krishna Basin so long as it does not exceed the enbloc allocation given by the Tribunal. According to this defendant the relief sought for in the plaint would tantamount to a complete re-writing of the decision of the Tribunal which would be outside the scope of a suit under Article 131 of the Constitution. After refuting the stand taken by the State of Andhra Pradesh in the plaint in paragraph 16 of the written statement the State of Maharashtra submitted , that the plaintiff does not deserve

to be granted any of the prayers prayed for in this para and the Suit should be dismissed with costs. Having filed the aforesaid written statement on 7th July, 1997 fully supporting the stand taken by the State of Karnataka and seeking relief of the dismissal of the suit filed by the State of Andhra Pradesh an additional written statement was filed by the said State on 9th April, 1999 giving a clear go bye to the earlier wirtten statement and taking a new stand in relation to the alleged construction of Almatti Dam with FRL RL 524.56 m. by the State of Karnataka. In this additional written statement it has been averred that by raising the dam height at Almatti, there is likelihood of enormous damage to private and public properties and works and structures including archeological structures and pilgrimage places in the State of Maharashtra. There would also be disruption of communications, enhanced distress and damages during floods each year due to sedimentation. It has been further averred that the details of the magnitude, duration and extent of submergence were not clear to the State of Maharashtra as the said submergence has not been discussed by the Tribunal itself but on getting subsequent documents from the State of Karnataka and on ascertaining the effect of the proposed Almatti Dam at 524.256 m it appears that there would be large scale submergence of area in the State of Maharashtra and no State should be allowed to have its project which will have deleterious and adverse effect on the other State. It is in this connection in the additional written statement it has been further averred that the said State of Karnataka has not obtained the relevant clearance from different environment authorities and forest authorities and even the Central Water Commission has not given the clearance and, therefore, the State of Karnataka should be injuncted from raising the dam height from 519.00 m. to 524.256 m. until and unless the actual area likely to be submerged is made known after due survey. In the written statement the adverse effect of submergence have been indicated in different paragraphs and ultimately it has been prayed that the prayer h, i & j sought for by the plaintiff so far as it relates to Almatti Dam under UKP should be allowed, namely, the State of Karnataka should be injuncted. Though the State of Maharashtra filed the aforesaid additional written statement taking the stand totally contrary to the stand taken earlier but no order had been passed on the same and it is only when the hearing of this suit began the Court passed an order that without prejudice to the contention of the State of Karnataka the said additional written statement be taken into consideration on the basis of which an additional issue is also required to be framed.

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

1.Whether the State of Karnataka has violated the binding decisions dated 24.12.1973 and 27.05.1976 rendered by the KWDT by executing the projects mentioned in para 66, 68n & 69 of the Plaint? (A.P./KAR) 2.Has this Honble Court jurisdiction to entertain and try this suit? (MAH.) 3. Does the Plaintiff prove that the allocation of Krishna Waters by the KWDT in its Final Order are specific for projects and not enbloc as contended by the Defendant? (MAH.) 4.Does the Plaintiff prove that the upper States are not entitled to construct project without reference to and consent of the other States? (MAH.) 5.Whether the Plaintiff is entitled to a declaration that all the projects executed

and/or which are in the process of execution by the State of Karnataka, and not in conformity with or in conflict with the Decisions of the KWDT are illegal and unauthorised? (A.P.) 6.Is not the Union Government duty bound to consult all the riparian States before according any approval/sanction/clearance in principle clearances to any schemes, projects proposed/undertaken, by any of the riparian States on the Inter-State river Krishna? (A.P.) 7.Whether the sanctions and the approvals granted by the 2nd Defendant to the State of Karnataka for the projects referred to in Issue I, without the prior concurrence of State of Andhra Pradesh are valid and binding upon the Plaintiff?(A.P.) 8.Whether sanctions and the approvals granted by the 2nd defendant are liable to be reviewed, reconsidered afresh, after obtaining the views thereon of the other riparian States?(A.P.). 9.(a) Whether the construction of the Almatti dam with a FRL of 524.256 m together with all other projects executed, in progress and contemplated by Karnataka would enable it to utilise more water than allocated by the Tribunal? (A.P.) (b) Whether Karnataka could be permitted to proceed with construction of such a dam without the consent of other riparian States, and without the approval of the Central Government? (A.P.) 10.Whether the Plaintiff proves that the reservoir and irrigation canals as alleged in paragraph 68 of the Plaint are oversized. If so, are they contrary to the Decision of the Tribunal? (A.P.) 11.Whether the Plaintiff State of Andhra Pradesh proves specific allocation/utilisation for UKP and canals as alleged? (A.P.) 12.Whether State of Karnataka is entitled to provide for any irrigation under Almatti canals and other new projects, when no allocation is made under the decisions of the KWDT? (A.P.) 13.Whether the Defendant State of Karnataka is entitled unilaterally to reallocate/readjust the allocation/utilisation under the UKP or any other project? Is concurrence of other riparian States necessary? (A.P.) 14.Whether the Union of India can permit and/or is justified in permitting the State of Karnataka to proceed with various projects which are in violation of the decisions rendered by KWDT? (A.P.) 15.Whether Upper Krishna Stage-II Multipurpose Project could be executed without the environmental clearance under the Environment (Protection)Act,1986 and the Notification issued by the Central Government in 1994 in exercise of its power under the said Act and the Rules made thereunder which mandatorily requires various analysis including dam break analysis?(A.P.) 16.Whether the acts of the State of Karnataka adversely effect or would adversely effect the State of Andhra Pradesh, and if so, with what consequences?(KAR) 17.Whether Hippargi was always part of the UKP and on that basis the KWDT awarded 5 TMC utilisation thereunder ?(A.P.) 18.Whether the utilisation of water under Chikkapada Salagi, Heggur and 5 other barrages is not 33 TMC as assessed by the Plaintiff State?(A.P.) 19.Whether the cumulative utilisations in the K2 sub-basin is 173 TMC as claimed by the State of Karnataka or 428.75 TMC as assessed by the Plaintiff State?(A.P.) 20.Whether the State of Karnataka has violated the KWDT award by proceeding with several new projects in the sub-basin such as K-6, K-8 and K- 9 in respect of which restrictions in quantum of utilisation have been imposed in the final decision of the Tribunal? (A.P.) 21.Whether utilisation under Almatti would be of the order of 91 TMC as claimed in para 66(iii) of the plaint?(A.P.) 22.To what reliefs if any, the plaintiff is entitled to?(A.P.) The additional issue framed as 9(C), because of the additional written statement filed on behalf

of defendant no.3 is to the effect, Whether Karnataka can be permitted to raise the storage level at Almatti dam, above RL 509.16 meters in view of the likely submergence of territories in Maharashtra.

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

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

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

In course of hearing of the suit arguments had been advanced on behalf of the State of Karnataka by Mr. Nariman that the aforesaid partial decree in terms of prayer a of OS No. 2 of 1997 unequivocally indicates that the entire report i.e. 24.12.1973 and the further report dated 27.5.1976 in entirety must be held to be binding upon three riparian States, and that being the position, there is no logic on the part of the State of Andhra Pradesh to resist the prayer of Plaintiff No. 1 in OS No. 1 of 1997 to make Scheme B binding on parties which Scheme obviously form a part of the report and the further report. Mr. Ganguli, learned senior counsel appearing for the State of Andhra Pradesh on the other hand contended, that a prayer made by the plaintiff has to be understood in the context of the averments made in the plaint itself and not bereft of the same. According to Mr. Ganguli prayer a in the case in hand, if read in the light of the averments made in the plaint itself it would only mean that the plaintiff State

having averred in the plaint that the Tribunal had made projectwise allocation which should be read into the final decision of the Tribunal which has been notified in the Official Gazette by the Government of India and, therefore, the State of Karnataka is not entitled to raise the height of the Dam at Almatti to 524.256 meters whereby it would be able to store more than 200 TMC of water with the utilisation capacity of about 400 TMC. It is in this context Mr. Ganguli placed before us paragraphs 3.1, 3.2 and 3.3 of the written statement to indicate to us as to how the said defendant understood the prayer a in the plaint. Mr. Ganguli ultimately urged that the final order of the Tribunal can be equated with a decree in a civil suit and decree must be consistent with the judgment and, therefore, applying the said analogy the final order requires to be read in the light of the adjudication made by the Tribunal in the final report. The learned counsel placed reliance on the following decisions in support of the aforesaid contentions:-

(i) Kalikrishna Tagore vs. The Secretary of State LR 15 Indian Appeals 186 at 192.3 (ii) Law Report 25 Indian Appeals at 107-08 (iii) 1913 Vol. 25 Madras Law Journal 24.

At the outset we are unable to accept the contention of Mr. Ganguli that the decision of the Tribunal which is ultimately notified under Section 6 of the Act can be held to be a decree of a suit and the report being the judgment and, therefore, the decided case laws on which reliance has been placed has no application at all. The inter-State Water Disputes Act having been framed by the Parliament under Article 262 of the Constitution is a complete Act by itself and the nature and character of a decision made thereunder has to be understood in the light of the provisions of the very Act itself. A dispute or difference between two or more State Governments having arisen which is a water dispute under Section 2(C) of the Act and complaint to that effect being made to the Union Government under Section 3 of the said Act the Central Government constitutes a Water Disputes Tribunal for the adjudication of the dispute in question, once it forms the opinion that the dispute cannot be settled by negotiations. The Tribunal thus constituted, is required to investigate the matters referred to it and then forward to the Central Government a report setting out the facts as found by him and giving its decision on it as provided under Sub-Section (2) of Section 5 of the Act. On consideration of such decision of the Tribunal if the Central Government or any State Government is of the opinion that the decision in question requires explanation or that guidance is needed upon any point not originally referred to the Tribunal then within three months from the date of the decision, reference can be made to the Tribunal for further consideration and the said Tribunal then forwards to the Central Government a further report giving such explanation or guidance as it deems fit. Thereby the original decision of the Tribunal is modified to the extent indicated in the further decision as provided under Section 5(3) of the Act. Under Section 6 of the Act the Central Government is duty bound to publish the decision of the Tribunal in the Official Gazette whereafter the said decision becomes final and binding on the parties to the dispute and has to be given effect to, by them. The language of the provisions of Section 6 is clear and unambiguous and unequivocally indicates that it is only the decision of the Tribunal which is required to be published

in the Official Gazette and on such publication that decision becomes final and binding on the parties. It is not required that the report containing the arguments or basis for the ultimate decision is also required to be notified so as to make that binding on the parties. This being the position, it is difficult to appreciate the contention of Mr. Ganguli that the decision of the Tribunal as notified, is in fact a decree of a civil suit and that decree has to be understood in the light of the judgment of the suit. We accordingly are not persuaded to accept the submission of Mr. Ganguli on this point but, at the same time we cannot accept the argument of Mr. Nariman that the order of this Court dated 30th September, 1997 passed in the suit in terms of prayer a must be held to mean that a decree is to be drawn up in OS 2 of 1997 making the entire report and the further report binding on the parties. When a prayer is made in the plaint the said prayer has to be understood in the light of the assertion of facts on which the prayer has been made. The defendant State of Karnataka understood the prayer on that basis as would appear from the averments made in the written statement of defendant no. 1 in paragraphs 3.1, 3.2 and 3.3. The aforesaid prayer had been made for the relief that notwithstanding enbloc allocation made in the final order of the Tribunal which is the decision of the Tribunal but the very basis to arrive at that decision being the projectwise allocation contained in the report the said projectwise allocation must be read into the enbloc allocation and, therefore, there must be restriction on the part of the State of Karnataka not to use more water in Upper Krishna Project than the allocated quantity of 160 TMC. Thus read the order of this Court dated 30th September, 1997, cannot be construed to mean that a decree has to be passed making the entire report as well as the further report of the Tribunal binding on the parties. So far as the question whether allocation made enbloc or projectwise the same has been answered while discussing issues nos. 1, 3 and 5 and in this view of the matter the earlier order dated 30th September, 1997 is of no consequence in disposing of the suit in question.

ISSUE Nos. 1, 3 and 5: Though, there are as many as 22 issues, which have been framed and necessarily to be answered in the suit, but in course of arguments advanced by Mr. Ganguli, the learned senior counsel, appearing for the State of Andhra Pradesh, the entire emphasis was on the height of Almatti Dam Stage-II at 524.256 meters, as proposed by the State of Karnataka and as it appears from various project reports. In view of the arguments advanced by the counsel for the parties, these three issues essentially form the bone of contention. It is necessary to be stated that too many issues have been framed by the three different States and Court has also permitted such issues to be struck and most of the issues over-lap one another and in fact have no bearing in relation to the prayer made by the plaintiff. But instead of re-framing the issues, arguments having been advanced by the counsel for the parties, we would deal with each of them, but with specific emphasis on the vital issues. So far as the three issues with which we are concerned at the moment, when read with the paragraphs of the plaint, dealing with the same, it appears that the plaintiff Andhra Pradesh has made out a case in the plaint that under Scheme A which is the decision of the tribunal and which has been notified by the Central Government under Section 6 of the Inter-State Water Disputes Act, though

there has been allocation of water enbloc but on going through the report itself and the very basis on which the mass allocation has been quantified, it would indicate that project-wise allocation must be read into the so-called mass allocation. This being the position, in Upper Krishna Project, the tribunal having allocated only 160 TMC of water, construction of Almatti Dam to a height of 524.256 meters itself constitutes an infraction of the decision of the tribunal, and, therefore, the Court should injunct the State of Karnataka from constructing a dam at Almatti up to the height of 524.256 meters. The stand of the State of Karnataka in the written statement filed as well as the stand of Union Government and State of Maharashtra in its original written statement filed however is that, there has been an enbloc allocation by the tribunal and consequently, there has been no fetter on any State to utilise water up to a limited quantity in any of its project, except those mentioned in the order of the tribunal itself and that being the position, the plaintiff would not be entitled to an order of injunction in relation to the construction of Almatti Dam to a height of 524.256 meters. Before we focus our attention to the evidence on record in answering these three issues, in the light of arguments advanced by the counsel for the parties, it must be borne in mind that injunction being a discretionary remedy, a Court may not grant an order of injunction, even if all the three necessary ingredients are established and those ingredients are prima facie case of infraction of legal rights, such infraction causes irreparable loss and injury to the plaintiff and the injury is of such nature that it cannot be compensated by way of damages. In the case in hand, when the plaintiff has prayed for an order of mandatory injunction to injunct the State of Karnataka from constructing the dam at Almatti to a height of 524.256 meters and makes out a case of infringement of legal rights of the State of Andhra Pradesh, flowing from the decision of the Krishna Water Disputes Tribunal, which decision has become final and binding on being notified by the Union Government under Section 6, what is required to be established is that in fact in the said decision of the tribunal, there has been a project-wise allocation in respect of Upper Krishna Project and if this is established, then the further fact required to be established is whether by construction of Almatti Dam up to a height of 524.256 meters, there has been any infraction of the said decision of the tribunal which has caused irreparable injury and damage to the lower riparian State of Andhra Pradesh and the said damage cannot be compensated by way of damages. Since the plaintiff-State has to establish all the aforesaid requirements, so that an order of injunction, as prayed for, can be granted, let us examine the very first ingredient namely whether under the decision of the tribunal, there has at all been a project-wise allocation as contended by Mr. Ganguli, appearing for the State of Andhra Pradesh or the allocation was enbloc, as contended by Mr. Nariman, appearing for the State of Karnataka and reiterated by Mr. Salve, the learned Solicitor General and Mr. Andhyarujina, appearing for the State of Maharashtra. While deciding the Original Suit No. 1 of 1997, filed by the State of Karnataka, negativing the contention of the said State to the effect that Scheme B evolved by the tribunal, whether forms a decision of the tribunal or not, we have already recorded the finding that Scheme B cannot be held to be the decision of the tribunal inasmuch as it is only that order of the tribunal which conclusively decides the dispute

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

Clause V (A) The State of Maharashtra shall not use in any water year more than the quantity of water of the river Krishna specified hereunder:- (i) as from the water year commencing on the 1st June next after the date of the publication of the decision of the Tribunal in the Official Gazette upto the water year 1982-83 560 TMC. (ii) as from the water year 1983-84 up to the water year 1989-90 560 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1975-76, 1976-77 and 1977-78 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (iii) as from the water year 1990-91 up to the water year 1997-98 560 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1982-83, 1983-84 and 1984-85 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (iv) as from the water year 1998-99 onwards 560 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (B) The State of Karanataka shall not use in any water year more than the quantity of water of the river Krishna specified hereunder:- (i) as from the water year commencing on the 1st June next after the date of the publication of the decision of the Tribunal in the Official Gazette up to the water year 1982-83 700 TMC (ii) as from the water year 1983-84 up to the water year 1989-90 700 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1975-76, 1976-77 and 1977-78 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (iii) as from the water year 1990-91 up to the water year

1997-98 700 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1982-83, 1983-84 and 1984-85 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (iv)as from the water year 1998-99 onwards 700 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (C) The State of Andhra Pradesh will be at liberty to use in any water year the remaining water that may be flowing in the river Krishna but thereby it shall not acquire any right whatsoever to use in any water year nor be deemed to have been allocated in any water year water of the river Krishna in excess of the quantity specified hereunder:- (i) as from the water year commencing on the 1st June next after the date of the publication of the decision of the Tribunal in the Official Gazette up to the water year 1982-83. 800 TMC (ii) as from the water year 1983-84 up to the water year 1989-90. 800 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (iii) as from the water year 1990-91 up to the water year 1997-98 800 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1982-83, 1983-84 and 1984-85 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (iv) as from the water year 1998-99 onwards 800 TMC plus a quantity of water equivalent to 10 per cent of the excess of the average of the annual utilisations for irrigation in the Krishna river basin during the water years 1990-91, 1991-92 and 1992-93 from its own projects using 3 TMC or more annually over the utilisations for such irrigation in the water year 1968-69 from such projects. (D) For the limited purpose of this Clause, it is declared that :- (i) the utilisations for irrigation in the Krishna river basin in the water year 1968-69 from projects using 3 TMC or more annually were as follows:- From projects of the State of Maharashtra- 61.45 TMC From projects of the State of Karnataka- 176.05 TMC From projects of the State of Andhra Pradesh- 170.00 TMC (ii) annual utilisations for irrigation in the Krishna river basin in each water year after this Order comes into operation from the project of any State using 3 TMC or more annually shall be computed on the basis of the records prepared and maintained by that State under Clause XIII. (iii) evaporation losses from reservoirs of projects using 3 TMC or more annually shall be excluded in computing the 10 per cent figure of the average annual utilisations mentioned in sub-Clauses A(ii), A(iii), A(iv), B(ii), B(iii), B(iv), C(ii), C(iii) and C(iv) of this clause.

The aforesaid Clause V, no doubt is in a negative form, prohibiting the State of Maharashtra and State of Karnataka from using in any water year more than the water that has been allotted in their favour respectively but by

no stretch of imagination, any restriction can be said to have been put on any of the States in the aforesaid Clause V, so long as they do not use more than the quantity allotted in their favour in any water year. In other words under Clause V of the decision, the State of Maharashtra is entitled to use up to 560 TMC in any water year and the State of Karnataka similarly is entitled to use up to 700 TMC in any water year. The language used by the tribunal in formulating Clause V of the decision is clear and unambiguous and as such it is difficult for the Court to read into it any restrictions as submitted by the learned senior counsel, appearing for the State of Andhra Pradesh. We may mention at this stage, that the original report and the decision of 1973 was marked as Exhibit PK-1 in OS 1/97 and the further repot and the decision of 1976 was marked as Exhibit PK-2 in OS 1/97, and those two documents having been referred to by the parties in course of arguments as PK- 1 and PK-2. We have also in judgment referred as PK-1 and PK-2 which were exhibited as such in OS 1/97.

Mr. Ganguli, the learned senior counsel however contended before us that before the tribunal, each of the three riparian States claimed water for their various projects, covering utilisation to the order of 4269.33 TMC, as is apparent from Exhibit PKI itself and then at a subsequent stage of the proceedings before the tribunal, all the party States agreed that 75% dependable flow up to Vijayawada in the river Krishna is 2060 TMC, which is, therefore much less than the total demand made by each of the States, amounting to 4269.33 TMC. The learned counsel further urged that all the three States entered into an agreement on 7.5.1971, indicating therein that 20 of the projects in Maharashtra, 13 projects in Karnataka and 17 projects in Andhra Pradesh should be protected and the parties also agreed to the specified quantity of utilisation of water in respect of each of the projects which could be treated as protected utilisation and total of such protected utilisation came to 751.20 TMC, as is apparent from the Original Report Exhibit PKI. It is the further contention that since in respect of one project in Maharashtra, five projects in Karnataka and five projects in Andhra Pradesh, the parties could not agree to the quantity of utilisation which should be protected and all the States invited the tribunal to decide the extent of utilisation to be protected in respect of those 11 projects and the tribunal adjudicated the additional utilisation to the extent of 714.91 TMC in respect of 9 out of the 11 projects and thus the total protected utilisation out of the dependable flow at 75% dependability worked out at 1693.36 TMC , which of course includes 227.25 TMC on minor irrigations. Having thus arrived at the figure of 1693.36 TMC for protected utilisation, the balance quantity out of the dependable flow to the extent of 366.64 TMC was further distributed by the tribunal to the extent of 50.84 TMC to Andhra Pradesh for Srisailam reservoir and Jurala Project. Out of the remaining 315.80 TMC, taking into consideration all germane factors, the tribunal allocated 125.35 TMC to Maharashtra and 190.45 TMC to Karnataka. Mr. Ganguli contends that while making these allocations, so far as Upper Krishna Project in the State of Karnataka is concerned, the tribunal merely permitted utilisation of only 52 TMC in the Right Bank Canal of Narayanpur in addition to the protected utilisation of 103 TMC already granted in respect of the Left Bank Canal under the Narayanpur Canal and, therefore, the total worked out at 155 TMC and there had been no

allocation made by the tribunal so far as Almatti Dam is concerned. At a later stage when in its Further Report Exhibit PK2, the tribunal allocated additional 5 TMC for utilisation under Hippargi Project, the conclusion is irresistible that in Upper Krishna Projects in Hippargi, Almatti and Narayanpur, a total quantity of 160 TMC was allocated and this must be read into the Final Order in Clause (V), though not specifically mentioned therein. It is in this connection, Mr. Ganguli took us through the different pages of Exhibit PKI as well as the plaint and the written statement of the State of Karnataka. But as has been stated earlier, if the decision of the tribunal is its Final Order, as notified by the Central Government in exercise of power under Section 6 of the Act, we really fail to understand, how the aforesaid limitations can be read into the said decision, particularly, when Clause (V) of the decision is clear and there is no ambiguity in the same. It is undoubtedly true that while considering the question of extent of allocation of water in favour of the three riparian States out of 2060 TMC of water at 75% dependability, the tribunal did take into account the different projects already undertaken by different States but consideration of those projects is only for the purpose of arriving at the quantity of water to be allocated and not for making any project-wise allocation, as contended by Mr. Ganguli. In Exhibit PKI itself, the tribunal records to the following effect : Our examination of the project reports and other relevant documents has a very limited purpose and it is to determine what are the reasonable needs of the two States so that an equitable way may be found out for distributing the remaining water between the two States. It is of course, always to be borne in mind that the allocation of waters though based on consideration of certain projects being found to be worth consideration are not on that account to be restricted and confined to those projects alone. Indeed the States (and this applies to all the States) would be entitled to use the waters for irrigation in such manner as they find proper subject always to the restrictions and conditions which are placed on them.

This unequivocally indicates the purpose for which the projects of different States were being examined and it is explicitly made clear that the States should be entitled to use the waters for irrigation in such manner as they find proper, subject, always to the restrictions and conditions which are placed on them. Unless, therefore, any restriction or conditions in the decision of the tribunal can be found out for utilisation of a specific quantity of water out of the total allocated share in the Upper Krishna Project, there cannot be any fetter on the part of the State of Karnataka to make such user. In the decision of the tribunal, there does not appear to be an iota of restrictions or conditions, which even can be inferred and, therefore, the submission of Mr. Ganguli, appearing for the State of Andhra Pradesh on this score cannot be accepted.

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

the exact findings of the Tribunal in this regard:-

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

The aforesaid finding fully negatives the contention of Mr. Ganguli, appearing for the State of A.P., that the allocation was projectwise which can be read into the final order. Clause IX of the final order has placed restriction on the use of water in the Krishna Basin by the three States. The reasons for putting such restrictions appears to be that on the main stream there has been only restriction on river Bhima whereas on the side streams there has been restriction in case of Tungbhadra and Vedavathi sub-basin. Even in case of sub-basin K-3 there has been restriction on the State of Maharashtra from using more than 7 TMC in any water year from Ghataprabha and the reason for such restriction is that the requirements of the State of Mysore for the projects in that sub-basin may suffer. Similarly restriction has been placed on the State of Andhra Pradesh not to use more than 6 TMC from the catchment of the river Koyna, the idea being that the waters of that river would reach the main streams of river Bhima. Even while placing such restriction the Tribunal has placed the upper limit slightly above the total requirements of that State as assessed from the demands made which had been either protected or which have held as worth consideration. The very fact that restrictions have been put by the Tribunal in several sub-basins and no restriction has been put so far as sub-basin K-2 wherein Upper Krishna Project of the State of Karnataka is being carried on clinches the point raised by the State of Andhra Pradesh and discussed in these three issues, namely, it is not possible to read any restriction for quantity of user of water in Upper Krishna Project by the State of Karnataka and so long as the total user does not exceed mass allocation, it cannot be said that the decision of the Tribunal is being violated infringing the rights of the State of Andhra Pradesh which can be prohibited by issuing any mandatory injunction. After receiving the copy of the report and the decision of the Tribunal under Exhibit PK-1 the State of Andhra Pradesh filed application for clarification, being clarification No.4 under Section 5(3) of the Act, requesting reduction of 1.865 TMC from the Koyna Project of State of Maharashtra. Having filed such application on 5th March, 1976, the learned Advocate General of the State of Andhra Pradesh did

not press the said clarification No.4 on the ground that the allocations are enbloc which is apparent from Exhibit PK-2 dealing with clarification no.4. Having made an unequivocal statement before the Tribunal itself that the allocations are enbloc we fail to understand how the State of Andhra Pradesh has filed the suit making out a case that there has been any project-wise allocation by the Krishna Water Disputes Tribunal. The aforesaid statement of the learned Advocate General made before the Tribunal has not been explained either in the plaint filed by the State nor even in course of hearing of the suit, and in our view, the State of Andhra Pradesh also fully understood that the allocations made under Scheme A was enbloc. It further appears from Exhibit PK-2 that the State of Andhra Pradesh did file a clarification no. 5 under Section 5(3) of the Act praying that the maximum quantity which could be utilised in K-5 and K- 6 sub-basin of the State of Maharashtra and Karnataka should be specified and ultimately on 23rd August, 1974, the learned Advocate General for the said State did not press the clarification as it had no materials on record on which he could substantiate it. The very fact that State had not filed any clarification application so far as K-2 sub-basin is concerned, though it did file such application in respect of sub-basin K-5 and K-6 as well as in case of Quana Krishna Lift Irrigation Scheme unequivocally indicates that the State had no grievance so far as the allocation enbloc made by the Tribunal and not putting any restriction of the user in K-2 sub-basin which consists of the Upper Krishna Project. This in our view, fully clinches the matter and the conclusion is irresistible that under the decision of the Tribunal there has been mass allocation and no project-wise allocation as contended by the State of Andhra Pradesh in the suit. In the aforesaid premises, we answer the three issues against the plaintiff and in favour of the defendants and hold that under the decision of the Tribunal the allocation of water in river Krishna was enbloc and not project-wise excepting those specific projects mentioned in clauses IX and X of the decision.

ISSUE NO.2

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

ISSUE NOS. 4, 6, 7 and 8

These four issues are inter-linked and have been framed in view of the positive stand taken by the State of Andhra Pradesh that in case of an inter State river when any project of one State is considered by the Government of India or any other appropriate authority the other State should also be made aware of and their consent should also

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

ISSUE NO. 9 (a) (b)

This issue is an important issue in the present suit and the relief sought for essentially depends upon the findings arrived at on this issue. The entire issue has to be decided on the basis as to whether there exists any prohibition in the decision of the Tribunal from constructing Dam at Almatti upto 524.256 meter or from storing any particular quantity of water therein. And if the answer is in the negative then the prayer for injuncting the State of Karnataka to raise the Dam height upto 524.256 has to be rejected. If the decision of the Tribunal is examined from the aforesaid stand point and in view of our conclusion that it is that final order which has been notified in the Official Gazette by the Central Government under Section 6 of the Act which is the decision of the Tribunal, we find nothing stated therein which even can be held to be a prohibition or restriction on the power of the State of Karnataka to have the height of Dam upto a particular height. In this view of the matter the plaintiffs prayer to injunct the State of Karnataka from constructing the Dam height at Almatti upto 524.256 meter cannot be granted. The issue has two sub-issues ; Sub-issue a relates to the height of Almatti Dam ;and sub-issue b being on the question whether State of Karnataka could be permitted to proceed with the construction without the consent of the other riparian States and without the approval of the Central Government? At the outset it may be stated that though the State of Karnataka had produced its project report relating to the construction of the Almatti Dam as per Exhibit PAP-42 but neither the Tribunal had considered the same nor any decision has been arrived at on the question of height of the said Dam. Even after the original report and the decision being made known under Section 5(2) of the Act as per Exhibit PK-1 the State of Andhra Pradesh also did not

raise any dispute or clarificatory application objecting to the construction of the Almatti Dam or even to the height of such Dam under Section 5(3) of the Act. In the absence of a decision of the Tribunal on the question of construction of Dam at Almatti or its height and mass allocation made, being binding upon all parties after being notified under Section 6 of the Act, the grievance relating to the construction of Dam at Almatti or to its height would be a matter of water dispute within the meaning of Section 2(C), in as much as it would be a matter concerning use of water of river Krishna and, therefore, cannot be a matter for adjudication in a suit under Article 131 of the Constitution of India. If the complaint of the State of Andhra Pradesh is that by construction of Almatti Dam which is an executive action of the State of Karnataka the State of Andhra Pradesh is likely to be prejudicially affected then also on such complaint being made to the Union Government under Section 3(a) the matter could be referred to a Tribunal for adjudication. But, we fail to understand how this Court could entertain the aforesaid lis and decide the same, particularly when the Tribunal has not focussed its attention on the same nor has made any adjudication in respect to the construction of Dam at Almatti or its height. Needless to mention that notwithstanding the allocation of water in river Krishna being made enbloc no State can construct any project for use of water within the State unless such project is approved by the Planning Commission, the Central Water Commission and all other Competent Authorities who might have different roles to play under different specific statutes. Under the federal structure, like ours, the Central Government possesses enormous power and authority and no State can on its own carry on the affairs within its territory, particulary when such projects may have adverse effect on other States, particularly in respect of an inter State river where each riparian State and its inhabitants through which the river flows has its right. From the averments made in the plaint it is crystal clear that the State of Andhra Pradesh feels aggrieved by the proposal of the State of Karnataka to have the Dam height at Almatti FRL 524.256 m. In the plaint itself in paragraph 51 the plaintiff has referred to the observation of the Committee to the effect: For required utilisation of 173 TMC at UKP the height of the Dam at FRL 519.6 m would be adequate. The Committee referred to in the said paragraph is Expert Committee which the four Chief Ministers had appointed, which Committee had examined the pros and cons of the Almatti Dam and the aforesaid views of the Expert Committee was approved by the four Chief Ministers who had been requested by the Prime Minister of India to intervene and find out the efficacy or otherwise of the stand of Karnataka to have Almatti Dam upto the height of FRL 524.256 m. The said Expert Committee had observed that the proposal of the State of Karnataka of having Upper Krishna Project with FRL 524.256 m in Stage II at Almatti has not been approved by the Government of India. And it has been further observed that it would be desirable to proceed with utmost caution in the larger interest of the Nation to wait and watch operation of various Krishna system upstream and down stream before embarking on creating larger storage at Almatti Dam than what is needed to suit the prevailing conditions. We are taking note of the observations made by the Expert Committee for the purpose that the plaintiff having failed to establish its case for getting an injuction, would it be appropriate for this Court to allow the State of Karnataka to have the height of the Dam at Almatti at 524.256 m or it would be obviously in the

larger interest of the country and all the States concerned to allow the Dam upto the height of 519.6 m and then leave it open to the States concerned to put forth their grievances before the Tribunal to be appointed by the Central Government for resolving the disputes relating to sharing of water in river Krishna. Reading the plaint as a whole it appears to us that the plaintiff State had not made any grievance for having a Dam at Almatti upto a height of FRL 519.6 m and on the other hand, the entire grievance centers round the proposal of the State of Karnataka to have the height at 524.256 m. The report of the Expert Committee referred to in the plaint has been exhibited as Exhibit PAP-212 and even that report indicates that the complaint of Andhra Pradesh was that the height of Almatti Dam at FRL 524.256m which has not been approved as yet by the Government of India, would adversely affect the lower riparian State of Andhra Pradesh both in the matter of irrigation as well as generation of power. The said report further reveals that the State of Karnataka is desirous of having the Dam height at FRL 524.256 m so that it can store its share of water available to it under Scheme B when it comes. It is only on fructification of Scheme B the need for a larger storage at Almatti would arise, and therefore, the State is planning ahead to have the height of the Dam at 524.256m. According to the report of the said Expert Committee even if the height is allowed not upto 524.256 m it can be allowed later only when the necessity arises and technically it is feasible. The report also records that for utilisation of 173 TMC at Almatti and Narainpur the height of the Dam required would be 519 m and not 524.256 m. Thus an expert body appointed by the four Chief Ministers of 4 different States who are not in any way connected with the inter-State river Krishna taking into account the present need envisaged by the State of Karnataka for utilisation of 173 TMC at Upper Krishna project and taking into account the report submitted by Indian Institute of Science at Bangalore did record a finding that the top of the shutters at Almatti should be fixed at 519.6 m which will provide a storage of about 173TMC which along with storage of 37.8 TMC at Narainpur will be adequate to take care of annual requirement of 173 TMC envisaged under Upper Krishna Project. In view of our conclusion in O.S. 1 of 1997 holding that Scheme B is not a decision of the Tribunal, and as such, cannot be implemented by a mandatory order from this Court and the stand of the State of Karnataka before the so called Expert Committee being that they have designed the height of Almatti Dam at 524.256 m keeping in view that in the event Scheme B fructifies the State will be able to get the surplus water and store it as a carry over reservoir, as observed by the Tribunal itself, notwithstanding the fact that the plaintiff has failed to establish a case on its own for getting the relief of injunction in relation to the construction of Almatti Dam by the State of Karnataka, it would be reasonable to hold that though the State can have the Dam at Almatti but the height of the said Dam should not be more than 519.6 m, particularly when the State of Karnataka has not been able to indicate as what is the necessity of having a height of Dam at 524.256 m when Scheme B is not going to be operated upon immediately. The Upper Krishna Project Stage II, detailed project report of October 1993 which has been exhibited in the present case as PAP 45 also indicates that minimum FRL required to get 173 TMC utilisation is found to be 518.7 m. It is in that report it has been indicated that it is because of probable maximum flood of 31000 qmx., the

water level is expected to go upto 521 m and, therefore, the proposal is to keep the height of the gate to 521 from the crest level with 2 mts. as the gate height. It may be stated at this stage that the height of the Almatti as approved by the Competent Authority is crest level 509 meter and it is in this context to have the height at FRL 524.256 m the State of Karnataka has proposed to have the gate height of 15 meters. But as has been indicated earlier, since the entire basis of the State of Karnataka to have the height of the Dam at 524.256 m is contingent upon implementation of Scheme B of the Tribunal thereby entitling the State of Karnataka to get its share in excess water and continue the Almatti Dam as a carry over reservoir and since we have decided against the State of Karnataka in O.S. 1 of 1997 which the State had filed for implementation of Scheme B, there is absolutely no justification for the said State to have the Dam height at Almatti of 524.256 m. We hasten to add that at the same time there cannot be any injunction or prohibition to the said State of Karnataka for having the Dam height at Almatti upto 519.6m which would be in the interest of all concerned.

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

it may be fully desirable for all the States to know about the developments of the other States but neither the law on the subject require that a State even for utilisation of its own water resources would take the consent of other riparian States in case of an Inter-State river. So far as the second part of Issue b is concerned, the answer is irresistible that the project of each State has to be approved by the Central Government as well as by other statutory authorities and the Planning Commission, but for which a State should not proceed with the construction of such project. Issues 9(a) and (b) are answered accordingly.

ISSUE 9(C) Issue 9(C) had been framed while allowing the additional written statement of the State of Maharashtra, which relates to the question of submergence. It is to be noted that in the original written statement filed by the State of Maharashtra, a positive stand had been taken that under the decision of the tribunal, there has been an enbloc allocation of water in favour of each of the three riparian states and as such there was no bar on the State of Karnataka to have a dam at Almatti up to any height and, therefore, it was prayed that the suit filed by the Andhra Pradesh should be rejected. In the additional written statement that was filed by the State of Maharashtra, it has however been averred that the eventual submergence of area within the State of Maharashtra had not been known earlier and, therefore, neither before the tribunal nor in the original written statement filed, any grievance had been made with regard to the construction of dam at Almatti to a height of 524.256 meters, but since the joint study made by the officers of both the states have brought out that a large area within the State of Maharashtra would get submerged, if Karnataka is permitted to have the dam height at Almatti up to 524.256 meters, the State of Maharashtra has brought these facts to the notice of this Court in the additional written statement and the additional issue has been framed. In the absence of any relief being sought for in the plaint by the plaintiff against the State of Maharashtra, whether the defendant State of Maharashtra can claim any relief against the co-defendant is itself a debatable issue. Mr. Andhyarujina, the learned senior counsel, appearing for the State of Maharashtra , however contended that a suit filed in the Supreme Court under Article 131 of the Constitution is of a very peculiar nature and the normal principle of a suit filed in an ordinary civil Court should not apply. According to Mr. Andhyarujina, if a dispute between the two states involving the existence or extent of a legal right of one State is being infringed by the action or in-action of another State, is brought before this Court invoking jurisdiction under Article 131 of the Constitution, this Court would be fully justified in entertaining and adjudicating the said dispute, no matter whether the dispute is raised as a plaintiff or a defendant in any proceeding before the Court. It is in this context the learned counsel referred to the observations of Bhagwati J and Chandrachud J, in the case of State of Karnataka vs. Union of India, 1978(2) SCR 1, wherein Honble Bhagwati J had indicated that the original jurisdiction of the Supreme Court under Article 131 on being invoked by means of filing a suit, the Court should be careful not to be influenced by the considerations of cause of action which are germane in suit and the scope and ambit of the said jurisdiction must be determined on the plain terms of the article without being inhibited by any a priori considerations. The learned Judge in the same

decision had also indicated that the very object of Article 131 seems to be that there should be a Forum, which could resolve such disputes between two States or the State and the Union and that forum should be the highest Court in the land so that the final adjudication of disputes could be achieved speedily and expeditiously without either party having to embark on a long tortuous and time consuming journey through a hierarchy of Courts. Mr. Andhyarujina also relied upon the observations of Bhagwati J in the aforesaid case to the effect:

What article 131 requires is that the dispute must be one which involves a question on which the existence or extent of legal right depends. The article does not say that the legal right must be of the plaintiff. It may be of the plaintiff or of the defendant. What is necessary is that the existence or extent of the legal right must be in issue in the dispute between the parties. We cannot construe Article 131 as confined to cases where the dispute relates to the existence or extent of the legal right of the plaintiff, for to do so, would be to read words in the article which are not there. It seems that because the mode of proceeding provided in Part III of the Supreme Court Rules for bringing a dispute before the Supreme Court under Article 131 is a suit, that we are unconsciously influenced to import the notion of cause of action, which is germane in a suit, in the interpretation of Article 131 and to read this article as limited only to cases where some legal right of the plaintiff is infringed and consequently, it has a cause of action against the defendant. But it must be remembered that there is no reference to a suit or cause of action in Article 131 and that article confers jurisdiction on the Supreme Court with reference to the character of the dispute which may be brought before it for adjudication. The requirement of cause of action, which is so necessary in a suit, cannot, therefore, be imported while construing the scope and ambit of Art. 131.

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

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

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

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

I consider that the Constitution has purposefully conferred on this, Court a jurisdiction which is untrammeled by considerations which fetter the jurisdiction of a Court of first instance, which entertains and tries suits of a civil nature. The very nature of the dispute arising under

Article 131 is different, both in form and substance, from the nature of claims which require adjudication in ordinary suits.

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

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

Mr. Andhyarujina submitted that the likelihood of submergence within the State of Maharashtra on account of height of dam at Almatti being raised to 524.256 meters, was disclosed only during the pendency of the present suit and the State of Karnataka itself in its letter dated 10th of August, 1998 had communicated to the State of Maharashtra that the State need not approach the Court of law on this issue as the matter can be resolved amicably. According to the learned counsel, the State of Karnataka too agreed to carry out actual field surveys and calculations to determine the extent of submergence under the directions of Central Water Commission in its meeting dated 22.2.1999 and those studies are still under progress and further the Supreme Court itself had passed an order of status quo relating to the height of Almatti Dam by order dated 2.11.1998 and consequently, the State of Maharashtra never thought it fit to file an independent suit, invoking the jurisdiction of the Court under Article 131. But the State of Karnataka having obtained the liberty from this Honble Court to proceed further with the installation of the assembly of the gates by order dated 4.11.1998 and the said State of Karnataka refusing to give an undertaking to the State of Maharashtra not to raise the height of the Almatti Dam beyond the present level of 509 meters, the State of Maharashtra was compelled to put forth its grievance on the question of likely submergence of its territory and has

prayed for the relief of injunction against the State of Karnatka for raising the dam height up to 524.256 meters. Mr. Andhyarujina also submitted that the exact extent of area to be submerged in the event the Almatti Dam is allowed to be constructed upto 524.256 meters, has not yet been ascertained and surveys are still on, but there cannot be any doubt that a large scale of the area within the State of Maharashtra would get submerged. Mr. Nariman, the learned senior counsel, appearing for the State of Karnataka did not seriously dispute the right of a co-defendant like State of Maharashtra to put forth the grievances so as to get relief against another co-defendant, though he undoubtedly, submitted that in the event, the State of Maharashtra was allowed to have the additional written statement and an adjudication of the additional issues framed, the State of Karnataka should have been given an opportunity, putting forth its case. He however contended that the dispute relating to submergence of territory of Maharashtra on account of the height of the dam at Almatti being raised to 524.256 meters, cannot be a matter of adjudication in a suit under Article 131, since the State of Maharashtra had not raised the dispute before the tribunal itself, even though the Project Report submitted by the State of Karnataka before the tribunal indicated the height of the dam at 524.256 meters. According to Mr. Nariman, such a dispute would be a fresh water dispute and would not be a part of adjudicated dispute and as such under Article 131 of the Constitution this dispute cannot be entertained and decided upon by this Court. Mr. Nariman also contended that the materials on record do not establish or do not help the Court to come to a positive finding that in the event, the Almatti Dam is raised to 524.256 meters, a large extent of the State of Maharashtra would get submerged inasmuch as the submergence, if any and the flow back, if any, would be in the river itself and not any territory beyond the river. Mr. Nariman further urged that the State of Maharashtra did anticipate submurgence of its territory as would appear from its stand before the tribunal which is apparent from paragraph 6.3.1(k) of Exh. MRK-1. It is true, according to the learned counsel that the tribunal did not consider the said question but after the Original Report was submitted, Maharashtra could have filed an application under Section 5(3) of the Act, seeking clarifications on the question of submergence but, that was not admittedly done, which would indicate that it had no grievance on the question of submergence. Having examined the rival contentions on this issue, we have no hesitation to hold that the issue must be answered against the State of Maharashtra.

It is no doubt true that the jurisdiction of the Court in a suit under Article 131 of the Constitution is quite wide, which is apparent from the language used in the said article and as has been interpreted by this Court in the two cases already referred to (see 1978 (2) SCR 1 and 1978 (1) SCR 64). It is also true that Article 142 confers wide powers on this Court to do complete justice between the parties and the Court can pass any order or issue any direction that may be necessary, but at the same time, within the meaning of Article 131, the dispute that has been raised in the present suit is between the State of Andhra Pradesh and State of Karnataka and question, therefore, would be whether it involve any existence or extent of a legal right of such dispute. In answering such a dispute, it may be difficult to entertain a further dispute on the question of submergence as raised by the State of

Maharashtra, a co-defendant. But in view of the stand taken by Mr. Nariman, without further delving into the matter and without expressing any final opinion, whether such a stand, as the one taken by Maharashtra is possible for being adjudicated upon, we would examine the merits of the said contention. A bare perusal of the report of the tribunal setting out the facts as found by it and giving its decision on the matters referred to it as per Exh.PK1 as well as the Further Report of the said tribunal, giving explanation to the application for clarifications filed by the different States, as per Exh. PK2, we find that the question of submergence within the territory of the State of Maharashtra on account of Almatti Dam in the State of Karnataka has not at all been discussed nor any opinion has been expressed thereon. The tribunal having given its decision on the question of sharing of the water in river Krishna on enbloc allocation basis, if the user of such water in a particular way, becomes detrimental to another State, then such a grievance would be a fresh dispute within the meaning of Section 2(C) read with Section 3 of the Act and it cannot be held to be an adjudicated dispute of the tribunal. We have already indicated that it is only an adjudicated dispute between the States on which a decision has been given by a tribunal constituted under Section 4 of the Act by the Government of India, can be a subject matter of a suit under Article 131, if there is any breach in implementation of the said decision of the tribunal. But a dispute between the two states in relation to the said Inter- State river arising out of the user of the water by one State would be a fresh water dispute and as such would be barred under Article 262 read with Section 11 of the Inter-State Water Disputes Act, 1956. The question of submergence of land pursuant to the user of water in respect of an Inter-State river allocated in favour of a particular State is inextricably connected with the allocation of water itself and the present grievance of the State of Maharashtra would be a complaint on account of an executive action of the State of Karnataka within the meaning of Section 3(A) and also would be a water dispute within the ambit of Section 2(C) and, therefore, it would not be appropriate for this Court to entertain and examine and answer the same. We do appreciate the concern of the State of Maharashtra, when it comes to its knowledge that there would be large-scale inundation and submergence of its territory if the height of Almatti Dam is allowed to be raised to 524.256 meters, as per the latest Project Report of the State of Karnataka, but such concern of the State of Maharashtra alone would not be sufficient for this Court to decide the matter and issue any order of injunction as prayed for in the additional written statement filed by the State of Maharashtra and on the other hand, it would be a matter for being agitated upon before a tribunal to be constituted by the Govt. of India in the event, a complaint is made to that effect by the State of Maharashtra. We also do not find sufficient materials in this proceeding before us to enable this Court to come to a positive conclusion as to what would be the effect on the question of submergence, if the height of the dam at Almatti is allowed to be constructed up to 524.256 meters inasmuch as, according to the State of Maharashtra, the joint surveys are still on. It is too well settled that no Court can issue an order of mandatory injunction on mere apprehension without positive datas about the adverse effects being placed and without any definite conclusion on the question of irreparable injury and balance of convenience. Then again, while allowing a particular State to use the water of

an inter- State river, if the manner of such user really submerges some land in some other State, then the question has to be gone into as to what would be the amount of compensation and how the question of rehabilitation of those persons within the submerged area can be dealt with which really is an aspect of the doctrine of equitable apportionment and all these can be gone into, if a complaint regarding the same is made and the Government of India appoints a tribunal for the said purpose. But these things cannot be gone into, in a suit filed under Article 131 as a part of implementation of an adjudicated dispute of a tribunal. It is also surprising to note that even though the Original Project Report of 1970 in relation to Almatti Dam had been produced before the tribunal, which was adjudicating the disputes raised by different States, yet the State of Maharashtra never thought of the question of submergence and never attempted to get that question decided upon. In the aforesaid premises, howsoever wide the power of the Court under Article 142 of the Constitution may be, we do not think it proper to entertain the question of submergence, raised by the State of Maharashtra in its additional written statement and decide the question of injunction, in relation to the height of Almatti Dam on that basis. Issue 9 (c) is accordingly decided against the State of Maharashtra.

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

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

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

Karnataka by constructing a Dam at Almatti is in consistent with Clause XV of the decision of Tribunal. Issue 9(C), therefore, is answered against the State of Maharashtra.

ISSUE NO. 10

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

While the Tribunal have laid down restriction on the use of water in certain sub-basins as well as the total use by each State, there may be locations where huydro power generation (within the basin) may be feasible at exclusively hydro-sites or at sites for multi-purpose projects. At such sites, part of the waters allocated to the States, as also water which is to flow down to other States could be used for power generation either at a single power station or in a series of power stations. The Tribunal may kindly give guidance as to whether such use of water for power generation within the Krishna basin is permitted even though such use may exceed the limits of consumptive use specified by the Tribunal for each State or sub- basin or reach, and

if so, under what conditions and safeguards.

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

ISSUES NO. 11 & 12 :

These two issues center round the same question as to whether there was any specific allocation or utilisation at Upper Krishna Project and whether providing for irrigation under Almatti Canal is contrary to the decision of the Tribunal since no allocation for irrigation has been made thereunder. We have already discussed the relevant materials placed by the State of Andhra Pradesh as well as the decision of the Tribunal and we have come to the conclusion that the plaintiff the State of Andhra Pradesh, has utterly failed to establish that infact there was any specific allocation by the Tribunal in respect of Upper Krishna Project or the Almatti Reservoir and on the other hand, the allocation was enbloc making it clear and unambiguous that States can utilise the quantity of water allocated in their favour within their territory. This being the position we have no hesitation to answer these two issues against the plaintiff State Andhra Pradesh and we hold that the plaintiff has failed to produce any materials in support of the aforesaid two issues. These two issues accordingly are answered against the plaintiff.

ISSUE NO.13

So far as this issue is concerned the question of entitlement of the State of Karnataka to reallocate or re-adjust utilisation under UKP or any other project unilaterally does not arise at all. If the Tribunal would have made any projectwise allocation and would have restricted the user of water under UKP to any particular quantity then the question of re-allocation by the State of Karntaka on its own would have arisen but the Tribunal not having made any allocation in respect of the Upper Krishna Project which includes Almatti and having made an enbloc allocation so long as the total user by the State of Karnataka does not exceed the enbloc allocation in its favour it cannot be said that there has been any violation

by the State of Karnataka by planning to use any particular quantity of water at Almatti. Then again the question of getting concurrence of other riparian States, as has been raised by the State of Andhra Pradesh is wholly misconceived. Neither there exists any law which compels any State to get the concurrence of other riparian States whenever it uses water in respect of inter-State river nor the decision of the Tribunal which allocates the water in the Krishna Basin on the basis of 75% dependability which figure was in turn arrived at by an agreement of parties puts any condition to have the concurrence of other riparian State. In this view of the matter without further dilating on this issue, we answer the same against the plaintiff.

ISSUE NO. 14

The aforesaid issue has been raised on the hypothesis that the Union of India is going to sanction different projects within the State of Karnataka which are in violation of the decision of Krishna Water Disputes Tribunal. As has been indicated earlier, so far as the Upper Krishna Project is concerned, the Government of India has approved the Dam height at crest level of 509 meters. The subsequent revised project submitted by the State of Karnataka in 1993 and re- submitted in 1996 are still under consideration and no final decision has been taken thereon. The Union of India in its counter affidavit has categorically refuted the allegations made by the State of Andhra Pradesh in this regard and on the other hand, it has been averred that State of Andhra Pradesh is going ahead with some project not sanctioned by the Union Government. In course of hearing Mr. Ganguli, learned Senior counsel appearing for the State of Andhra Pradesh, has not produced any materials in support of the aforesaid stand pertaining to issue no. 14. We, therefore, decide the said issue against the plaintiff.

ISSUE NO.15

The aforesaid issue has been framed on the allegation of the plaintiff that the State of Karnataka is likely to execute the Upper Krishna Stage II multipurpose project without getting the environmental clearance under the Environment Protection Act as well as in violation of the Notification issued by the Central Government in exercise of its power under the same Act and the Rules made thereunder. Under Article 256 of the Constitution it is an obligation for the States to exercise their power ensuring compliance with laws made by Parliament and even it enables the Union Government to give such direction to a State as may be necessary for that purpose. In a federal structure like ours, the Constitution itself maintains balance by distributing powers between the Centre and the States and by conferring power on the Central Government to regulate and to issue directions whenever necessary. The several provisions of the Constitution have been tested in the last 50 years and there is no reason to conceive that any State will force ahead with its project concerning user of water in respect of Inter State reservoir without getting the sanction/concurrence of the Appropriate Authorities and without compliance with the relevant statutes or laws made by the Parliament. It is a common knowledge that the large scale projects planned by each of these States, are submitted to the Planning Commission for its approval and for getting financial assistance. Such projects are then

examined by different authorities and it is only after getting approval of the Planning Commission the same is submitted to the appropriate departments of the Government of India where again all the formalities are scrutinised and final sanction or permission is granted. So far as user of water in respect of an Inter State Reservoir is concerned, the plans are also examined by the Central Water Commission, who is an expert body and the views given by such Commission also is taken into consideration by the Government of India. This being the entire gamut of procedure we really fail to understand on what basis the State of Andhra Pradesh has made the allegation and the issue has been struck in that respect. Needless to mention that every such projects whether being executed in the State of Maharashtra or Karnataka or Andhra Pradesh must be approved by the appropriate authority of the Government of India and necessarily, therefore, before any approval is accorded, the project must be found to have complied with all the relevant laws dealing with the matter. It has not been placed before us that the State of Karnataka has carried out any project in contravention of the provisions of any particular law made by Parliament or in contravention of any direction issued by the Government of India. This issue accordingly, in our opinion, is pre-mature. But we hasten to add that all the projects of different States concerning user of water available to them in respect of an Inter State River must be duly sanctioned by the Appropriate Authorities of the Government of India after proper scanning and it is only then the State would be entitled to carry out the same. The issue is answered accordingly.

ISSUE NO.16

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

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

ISSUE NO. 17 - Under this issue, the question that arises for consideration is whether by the decision of the Krishna Water Disputes Tribunal, only 5.00 TMC was awarded for utilisation at Hippargi. While answering Issue No. 3, we have already held that the tribunal only made enbloc allocation and not any specific allocation for specific projects, excepting those mentioned in Clause (IX) and under Clause (IX) so far as Hippargi is concerned, coming under K2 sub-basin, the same does not find mention therein. In this view of the matter, the said issue is answered against the plaintiff.

ISSUE NO. 18- The aforesaid issue has been framed on the basis of averments made in paragraph 66(v) and paragraph 68(b) item No. 4. The averment in paragraph 66(v) is on the basis of Newspaper Report and the averment made in paragraph 68(b) item No. 4 is the own estimation of State of Andhra Pradesh. Defendant No. 1- State of Karnataka denies the contents of the averments in the plaint vide paragraph No. 12.88 and paragraph No. 12.111. The counsel appearing for the State of Andhra Pradesh also did not place any material in support of the aforesaid issue in course of the arguments and the averments in the plaint having been denied in the written statement, the issue in question must be answered against the plaintiff.

ISSUE NO. 19- Though, the plaintiff-State of Andhra Pradesh on its own estimation, has made an averment in paragraph 68(b) to the effect that the plan utilisation by the State of Karnataka in K2 sub-basin is 428.75 TMC on the basis of which the aforesaid issue has been framed, but no positive datas have been placed before us to come to the aforesaid conclusion. On the other hand, the State of Karnataka in its written statement has asserted that under Upper Krishna Project, the utilisation would be to the tune of 173 TMC and this is apparent from several documents placed before the tribunal as well as in this proceeding In this view of the matter, we answer this issue by holding that the plaintiff has failed to establish that the cumulative utilisation in K2 sub-basin of the State of Karnataka would be to the tune of 428.75 TMC. At any rate, since we have already held that the allocation was enbloc and there is no restriction for utilisation in K2 sub-basin in the decision of the tribunal. The issue really does not survive for consideration. The issue is answered accordingly.

ISSUE NO. 20- This issue relates to the decision of the tribunal in Clause (IX), under which Clause, restrictions have been put to the extent indicated thereunder. But the State of Andhra Pradesh has not been able to establish the allegation made in this regard nor even the counsel, appearing for the State has made any submission thereon. During the course of hearing of the suit, on behalf of the State of Andhra Pradesh, written submissions had been filed and even after the close of the hearing, the State of Andhra Pradesh has filed a written submission on 15th of March, 2000, in which also, there has been no mention about the alleged violation in sub-basin K-6, K-8 and K-9. We, therefore, answer this issue by holding that the plaintiff has failed to establish the same and the issue is answered against the plaintiff accordingly.
ISSUE NO. 21-

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

In course of arguments Mr. Ganguli, the learned Senior counsel for the State of Andhra Pradesh had raised a contention that the State of Karnataka to frustrate any decree to be passed by this Court injuncting the defendant no.1 from raising the construction of the Dam at Almatti at a height of 524.256 has already incorporated an autonomous body, called Krishna Bhagya Jala Nigam Limited (KBJNL)and the State Government has divested itself of all powers relating to the construction of Dam at Almatti with the aforesaid Nigam and this has been designedly made so that

any order or decree for injunction would not be binding. Since this argument had been advanced towards the concluding stage and there was no assertion in the plaint in this regard, nor any issue had been struck by the Court, the State of Karnataka had been permitted to file an affidavit indicating the correct state of affairs in relation to the constitution of KBJNL and to allay or apprehension in the minds of the plaintiff State. An affidavit had been filed by the Secretary to the Government of Karnataka, Irrigation Department, who has also been nominated as Director of KBJNL, the said nomination having been made under Article 147(c) of the Articles of Association of the Companies. It has been categorically stated in the said affidavit that for facilitation of mobilising funds and providing sufficient funds to complete irrigation projects the constitution of KBJNL has been constituted with the sole idea to complete the works of Upper Krishna Projects by 2000AD. This company is a Government Company which has been established with an approval of the Cabinet in the State of Karnataka by its decision dated 6th May, 1994 and the Chief Minister of the State of Karnataka is the Chairman of the Company whereas Deputy Chief Minister is the Vice- Chairman of the Board of Directors. All the Subscribers to the Memorandum are Government Officials and it has been declared to be a Government Company. The Memorandum of Articles of Association have been exhibited as Exhibited PAP 210. The affidavit has given the details as to how the State Government retains full control over KBJNL and on going through the said affidavit we have no hesitation to come to the conclusion that the apprehension of the plaintiff State is wholly mis-conceived and devoid of any substance.

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

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