KRISHNA WATER DISPUTES TRIBUNAL

(Constituted under the Inter-State River Water Disputes Act, 1956)

Trikoot-I, 3rd Floor, Bhikaji Cama Place, New Delhi-110066

In re: Reference proceedings u/s 89 of the Andhra Pradesh Re-organisation Act.

Res - UOI - 1 of 2014

Res - Mah - 2 of 2014

Res - AP - 3 of 2014

Res - Tel - 4 of 2014

Res - Kar - 5 of 2014

The Tribunal is seized of the present reference by virtue of Section 89 of The Andhra Pradesh Re-organisation Act 2014, Act No. 6 of 2014 (for brevity to be referred hereinafter as Act No. 6 of 2014). The aforesaid Section 89 is quoted below:

*"89. The term of the Krishna Water Disputes Tribunal shall be extended with the following terms of reference, namely:-*

*(a) shall make project-wise specific allocation, if such allocation have not been made by a Tribunal constituted under the Inter-State River Water Disputes Act. 1956;*

*(b) shall determine an operational protocol for project-wise release of water in the event of deficit flows.*

***Explanation:*** *For the purposes of this section, it is clarified that the project specific award already made by the Tribunal on or before the appointed day shall be binding on the successor States."*

Presently, suffice it to mention that the Andhra Pradesh Re-organisation Act 2014 has been enacted for the re-organisation of the existing State of Andhra Pradesh and for matters connected thereto. The term ñexisting State of Andhra Pradeshò has been defined under Section 2 (e), to mean, the State of Andhra Pradesh ñas existing immediately before the appointed day.ò It may be worthwhile to mention that the Act was enforced w.e.f. 2.6.2014. The formation of State of Telangana is provided under Section 3 of the Act 6 of 2014 which comprises of the part of the territories of the existing State of Andhra Pradesh, a number of places have been indicated, for example, Adilabad, Karimganj, Medak, Nizamabad, Warangal, Nalgonda, Mehboob Nagar é é é é é é .. é é . é é é é é é é é é é ...é é é é é é é .. é é é é é . é é é é é .. é é é .. é é . and Hyderabad Districts. The territories as mentioned in Section 3 formed the State of Telangana and would cease to form the part of the existing State of Andhra Pradesh. Thereafter, Section 4 provides that the State of Andhra

Pradesh shall comprise the territories of existing State of Andhra Pradesh other than those specified in Section 3.

The term ñSuccessor Stateò has been defined in Section 2 (j) which provides successor State, in relation of existing State of Andhra Pradesh, means the State of Andhra Pradesh or the State of Telangana as the case may be.

So as to have some background of the matter, it would be appropriate to have some bare necessary facts. A Tribunal was constituted by the Central Govt. under Section 4 (1) of the Inter-State River Water Disputes Act 1956 (hereinafter to be referred as Act No. 33 of 1956) by means of a notification dated 10th April 1969 for resolution of disputes relating to the waters of Inter-state river Krishna and the river valley thereof. The Tribunal was headed by late Honôble Mr. Justice (Retd.) RS Bachawat (hereinafter to be referred to as KWDT-I/Bachawat Tribunal). The States of Maharashtra, Karnataka and Andhra Pradesh were the parties to the dispute and the proceedings. The KWDT-I delivered its decision and the report in December 1973 and the Further Report was forwarded to the Central Govt. in May 1976, finding availability of the yearly yield of water of river Krishna at 75% dependability, as 2060 TMC and 70 TMC as return flows. The

State of Maharashtra was allocated 585 TMC, the State of Karnataka 734 TMC and the State of Andhra Pradesh 811 TMC. The allocation of water as aforesaid, was enbloc except for the projects in respect of which restrictions were placed as contained in Clauses IX and X of the final order. The allocation for the rest of the projects, other than those mentioned in Clauses IX and X referred to above, have not been treated to be project-wise specific allocations.

It may be worthwhile to mention here that KWDT-I had prepared two Schemes namely Scheme-A and Scheme-B in its decision. The Scheme-B, inter-alia, had also provided for sharing of the deficit flows in the lean years and for constituting Krishna Valley Authority for implementation of Scheme-B. But due to lack of agreement amongst the parties, the Krishna Valley Authority could not be constituted. No legislation, as suggested, was passed constituting Krishna Valley Authority. It is thus that the Scheme-A became operative in terms of the decision and still continues to be so. The Scheme-B was not found to be part of the final order of KWDT-I, having not been published in the notification notifying the decision of KWDT-I. The KWDT-I had also provided a review after 31$^{st}$ May 2000 and further that such a review or revision shall

not, as far as possible, disturb the utilisation that may have been undertaken by any State within the limits of allocation made to it under the final orders of the Tribunal.

Later the State of Maharashtra filed a complaint under Section 3 of Act No. 33 of 1956 on 27.11.2002, the State of Karnataka on 25.9.2002 and the State of Andhra Pradesh on 21.1.2003, in pursuance thereof the Central Govt. constituted this Tribunal by means of a notification dated 2.4.2004 to resolve water dispute amongst the State of Maharashtra, Karnataka and Andhra Pradesh regarding waters of the river Krishna and the valley thereof.

This Tribunal (to be referred as KWDT-II) forwarded its decision and report under section 5(2) of Act 33 of 1956 on December 30, 2010. The allocations as made by KWDT-I at 75% dependability indicated earlier, have been kept in-tact and maintained undisturbed. This Tribunal assessed the availability of water over and above at 75% dependability. It was found that availability of water at 65% dependability is 2239 TMC and the average yield is 2578 TMC. The total availability of distributable water was found to be 448 TMC. It was provided that the riparian states would start utilization of water at 65% dependability only

after utilization of allocated water by KWDT-I at 75% dependability and at average availability after utilization at 65% availability by all States, not earlier. Thus, it was ensured that the three riparian States continue to get water at 75% dependability, which is considered appropriate availability for agricultural operations.

The utilization of more water at lower dependabilities was allowed for the reason that some more water may be available though at lower dependability which may well serve the water starved areas of the three contestant states. The availability at average flows comes to near about 58%. It is with the improved methods of irrigation and development of new technologies in the field that such crops as identified can be sown in the areas with lesser availability of water, to some extent it may meet out some of the needs of the people of water scarcity areas. As indicated earlier, it was not at the expense of availability of water at 75% dependability so that normal agricultural operations which are being carried out at 75% dependability may not be disturbed in any manner.

Out of the surplus water, State of Maharashtra has been allocated 43 TMC out of 65% dependability and 35 TMC out of the

average flows. Besides 3 TMC for minimum flows in the stream at 65% dependability, the total thus comes to 81 TMC.

The State of Karnataka has been allocated 65 TMC out of 65% dependability and 105 TMC at the average flows and 7 TMC for minimum flow in the stream out of 65% dependability, it all totals to 177 TMC.

The State of Andhra Pradesh has been allocated 39 TMC at 65% dependability and 145 TMC out of surplus flows and 6 TMC for minimum flows in the stream at 65% dependability totalling to 190 TMC. The total allocation of the 3 States including those made by KWDT-I come to 666 TMC for the State of Maharashtra, 911 TMC for the State of Karnataka and 1001 for the State of Andhra Pradesh.

The States of Maharashtra, Karnataka and Andhra Pradesh as well as the Union of India preferred reference on their behalf under sec. 5(3) of the Act No. 33 of 1956. A number of grounds were taken by the States and Union of India for seeking guidance, explanation and clarification relating to the report and the decision dated December 30, 2010 under sec. 5(2) of the Act No. 33 of 1956. After hearing the parties and Union of India all the four

references, were decided by means of further report dated November 29, 2013 which was forwarded to the Central Government on the same day, namely, as 29.11.2013.

By means of further report, the State of Andhra Pradesh has been allocated 4 TMC more out of the yield at 65% dependability, reducing the allocation to the State of Karnataka by 4 TMC from availability of water at 65% dependability. In the result, the total allocation to the State of Andhra Pradesh increased by 4 TMC from 1001 TMC to 1005 TMC and that of Karnataka is reduced by the same amount namely 4 TMC from 911 TMC to 907 TMC.

After the report under section 5(3) of Act No. 33 of 1956 was forwarded on November 29, 2013, The Andhra Pradesh Reorganization Act, 2014 ( Act No. 6 of 2014) was promulgated and has been given effect from 02.06.2014. It contains section 89 in Part-IX of the Act which has been quoted earlier. According to section 89, term of the KWDT-II is extended with the terms of reference as contained in clauses (a) and (b) of section 89. Its clause (a) requires that project-wise specific allocation may be made for the projects which may not have been allocated water in that manner by a Tribunal constituted under the Act No. 33 of 1956 and further by clause (b), it is required that the Tribunal may determine

an operational protocol for project-wise release of water in the event of deficit flows. By means of Explanation to Section 89, it has been clarified that Project Specific Award already made by the Tribunal shall be binding on the successor States. Accordingly, the Central Government published a Gazette Notification No. S01293(E) dated May 15, 2014. The relevant part of the said Notification is quoted below: (expression the said Act stands for Inter-State River Water Disputes Act)

> *" - - - - - - And, whereas, under section 12 of the said Act, the Central Government shall dissolve the Tribunal after it has forwarded its report and as soon as the Central Government is satisfied that no further reference to the Tribunal in the matter would be necessary.*
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> *And, whereas, section 89 of the Andhra Pradesh Re-organization Act, 2014 (6 of 2014) provides that the term of the Krishna Water Disputes Tribunal shall be extended with the terms of reference specified in clauses (a) and (b) of the said section.*
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> *And, whereas, the Central Government considers it necessary to extend the tenure of the Tribunal for two years or until further orders whichever is earlier.*
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> *Now, therefore, in exercise of the powers conferred by the sub-section (3) of the said Act, the Central Government hereby extends the period of submission of further report by*

*the said Tribunal for a further period of two years ( or until further orders, whichever is earlier) with effect from the Ist August, 2014 so as to address the terms of reference specified in clauses (a) and (b) of the Section."*

The aforesaid notification dated May 15, 2014 along with Corrigendum Notification, which is not very relevant for our purpose, was communicated vide letter No. 17/1/2007-BM/697-707 dated June 16, 2014 addressed to the Chairman, for information and further necessary action. It also appears that the said letter was addressed to Chief Secretary to the Governments of Karnataka, Telangana, Maharashtra and to the Principal Secretary to the Government, Irrigation & CAD Department, Andhra Pradesh. The Tribunal issued notices to all the states to which the letter dated 16.06.2014 was addressed as well as to the Union of India for appearance and then for filing their response to the reference as contained in Section 89 of the Act No. 6 of 2014 and notified by the Central Government in the official gazetted dated 15th May, 2014.

All the four states, namely State of Maharashtra, Karnataka and successor states of erstwhile state of Andhra Pradesh, namely, Telangana and Andhra Pradesh as also the Central Government put in their appearance through their counsel. By order dated July 24, 2014, all parties and the Central Government were given time to

file their response to the reference within a period of six weeks. All parties filed their response as well as replies to the response and rejoinder thereto and exchanged the same in between them. The Central Government also filed its response.

The State of Maharashtra in its response dated September 3, 2014 pleaded that the dispute which was referred to this Tribunal by Notification dated April 2, 2004 amongst the States of Maharashtra, Karnataka and Andhra Pradesh, stood finally decided upon forwarding of the further report by the Tribunal to the Central Government under section 5(3) of the Act No. 33 of 1956. It is also pleaded that the Andhra Pradesh Re-organization Act, 2014 provides for the reorganization of the erstwhile State of Andhra Pradesh and matters appurtenant thereto. The erstwhile State of Andhra Pradesh stands divided into two successor states, namely States of Andhra Pradesh and State of Telangana. The Part-IX of the aforesaid Act provides for Management and Development of Water Resources in the successor states. Thus, the jurisdiction of this Tribunal under section 89 of the Act No. 6 of 2014 is limited to apportionment of project-wise specific allocation between the successor states. The allocation already made by the Tribunal to the States of Maharashtra and Karnataka cannot be changed under

section 89 of the Reorganization Act. It is also pleaded that except the successor states, no other state is required to be made party.

The stand of the State of Karnataka in its response dated September 17, 2014 is also almost similar to that of State of Maharashtra and it is pleaded that section 89 of the Reorganization Act is squarely applicable to the successor states only. In the background of the facts as stated in the response, the proceedings had already been concluded before this Tribunal and the Report and the Further Report under section 5(2) and 5(3) of the Act No. 33 of 1956 had been forwarded to the Central Government before the reorganization of the erstwhile State of Andhra Pradesh. The disputes amongst the three riparian States stands finally decided before the bifurcation of erstwhile State of Andhra Pradesh.

The State of Andhra Pradesh in its response dated 16.09.2014 took a plea that after the forwarding of the further report dated 29.11.2013 under section 5(3) of Act No. 33 of 1956, the Central Government felt satisfied under the provisions of section 12 of Act No. 33 of 1956 that by reason of section 89 of Andhra Pradesh State Reorganization Act, 2014, a further reference under section 5(3) of Act No. 33 of 1956 was necessary. It is also pleaded that it was reference of a fresh dispute amongst the four

riparian States. It is also pleaded that section 89 of Act No. 6 of 2014 is a stand alone provision which operates on its own terms without being subjected to any of the provisions of the Act No. 33 of 1956. According to the stand taken by Andhra Pradesh, this Tribunal has to make project-wise specific allocation in respect of projects in the entire basin and to determine operational protocol covering each project in the event of deficit flows. It has further been pleaded that the issues referred to under section 89 of Act No. 6 of 2014 were not adjudicated upon earlier in proceedings under section 5(2) and 5(3) of the Act No. 33 of 1956. So different stands have been taken about the reference under section 89 of 6 of 2014.

The State of Telangana in its response dated 17th September 2014 took the stand that the reference under section 89 is in relation to all the riparian States of Krishna basin. In paragraph 2, it is stated that the said provision is not confined to sharing of waters between the two successor states. Another plea as raised is that in case section 89 of Act No. 6 of 2015 were to be confined only to two successor States, Parliament could make a provision under section 84 of that Act by empowering the Apex Council to amicably resolve matter or on failure, to refer the same to the Tribunal. It is pleaded that scope of reference under section 89 is broad and

relates to all the riparian States. By referring Eleventh Schedule read with section 85(8)(e) of the Act No. 6 of 2014, it is submitted that the mandate to the States of Andhra Pradesh and Telangana is to complete the six irrigation projects specifically mentioned in Clause 10 of the Schedule. No allocation to those projects has been made by KWDT-II. The plea, therefore, raised is that the Tribunal is mandated to reallocate the water to the successor States including for these six projects.

The other pleas which have been raised are that interest of the State of Telangana in the matter of allocation of water was not adequately represented for equitable distribution of water in the basin hence, it is necessary to re-examine the allocations made by KWDT-I and KWDT-II to all other riparian States so that equitable allocation be made to the State of Telangana.

The Central Government by its letter dated 25th August 2014 took the stand that it was implicit in the reference under section 89 of the Act No. 6 of 2014 that the Tribunal determines the shares of the successor States of Telangana and residual State of Andhra Pradesh as a result of reorganization of the erstwhile State of Andhra Pradesh without disturbing project-wise allocations made to other party States.

The stand as taken by the different parties was refuted by each other in their replies to the response and the rejoinder thereto. After some hearing of the matter, it was felt that the crux of the matter may lie in the scope of the reference made under section 89 of the Act No. 6 of 2014 particularly as to whether it covers all the basin States including the State of Telangana or it is confined to the successor states, apart from other legal issues which had been raised by the parties. It was, therefore, thought fit as agreed by all parties that such issues may be decided as preliminary issues before entering into the factual merits of the rival claims. With the assistance of the parties, on 07.01.2015, the following nine issues were framed:

1) Has the Krishna River Water Dispute, referred by Central Government on 2.4.2004 to this Tribunal, been finally adjudicated by the Tribunal under Section 5(2) of the Inter State River Water Disputes Act No. 33 of 1956 on December 30, 2010 and by the Further Report and Decision dated November 29, 2013 of this Tribunal under Section 5(3) of the said Act in so far as the Tribunal has made the distribution of the waters of the river Krishna between the States of Karnataka, Maharashtra and undivided State of Andhra Pradesh?
2) Has this Tribunal become functus officio upon forwarding the Further Report to the Central Government on

November 29, 2013 except for the statutory reference made by the Central Government under Section 89 of the Andhra Pradesh Reorganization Act, 2014 on 15.5.2015?

3) Is the Reference made by the Central Government on 15.5.2014 under Section 89 of the Andhra Pradesh Reorganization Act, 2014 limited only to the project-wise specific allocations which have not already been made by the Tribunal in the area of undivided former State of Andhra Pradesh, and operational protocol for project-wise release of water in the event of deficit flows from projects in the areas of successor State of Andhra Pradesh and Telangana only?
4) Whether the scope of inquiry into the terms of reference under Section 89 of Andhra Pradesh Reorganization Act encompasses all the four States of Maharashtra, Karnataka, Telangana and Andhra Pradesh or only the two successor States of Andhra Pradesh and Telangana?
5) Whether the project specific allocation contemplated in clause (a) of Section 89 of the Act No. 6 of 2014 between the two successor States of Telangana (Section 3 territories) and Andhra Pradesh (Section 4 territories) is to be determined out of the water allocated to the existing State of Andhra Pradesh in the Report and the Decision dated December 30, 2010 and modified Order dated November 29, 2013?
6) Whether the provisions of Act No. 6 of 2014 and in particular Section 85(8)(a) and Section 85(8)(e) read with Eleventh Schedule, which mandates the Krishna River

Management Board (constituted under Section 85(1) to regulate the supply of water from the projects to the two successor States of Telangana and Andhra Pradesh having regard to the ñAwardsò granted by the Tribunals constituted under the Inter State River Water Disputes Act No. 33 of 1956, prohibit reopening of the Awards passed by the two Krishna Water Disputes Tribunals?

7) Whether Reference Petition No. 4 of 2011 filed by the Union of India under Section 5(3) of the Act No. 33 of 1956 raising substantially the same questions as under clauses (a) and (b) of Section 89 of Act No. 6 of 2014 have been disposed of by the Tribunal by Further Report and modified Order dated November 29, 2013 under Section 5(3) of the Act No. 33 of 1956, if so, its effect?

8) Whether in the absence of any project-wise specific allocation, the upper riparian States of Maharashtra and Karnataka, any project-wise allocations only for the projects in Telangana and Andhra Pradesh would at all enable the Tribunal to determine an operational protocol for project-wise release of waters in the event of deficit flows?

9) Whether the Report dated December 30, 2010 and Further Report dated November 29, 2013 could be termed as final and binding in the absence of the same having been notified under Section 6 of Act No. 33 of 1956 and being the subject matter of challenge in Special Leave Petition No. 10498 of 2011, Nos. 3076-79 of 2014 and Nos. 7457-7460 pending before the Hon3ble Supreme Court?

The arguments of the learned counsel representing different parties and for the Central Government have been heard. Mr. F. Nariman and Mr. Anil Diwan, learned senior counsels argued the case on behalf of the State of Karnataka. Mr. Andhiyarujina, Senior Counsel argued on behalf of the State of Maharashtra and Mr. A.K. Ganguli, leaned senior counsel argued on behalf of the State of Andhra Pradesh whereas arguments on behalf of the State of Telengana have been submitted by the senior counsel Mr. Vaidyanathan, Mr. S. Wasim A Qadri represented and made submissions on behalf of the Central Government.

We take up the matter issue-wise as have been framed for deciding them as preliminary issues.

> ñIssue No.1ò - Has the Krishna River Water Dispute, referred by Central Government on 2.4.2004 to this Tribunal, been finally adjudicated by the Tribunal under Section 5(2) of the Inter State River Water Disputes Act No. 33 of 1956 on December 30, 2010 and by the Further Report and Decision dated November 29, 2013 of this Tribunal under Section 5(3) of the said Act in so far as the Tribunal has made the distribution of the waters of the river Krishna

between the States of Karnataka, Maharashtra and undivided State of Andhra Pradesh?

Mr. Andhyarujina argued that issue No. 1 is to be answered in affirmative. It is submitted that so far this Tribunal is concerned it has finally adjudicated the water dispute amongst three States of Karnataka, Maharashtra and Andhra Pradesh by forwarding the further report to the Central Government under section 5(3) of Act No. 33 of 1956, it is submitted that now there is nothing left to be decided by the Tribunal. The decision rendered under section 5(2) of the Act No. 33 of 1956, stands modified to the extent of changes made in the Further Report under section 5(3) of the Act No. 33 of 1956. The stand of the State of Karnataka is also similar. As a matter of fact none of the parties including the States of Andhra Pradesh and Telengana have denied that the dispute referred to the Tribunal stands adjudicated and settled amongst the States of Maharashtra, Karnataka and Andhra Pradesh but there is some reservation on behalf of the States of Andhra Pradesh and Telangana, on whose behalf, it is submitted that though the disputes stand adjudicated and finally settled by the Tribunal but it has not yet attained the finality. In this connection, the main submission is that in absence of publication of the decision under sub-section (1)

of Section 6 of the Act No. 33 of 1956, the decision does not become binding between the parties and lacks enforceability, nor it attains the same force as an order or decree of the Hon'ble Supreme Court as provided under sub-section (2) of Section 6 of the Act No. 33 of 1956. Yet another factor which has been pointed out in support of the submission is that in appeal preferred by the State of Andhra Pradesh in the Hon'ble Supreme Court, against the decision and the Report of the Tribunal dated December 30, 2010 as well as against the Further Report, are pending and there is an interim order for not notifying the decision under Section 6 of the Act No. 33 of 1956.

It would be beneficial to consider a few provisions of the Interstate River Water Disputes Act in so far they relate to the adjudication and decision on the disputes referred to the Tribunal. According to section 5(1) of the Act No. 33 of 1956, the Central Government refers the disputes to the Tribunal for adjudication. Accordingly, the Tribunal investigates the matters referred to it and forwards to the Central Government the report and its decision in terms of under sub-section (2) of Section 5 of the Act. The matter is investigated like a trial in an original suit which ultimately culminates into its report and decision. Thereafter, according to

sub-section(3) of Section 5, the Central Government or any State Government is entitled to again refer the matter to the Tribunal for further consideration, for the purposes as provided therein in sub-section (3). The Central Government or/and any of the State Government have to exercise this right of further reference within a period of 3 months of the date of the decision. The Tribunal thereafter is to forward to the Central Government its Further Report within a period of one year from the date of reference. With the Further Report of the Tribunal as given, it is deemed that the decision of the Tribunal under section 5(2) is modified to the extent of changes, if any made by the Further Report.

The next step is provided under Section 6 of the Act, it is for the Central Government to publish the decision of the Tribunal in the official gazette and it is provided under sub-section (1) that it shall be final and binding on the parties. Under sub-section (2) of Section 6 after publication, the decision shall have the same force as order or decree of the Hon'ble Supreme Court.

So far as the adjudicatory process for decision making and the decision is concerned that all is complete and over with forwarding the Further Report under Section 5(3) of the Act. The

Act No. 33 of 1956 does not contain any provision for an appeal against the decision of the Tribunal.

The question of enforceability as raised, is a different aspect of the matter and question of the decision being final would not be dependent upon it. Publication of the decision of the Tribunal under section 6 of the Act No. 33 of 1956 is only an act/duty cast upon the Central Government to perform which it cannot refuse to discharge or delay unreasonably. It can well be observed that the time taken in the publication of the decision under section 6 of the Act only has the effect of postponing the enforceability of a final decision for the time being but it cannot be delayed beyond a reasonable limit. The decision of the Tribunal after forwarding of the Further Report has to be published sooner or later or to say within a reasonable time. A decision arrived at after going through the adjudicatory process as prescribed under the law, adjudicating rights and liabilities of the parties is certainly a final decision or settlement of the dispute. The Section 6 of Act No. 33 of 1956 says that the Central Govt. ósha llô publish the decision, it is a mandate to the Central Govt. leaving no other option for it.

Therefore, to say that since it lacks enforceability, the dispute is not finally decided will not be a correct proposition. This contention is not found to be acceptable.

So far as the argument about pendency of appeals before the Hon'ble Supreme Court is concerned, it may be observed that whatever is under consideration before the Hon'ble Supreme Court in an appeal would of course be subject to the decision in appeal. But the Tribunal has undoubtedly, on forwarding of the Further Report, has decided the matter which is otherwise final.

However, the provision contained under section 12 of the Act No. 33 of 1956 may require our attention and cannot be ignored, it reads as follows:

> *"12. The Central Government shall dissolve the Tribunal after it has forwarded its report as soon as the Central Government is satisfied that no further reference to the Tribunal in the matter would be necessary."*

So according to Section 12 of the Act No. 33 of 1956, the Tribunal is to be dissolved on forwarding of its report as soon as satisfaction of the Central Government is arrived at that no further reference in the matter would be necessary. As observed earlier also, Section 12 does not confer any right upon any State to make a

further reference any more, therefore, so far as State parties are concerned, it is an end of the matter on forwarding of the report by the Tribunal under sub-section (3) of Section 5 of the Act No. 33 of 1956.

The right of further reference once again, which is not available in the normal course, appears to be reserved only for the Central Government before dissolving the Tribunal. It may be for the purpose that in case any apparent lacunae or something otherwise of the kind may appear to the Central Government, it may require the Tribunal to once again look into it because the Tribunal, after its dissolution, would no more be available for the purpose. It appears to be by way of abundant caution that the provision for second reference is reserved for the Central Government only to the exclusion of the parties to the proceedings contesting rival claims. Such a provision as quoted above and discussed, leads to the inference that the disputes amongst the parties *inter se* is finally settled and decided but for a little scope for matters otherwise related to settled matter that the Central Government, as a last opportunity may put forth before the Tribunal for its consideration before its dissolution.

The Issue No. 1 is thus answered in the manner that the decision of the Tribunal on forwarding of the further report under sub-section (3) of section 5 of the Act No. 33 of 1956 is final settlement of the dispute amongst the parties inter se, subject to any order passed by the Tribunal itself on a further reference, if any, preferred by the Central Government under section 12 of the Act No. 33 of 1956.

**Issue No. 2 :**

Has this Tribunal become *functus officio* upon forwarding the Further Report to the Central Government on November 29, 2013 except for the statutory reference made by the Central Government under Section 89 of the Andhra Pradesh Reorganisation Act, 2014 on 15.5.2014?

It is submitted, particularly on behalf of the State of Maharashtra that the Tribunal has become *functus officio* after forwarding its report to the Central Government under Section 5(3) of the Act No. 33 of 1956. The submission is that after deciding the references, the Tribunal finally decides the dispute amongst the parties and there is no other provision requiring the Tribunal to undergo any other exercise in adjudicating the dispute. Hence, for all practical purposes, the Tribunal is theoretically dissolved and it is rendered *functus officio* and cannot entertain any matter touching

the decision rendered, which has been decided on merit deciding the rights of the parties *inter se*.

We, however, find it difficult to accept the contention that the Tribunal is rendered *functus officio*. The Tribunal is constituted by means of a notification issued under Section 4(1) of the Act No. 33 of 1956. Such a notification was issued constituting this Tribunal by means of publication in the Gazette dated 2nd April 2004. After the Tribunal is constituted, it is only dissolved according to the provision contained under Section 12 of Act No. 33 of 1956. According to the aforesaid provision, after the Tribunal has forwarded its report to the Central Government and the Central Government is satisfied that no further reference to the Tribunal in the matter would be necessary, Central Government would dissolve the Tribunal.

In this case, no doubt, the Tribunal has already forwarded its report to the Central Government under Section 5(2) as well as 5(3) of the Act No. 33 of 1956 on 30.12.2010 and 29.11.2013 respectively, the Central Government has not yet dissolved the Tribunal so far. The Central Government retains with itself, by virtue of Section 12 of Act No. 33 of 1956, option to make a further reference to the Tribunal before resorting to its dissolution. The

Central Government dissolves the Tribunal on being satisfied that no further reference is to be made to the Tribunal. Thus, in view of the fact given above that the Tribunal having not been dissolved under Section 12 of Act 33 of 1956, it would not be possible to say that it has become *functus officio*.

The issue, therefore, is answered in Negative and as itself indicated in the issue, the Tribunal is still functional for the purposes of deciding the reference as made under Section 89 of the Act 6 of 2014.

**Issues Nos. 3, 4 & 5:**

3) Is the Reference made by the Central Government on 15.5.2014 under Section 89 of the Andhra Pradesh Reorganization Act, 2014 limited only to the project-wise specific allocations which have not already been made by the Tribunal in the area of undivided former State of Andhra Pradesh, and operational protocol for project-wise release of water in the event of deficit flows from projects in the areas of successor State of Andhra Pradesh and Telangana only?

4) Whether the scope of inquiry into the terms of reference under Section 89 of Andhra Pradesh Reorganization Act encompasses all the four States of Maharashtra, Karnataka, Telangana and Andhra Pradesh or only the two successor States of Andhra Pradesh and Telangana?

5) Whether the project specific allocation contemplated in clause (a) of Section 89 of the Act No. 6 of 2014 between the two successor States of Telangana (Section 3 territories) and Andhra Pradesh (Section 4 territories) is to be determined out of the water allocated to the existing State of Andhra Pradesh in the Report and the Decision dated December 30, 2010 and modified Order dated November 29, 2013?

The above noted three issues since raise similar question, we propose to take up these issues together.

According to Issue No. 3, the question for consideration would be as to whether or not reference made under section 89 of the Act No. 6 of 2014 is limited to the project-wise specific allocation in respect of the area of the erstwhile State of Andhra Pradesh and the operational protocol in the event of deficit flows from the projects in the area of successor States of Andhra Pradesh and Telangana only. The Issue No. 4 raises the question about the scope of inquiry into the terms of the reference under section 89 of Act No. 6 of 2014 that it relates to four States, namely, Maharashtra, Karnataka, Telangana and Andhra Pradesh or the only two successor States. Whereas in issue No. 5, the point raised is that the project specific allocation contemplated under clause (a) of Section 89 is to be made out of the water allocated to the erstwhile

State of Andhra Pradesh as per allocation made to it by the decision of this Tribunal dated 30th December 2010 as modified by Further Report dated November 29, 2013.

The first response was received from the Union of India/Central Government, marked as RES-UOI-1 vide the letter dated 25th August 2015. The stand of Union of India/Central Government is that this Tribunal is to determine shares of the successor States as a result of reorganization of the erstwhile State of Andhra Pradesh without disturbing the allocations made in favour of other party States.

The response of the State of Maharashtra is dated September 17, 2014 and as stated in paragraph No. 7 thereof its stand is that the jurisdiction conferred on this Tribunal by Section 89 of Act No. 6 of 2014 is limited to apportionment of project-wise specific allocation, if not already made, and to determine the project-wise release of water in the event of deficit flows between the State of Telengana and Andhra Pradesh. It is further averred that the allocations which have already been made in favour of the States of Maharashtra and Karnataka cannot be changed. The response of Maharashtra has been marked RES-MAH-2.

State of Andhra Pradesh filed its response dated 16.09.2014 marked as RES-AP-3. The stand taken in the response is that instead of invoking its powers under Section 12 of the Act No. 33 of 1956, the Central Government being satisfied that by reason of Section 89 of the Act 6 of 2014, a further reference under Section 5 of the Act of 1956 was necessary, in pursuance whereof issued the Notification dated 15.05.2014, for further adjudication of water disputes in relation to water of Interstate River Krishna. It is further stated that Parliament legislatively perceived existence of disputes between the four riparian States in the Interstate River Krishna. It is also averred that the Central Government has powers to make fresh reference of disputes under Section 5(1) and (2) of the Act No. 33 of 1956. In a nut shell, the stand taken by the State of Andhra Pradesh is that the reference has been made under section 5(1) and 5(2) of Act No. 33 of 1956 and it relates to all the four States.

The State of Telengana filed its response dated 17th September 2014 marked as RES-TEL-4. The State of Telengana also, in short, has taken up the case that looking to water needs and problems of the State of Telengana that the reference has been made in respect of all the four riparian States of Krishna basin. It is

not confined to sharing of water between the two successor States only. The water is to be allocated amongst the four states considering the needs of the State of Telangana which have not been properly and adequately projected and considered.

In the response dated September 17.02.2014 marked as RES-KAR-5, the State of Karnataka has taken the stand that Section 89 of the Act No. 6 of 2014 is applicable to the successor States of Telangana and Andhra Pradesh and not to all four States. The allocation already made to three States cannot be disturbed.

Mr. Anil Diwan, learned Senior Counsel appearing on behalf of State of Karnataka opened the arguments and submits that so far the dispute related to the three riparian States, namely, the States of Maharashtra, Karnataka and erstwhile Andhra Pradesh, it stood settled and decided on the forwarding of the report under Section 5(3) of the Act No. 33 of 1956. The reference under Section 89 of Act No. 6 of 2014 confines to the two reorganized States out of the erstwhile State of Andhra Pradesh. He has also referred to the different paragraphs of the responses and the replies of the different States controverting the stand of each other.

He has referred to the statement of reasons and objects of the Andhra Pradesh Reorganization Act 2014 so as to be able to understand the purpose sought to be achieved by enacting the Reorganization Act. In the statement of objects and reasons of the Act No. 6 of 2014, it is indicated that it would meet the democratic aspirations of the people of the Telangana Region and ensure peace, goodwill, progress and prosperity amongst the sections of the people of the successor States. The salient features of the bill are to provide for the territories of the successor States and other necessary provisions as enumerated in clause (3) (a) to provide for distribution of revenues apportionment of assets and liabilities, mechanism for management and development of water resources, powers and natural resources and other similar matters and in clause (f) for declaring Polavaram Project as a national project.

It is submitted that statement of objects and reasons does not indicate, it has anything to do with the two riparian States of Maharashtra and Karnataka. It is also submitted that there is nothing to show that the decisions of the Tribunal are to be overthrown. Mr. Diwan further submits that to ascertain the purpose of legislation or a provision, they have to be interpreted in the light of text-context, objects and reasons of the enactment,

justice and reason and that the consequences may not be absurd by following literal construction.

Mr. Anil Diwan takes us through some provisions of the Act No. 6 of 2014. The part-V of the Act deals with authorisation of expenditure and distribution of revenues. Section 46 provides that the Award made by the Thirteenth Finance Commission to the existing State of Andhra Pradesh shall be apportioned between the successor states by the Central Government on the basis of population ratio and other parameters. Whereas sub-section (3) of Section 46 provides for adequate incentives as special development package, in particular for Rayalaseema and north coastal regions of the State of Andhra Pradesh. It is one of the matters which finds place in the objects and reasons for enacting the Act 6 of 2014. The Part-VI provides for apportionment of assets and liabilities between the two successor States. They share the assets of the existing State of Andhra Pradesh as well as bear the burden of liabilities in between the two. Section 48 is in respect of sharing land and goods of the existing State of Andhra Pradesh. It is further provided that in case of any dispute relating to distribution of land and goods etc., the Central Govt. shall endeavour to settle such disputes through mutual agreement arrived at between the

successor States. Ultimately in case of non-settlement, the Central govt. is to issue appropriate directions for the purpose. Similarly, Section 49 provides for division of cash and balance in the banks and treasuries of the existing State of Andhra Pradesh between the successor States. Again section 50 provides that the arrears of taxes, duties and arrears of land revenue shall be recovered by the successor States in which the property situates. Similarly, under Section 51, right to recover loans and advances of the existing State of Andhra Pradesh are recoverable by successor states in whose area the local body or society or such organisation falls. Again similar provisions are regarding investments and credits in certain funds, under Section 52, of the Act and assets and liabilities of the State Undertakings as well as the Public Debts under Section 54 become the share and liability of the successor States as may be apportioned in the manner provided in detail in such provisions. Similar provisions continue upto Section 67.

It is submitted by Mr. Diwan that in the land, goods, cash, funds and other kinds of assets and liabilities of the existing State of Andhra Pradesh, there is to be an apportionment between the successor States. No other State is involved in the matter of inheriting the assets and bearing the liabilities of the existing State

of Andhra Pradesh in a way predecessor in interest, which are shared and succeeded to only by the successor States without touching any other State. The provisions in part VI contain details as to how the sharing shall be effected by agreement or by Central Govt. or by any other method.

The allocation of the officers of different services to the successor States is provided for under Section 76 falling in part VIII of the Act. Lastly, it is provided under Section 81 that the Central Govt. may give such direction to the Governments of the successor States as it may appear to be necessary for the purposes of giving effect to the provisions of part VIII.

Our attention is then drawn to Part-IX of the Act which relates to management and development of water resources, beginning with Section 84 upto Section 91. Section 84 provides for an Apex Council for the Godavari and Krishna River water resources and their Management Boards. It is pointed that Apex Council consists of Minister of Water Resources, Govt. of India as chairperson and the two Chief Ministers of the successor States as Members. There is none in the council from any third State. It is further submitted that the functions of the Apex Council, as provided under Section 84 relate only to the two successor States.

Our attention is also drawn to Clause (iii) of sub-section (3) of Section 84 which provides for resolution of any dispute amicably by the Apex Council, arising out of the sharing of river waters through negotiations and mutual agreement between the successor States and clause (iv) provides for reference of a dispute not covered under KWDT to a Tribunal constituted under Act No. 33 of 1956.

It is indicated that Section 85 provides for constitution of two separate Boards, namely, Godavari River Management Board and Krishna River Management Board for administration, regulation, maintenance and operation of those projects as may be notified by the Central Government from time to time. The Board consists of Chairman appointed by the Central Government and two Members to be nominated by each successor State and one Expert to be nominated by the Central Government . The Board is to be assisted by Central Government Industrial Security Force in the day to day management of reservoir. One of its functions as indicated in sub-section (8) is to regulate supply of water from the projects to the successor States having regard to:

> *"(i) awards granted by Tribunals constituted under the Inter-State River Water Disputes Act No. 33 of 1956)".*

Mr. Diwan has also pointed out that in sub-clause (b) of sub-section (8), it is provided that while appraising any proposal for new project giving technical clearance on being satisfied that such project does not negatively impact, the availability of water as per the awards of the Tribunals constituted under the Act No. 33 of 1956, it is tried to be emphasized by the learned counsel that the award given by the Tribunal constituted under the Act No. 33 of 1956 cannot be disregarded in view of the aforesaid provisions. He then draws our attention to the Eleventh Schedule, clause (1) which provides that the operational protocol to be notified by Ministry of Water Resources would be based on appropriate dependability criteria as may have been adjudicated by the Krishna Water Disputes Tribunal, which would be binding on the successor States. He again refers to clause (4) of the Eleventh Schedule providing that the allocations made by the Inter State River Water Disputes Tribunals to various projects or for the regions of the existing State of Andhra Pradesh, in respect of assured water shall remain the same. It is submitted that the decisions of the Water Disputes Tribunals have been given due weightage and regard ensuring their compliance.

A similar provision about that dependability criteria finds mention in clause (7) of the Schedule. Then a reference to Section 86 has been made to indicate that the employees of the Board are to be appointed on deputation from the successor State in equal proportion for which necessary funds are to be provided by the successor State. Section 87 is about the jurisdiction of the Board in regard to projects, dams, reservoir etc. having regard to the awards, if any, made by the Tribunals constituted under the Act No. 33 of 1956. Section 88 gives powers to make regulations consistent with the provisions of the Act, for its functioning. Thereafter, comes Section 89 which has already been quoted earlier providing for extension of the term of this Tribunal with terms of the reference as contained in clauses (a) and (b) of section 89 of the Act. It is provided that the Tribunal shall make project-wise specific allocation, if such allocations have not been already made by a Tribunal constituted under the Act No. 33 of 1956 and under clause (b), the Tribunal is to determine an operational protocol for project-wise release of water in the event of deficit flows.

It is submitted that all the provisions of Act No. 6 of 2014 as indicated earlier relate to the existing State of Andhra Pradesh and the successor States only. There are provisions dividing the existing

State of Andhra Pradesh into two States called successor States, namely, State of Telengana and the State of Andhra Pradesh. Followed by the provisions for dividing the assets, liabilities and all the resources vested in the existing State of Andhra Pradesh between the successor States. Section 89 is also placed in the same sequence of provisions in Part-IX. Therefore, it is not possible to say that Section 89 relates to other States than the successor State also which came into being on bifurcation of the existing State of Andhra Pradesh. Thus, all the exercise which is to be undertaken under section 89 shall be between the successor States only pertaining to the area and boundaries as were that of the existing State of Andhra Pradesh. There is nothing to indicate otherwise in Section 89 of the Act No. 6 of 2014. Section 89 does not indicate that it relates to the four States, namely, the States of Maharashtra, Karnataka and the successor States of existing State of Andhra Pradesh, namely, State of Telengana and the State of Andhra Pradesh. On the other hand, it is submitted that there is a clue that Section 89 relates to the successor States which is to be found in Explanation to Section 89, according to which the allocations which are project-wise specific as made by the Tribunal shall be binding on the successor States. The learned counsel then refers to

Section 104 of the Act No. 6 of 2014 which provides for substitution of the successor States of Telangana and Andhra Pradesh in place of existing of State of Andhra Pradesh in all legal proceedings pending immediately before the appointed date. It all is about the successor States.

It is submitted that the main purpose of the Statute, namely, Act No. 6 of 2014 was to divide the existing State of Andhra Pradesh into two States well within the territory and boundaries of erstwhile State of Andhra Pradesh. The Division has been affected by virtue of Sections 3 and 4 of the Act and other provisions have been made for sharing of the assets and liabilities of the erstwhile State of Andhra Pradesh between the successor States. It is submitted, that to say that Section 89 applies to all the four states shall be against the text and the context of the purpose of the Act No. 6 of 2014.

Mr. Diwan refers to 1993 (Supp) (1) SC page 96 - in the matter of Cauvery Disputes Tribunal, our attention has been particularly drawn to para 64 at page 135 holding that Entry 56 relates to the use, distribution or control of the waters of any Inter State River and Entry 17 speaks of water supplies, irrigation and canals, water storage etc. but Article 262(1) of the constitution

speaks of adjudication of disputes of Inter State River Water. It is also observed in paragraph 70 at page 138 that Interstate Water Disputes Act 1956 is relatable only to Article 262 of the Constitution. In paragraph 77 at page No. 142, it is observed that the effect of provisions of Section 11 Act No. 33 of 1956 read with Article 262 of the constitution is that the entire judicial power of the State and the Courts including that of Hon3ble Supreme Court is vested in the Tribunal appointed under section 4 of the Act to adjudicate upon any water disputes relating to an Inter State river. Therefore, no executive order or legislation or any act of State can interfere with the adjudication made by a Tribunal exercising judicial powers of the State. The submission is that Section 89 would not be applicable to interfere with the decision already taken by the Tribunals in respect of the States of Maharashtra and Karnataka. He then refers to a case reported in (2014) - 12 SCC - 696 State of Tamil Nadu Vs. State of Kerala - paragraph 86 at page 770 on the proposition of separation of powers and the independence of courts from the executive and the legislature. It is submitted that the proposition of separation of powers applies to the final judgment of the court or for that matter a decision by the Tribunal constituted under Act No. 33 of 1956. It is further

observed that the legislature cannot declare any decision to be void or of no effect. The defects if any found may be remedied by amending the Act. It is submitted that it would be against the principles of separation of powers to submit that Section 89 is applicable to the States other than the successor States. The decision already taken in respect of the States of Maharashtra and Karnataka by the Tribunals cannot be whittled down or be made ineffective in any manner. The two States viz. Maharashtra and Karnataka are not subject matter of division of the erstwhile State of Andhra Pradesh nor division of its assets and liabilities between the two successor States. Therefore, it is submitted that whatever exercise is to be undergone under Section 89 would relate to the successor States only. He also places reliance upon principles of statutory interpretation by G.P. Singh - Thirteenth Edition 2012 pages 124 to 128 where it is commented that the Rule in Heydonôs case about the ópurposive Constructionô or ñMischief Ruleò would be applicable to suppress the mischief and advance the purpose of the legislation. It is pointed out that the Rule in Heydonôs case was approved in a decision reported in (1996) 5 SCC page 76 in P.E.K. Kulliani Amma Vs. K. Devi.

It is submitted that yet another aspect which is relevant for the purpose of correct interpretation of a statute is in regard to the consequences of the provisions of the enactment and on this proposition refers to the discussion at page 131 of the book of G.P. Singh to the effect that if the language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences resulting from adopting the alternative construction. A construction that results in hardship, inconvenience, injustice absurdity or anomalies or which leads to inconsistency or uncertainty and fraction in the system which the Statute purports to regulate, has to be rejected and preference should be given to that construction which avoids such results. This rule has no application when the words are susceptible to only one meaning and no alternative construction is reasonably open. It is submitted that in the present case if it is to be taken that Section 89 is applicable to all the four States doing away with the decision of the Tribunals in respect of shares, rights and liabilities pertaining to the States of Maharashtra and Karnataka, it will result in great injustice and inconvenience and hardship and it shall unsettle the settled position which is coming down since the decision of KWDT-1 which is in operation as per Scheme A for very a long

time. It will upset all the planning developed during this long period and farmers may also be affected for no reason concerning them.

It is also submitted that Section 89 does not admit of reasonably two possible interpretations about its applicability to the two other States, namely, Maharashtra and Karnataka, he relies upon 1981(4) SCC page 173 at page 175, the case of K.P. Verghese - where it is observed that even plain meaning to a provision cannot be given where it results in absurdity and injustice. In such cases, the court must go by the object and purpose for which the legislation has been passed. It is submitted that in the present case, Section 89 neither by plain reading nor by any alternative meaning, provides for undergoing the exercise as provided in Section 89 in respect of States of Maharashtra and Karnataka, namely, for the state other than the successor State. Such an interpretation, in no way is going to advance the purpose of Act No. 6 of 2014 rather it shall result in hardship to the people of the States of Maharashtra and Karnataka leading to absurd consequences. In support of the principles of purposive interpretation, reliance has also been placed on (2009) 8 SCALE page 351 - the case of N. Kannadasan - paragraph 64 at page 369 where it is also observed that construction

of a statute would not necessarily depend on any formalism but may have regard to the text and the context thereon. Some other cases have also been cited on the question of interpretation of statute e.g. (2003) UKHL-13 House of Lord page 118 - R. Vs. Secretary of State for Health - laying down the principle that the historical background and the context in which the statute has been enacted should be considered more appropriate instead of giving any literal interpretation which may give rise to more defects rather than to achieve the purpose of the legislation. He also cited (1957) SCR page 930 at page 936 - RMD Chamarbaugawallahôs case which also speaks of intent of the statute while interpreting the provision. Mr. Diwan has also cited (1956) SCR page 11 - CIT Vs. Sodra to contend that mention of one thing excludes the others, therefore, since only successor States are mentioned in the Explanation to Section 89, it excludes the States of Maharashtra and Karnataka.

It is submitted that the purpose of the Act No. 6 of 2014 is to reorganize by bifurcating the erstwhile State of Andhra Pradesh and for distribution of all assets and liabilities including services etc. between the successor States and nothing beyond it. The two new States came into being out of the erstwhile State of Andhra Pradesh

as intended to achieve the object of creation of a separate State of Telangana for betterment of social economic and political and other aspirations of the people which according to the statement of objects and reasons has been a long standing demand of the people of Telangana region. The provisions of Act No. 6 of 2014 nowhere speak about States other than the existing State of Andhra Pradesh and the successor States in connection with any matter whatsoever nor it is necessary to subject the States of Maharashtra and Karnataka to the same regime and exercise as provided for under section 89 of the Act No. 6 of 2014 to achieve the purpose and intention of the legislation rather on the other hand it will result in consequences not intended at all by the Statute e.g. to disturb the decision of the Tribunals in relation to the States of Maharashtra and Karnataka, which may, result in great hardship, inconvenience and absurd consequences. We see force in this submission made by the learned counsel.

So as to ascertain the purposes sought to be achieved by enacting Act No. 6 for 2014 Mr. Andhyarujina, learned senior counsel appearing for the State of Maharashtra also similarly submits that the purpose of Andhra Pradesh Reorganisation Act 2014 is only for division the erstwhile State of Andhra Pradesh and

to distribute its assets and liabilities between the successor states. The aspirations of the people as sought to be fulfilled as per the object and reasons of the Act No. 6 of 2014 are achieved by different provisions from Part-V to Part-IX of the Act. The States of Maharashtra and Karnataka have obviously been not touched under the Act nor it was necessary for achieving the objects of the Act. He also submits that there are provision in the Act which go to show that the decision of the Tribunal constituted under the Act No. 33 of 1956 are preserved rather than being disturbed in relation to non-successor States. He also points out to the absence of any representative of the States of Maharashtra and Karnataka in the Apex council and in the Board. In support of his contentions that the decisions of the Tribunal are protected he refers to Section 85 sub-section (8) clause (d) where even negative impact on the allocations made by the Tribunal have been warded off. His submission is also to the effect that Section 89 is to be read in the light of all the provisions preceding it. It is submitted that firstly there is no ambiguity in Section 89 which may require any interpretation except that it relates to the successor States. But in case any party feels any far fetched ambiguity, that may be for the reason of omission to say ósuccessor statesô in Section 89 and that

these words ñsuccessor Statesò should be read in clauses (a) and (b) of Section 89.

It is submitted that Section 89 cannot be read as a general provision reopening everything including the allocation which have already been made to three States by KWDT-1 and KWDT-II. A Tribunal constituted under Article 262 of the Constitution, exercises judicial powers of the State and refers to the decision in the Cauvery case, hence, the decision of the Tribunal cannot be interfered with. He also placed reliance upon the Principles of Statutory Interpretation by G.P. Singh to say that a statute must be read as a whole in context of the purpose sought to be achieved. In that view of the matter, division of the State and division of the assets, resources and liabilities etc. of the erstwhile State of Andhra Pradesh having been done, the purpose sought to be achieved is fulfilled and rightly no provisions relating to States of Maharashtra and Karnataka has been made which has no relevance for achieving the purpose of the statute or that of Section 89. It is submitted that for interpreting a provision, the other provisions preceding the provision in question and succeeding it, have to be seen. He placed reliance upon a decision reported in (2001) 4 SCC page 139 - UOI Vs. Elphinstone Spinning & Weaving. On the basis of the said

decision, it is also submitted that the long title of the Act which preceeds the preamble, is also admissible as an aid to ascertain the meaning of the statutory provisions. The long title of the Act, namely, the Andhra Pradesh Reorganization Act itself shows that the main purpose was to divide the existing State of Andhra Pradesh to fulfil the aspirations of the people of Telangana region. He has particularly drawn our attention to page No. 165 of the case - UOI Vs. Elphinstone Spinning & Weaving (supra), - where observations of the decision in the case of Burrakur Coal Co. Ltd. ( AIR 1961 SC 1954 have been quoted as it relates to use of preamble in interpreting a provision:

> *"It is one of the cardinal principles of construction that where the language of an Act is clear, the Preamble must be disregarded though, where the object or meaning of an enactment is not clear, the Preamble may be resorted to, to explain it. Again, where very general language is used in an enactment which , it is clear must be intended to have a limited application, the Preamble may be used to indicate to have a limited application, the Preamble may be used to indicate to what particular instance the enactment is intended to apply. We cannot, therefore, start with the Preamble for constructing the provisions of an Act, though we would be justified in resorting to it, may, we will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application".*

It is thus submitted that where the provision is not ambiguous and by a plain reading the meaning is clear, it is unnecessary to even look into the preamble or other aids as may be available for the purpose. It is submitted that there is no clue in Section 89 even to suggest that the whole water of the river Krishna is to be redistributed amongst all the riparian States. His submission is that Section 89 relates to successor States alone and not to all the four States. It has limited application confined to successor States.

Mr. AK Ganguli learned Sr. Counsel for the state of Andhra Pradesh submits that according to Clause (a) of Section 89, this Tribunal is required to make project-wise specific allocations, if such allocation have not been already made by a Tribunal constituted under Act No. 33 of 1956 and as per clause (b), this Tribunal is to determine an operational protocol for project-wise release of water in the deficit years. It is submitted that the above exercise as provided under Section 89, is to be undertaken in respect of such project which were subject matter of KWDT-I as well as KWDT-II since in Clause (a), the expression used is ó a Tribunalô which would include KWDT-I as well. It is submitted that it would thus be in respect of all projects in any State which have been allocated water enbloc and not project-wise specific. He

then draws our attention to explanation to clause 89 which says ófor the purposes of this sectionô it is clarified that the project-wise specific allocation already made by the Tribunal, shall be binding on successor States. It is submitted that this binding nature of project specific allocation pertains to all the three States and not for the successor States alone. Yet another argument as advanced by the learned counsel is that Clause (a) of Section 89 does not say that project-wise allocation shall be made in respect of part of Krishna River falling within the State of Andhra Pradesh. It is further submitted that river and the river basin is one unit and there may not be any break up providing for making project-wise specific allocation in respect of only one State leaving the others. So far Clause (b) of Section 89 is concerned, the operational protocol will be required to be made in respect of the projects of all the riparian States in the event of deficit flows.

So far the nature of allocation made by KWDT-I is concerned, he refers to (2009) SCC page 572, State of Karnataka vs. State of Andhra Pradesh and particularly to paragraphs 47 and 49 at page 637 and 639 where it has been held by the Hon'ble Supreme Court that allocation made by KWDT-I are enbloc except for projects mentioned in clauses IX and X of the final order. In

respect of the allocation made by this Tribunal, the learned counsel refers to page 413 of the Further Report of KWDT-II and to its clauses X and XI which place restriction on only maximum permissible utilization by each State which, it is submitted, is a kind of mixed allocation project-wise with restrictions, otherwise enbloc.

As to the question about the purpose of the enactment, The Andhra Pradesh Re-Organisation Act 2014 and Section 89, submitted is for the purposes of making allocations to all the projects, project-wise specific allocation rather than to have enbloc allocations. It is submitted that the enbloc allocation gives liberty to a State to divert the water allocated to a particular project to other projects or to over-utilize water in a particular project. In case the allocation is project-wise specific allocation, this malpractice would stop since there would be ceiling on projects and no more than the allocated quantity of water shall be utilized in a project nor there would be diversion to other projects. As a result of which more water would flow down for utilization by the lower riparian States which are in dire need of water. It is submitted that the States of Maharashtra and Karnataka have misused the liberty of enbloc allocation and have increased number of projects by

diverting waters from one project to the other and even in the projects which were considered by the KWDT-I not worth consideration. It is further submitted that by project-wise specific allocations, there would be no disputes in future over utilization and diversion of water from one project to the other.

We, however, feel it difficult to be persuaded by this argument of the learned counsel about the purpose of enacting the Act No. 6 of 2014 and Section 89. There cannot be any presumption that in all case where there is enbloc allocation, a State must over-utilize water in its projects. For each project some amount of water has been allocated. Normally, each State is supposed to utilize only that amount of water in a particular project. In case some water from one project is diverted to some other project, as per the local need, it would normally not affect the lower riparian States because there is limit on total utilization of water by each State, as clearly provided by KWDT-I that no State shall utilize water over and above the given quantity of allocation in a water year.

Yet another aspect is that in case a State chooses to violate the limit of the allocation to a particular project which may not have been allocated project-wise specific allocation, such State can

violate the limit of the project-wise specific allocation too. In case the purpose of Section 89 is to avoid future disputes, as submitted, we feel that such purpose would hardly be achieved by merely making project-wise specific allocations. In case of over utilization or diversion of water by any State which causes injury to the other riparian State, it is always open to seek such redressal of the wrong done as may be open to a party. But there seems to be hardly any check for avoidance of any dispute in future by merely making the project-wise specific allocation. We also find no substance in the submission that by making the allocation project-wise specific, more water may be available, which may be allocated to the lower riparian States. It is submitted that for the exercise under Section 89 of the Act 6 of 2014, the requirement of each project, except where it is project-wise specific allocation, shall have to be re-examined and reassessed and project-wise specific allocation may be made accordingly. This will make more water available for distribution to the riparian States. We again find no force in such a submission. There is a limit of maximum utilization put by KWDT-I for each State saying that in a water year not more than total quantum of enbloc allocation would be utilized by a State. Therefore, even if there is some over utilization in some project and

some diversion here and there, it would not make any difference in the matter of availability of water for allocation amongst the lower riparian States as the enbloc utilization have also to be made within the maximum limit of total amount of water allocated to it.

It is submitted that whatever amount of water is found to be extra, this Tribunal may allocate the same amongst the all riparian States. A perusal of Section 89 would show that there is no such scheme by which fresh allocations are to be made or re-distribution of water is to be undertaken by this Tribunal. It has no connection with the purpose sought to be achieved by Reorganization Act of 2014.

To counter the stand of the Central Government that this Tribunal, by virtue of Section 89 of the Act No. 6 of 2016, has to distribute water between the successor States, it is submitted that the provision of Section 89 is not to be interpreted the way it is canvassed by the Central Government . The letter addressed to this Tribunal dated 25th August 2014 cannot be held to be the intent of the Parliament in enacting Section 89 of the Act No. 6 of 2014. The provision is to be interpreted on its own. Initially to support his contention, it was submitted by Mr. Ganguli that since there is a

provision for sharing of the water under section 84 of the Act No. 6 of 2014, there would not be two provisions for the same purpose, namely, Section 89 too for sharing of water between the successor States.

Therefore Section 89 is for the purposes of distribution of water to all the four States. So far this contention is concerned, undoubtedly, letter dated 25.8.2014 by itself cannot be basis to interpret Section 89 of the Act No. 6 of 2014. Similarly, the argument that there would not be two provisions for the same purpose, namely, Sections 84(3)(iii) and 89 in one statute. In this background, it is sought to be argued that Section 89 is for the purposes of redistribution and reallocation of water to the projects of all the four States. It may be true that the stand taken by the Central Government that Section 89 is for the purposes of ñdistribution of waterò between the two States may not be correct in so far it relates to distribution of water, since Section 84(3)(iii) is already there but it does not follow that the stand that it is in relation to two successor States is also incorrect for other purposes of Section 89. This aspect requires consideration together with other facts and material and the provisions of the Act, whatever worth it may have.

Later on somehow a different stand is taken by the State of Andhra Pradesh that there is no provision for division of water between successor States in Act No. 6 of 2014, so it will lead to the inference that Section 89 is for redistribution of water amongst all the four the four States. So by inference, it is sought to be argued that Section 89 is for the purposes of redistribution and for reallocation of water project-wise specific to the projects of all the four States. This argument has no force at all.

The language used in Section 89 does say anything about redistribution of water amongst all the four States. Nor there is any mention of the State of Telangana for the purpose. It is not a correct stand which is tried to be taken later that there is no provision for distribution of water in Act No. 6 of 2014. The sub-clause (iii) of sub-section (3) of Section 84 clearly provides for amicable settlement of the disputes by the Apex council, arising out of sharing of water between the successor States. The provision is quite clear since sharing of water between the two States is very much envisaged in the aforesaid provisions. That being the position, it cannot be argued that Section 89 of the Act No. 6 of 2014 is inferentially for the purposes of redistribution of water amongst the four States. On the other hand, once a machinery has

been provided for sharing of water between the two States, there would not be any occasion to make another provision for sharing and distribution of water amongst the four States under Section 89 of the Act. Both provisions cannot go together.

In reply to the point raised that Section 89 does not provide for distribution or reallocation of water, Mr. Ganguli submitted that in all Reorganisation Acts, a mechanism is provided for distribution of water between the successor States which is not there in the Act No. 6 of 2014 which is not a factually correct position. To make out his point, Mr. Ganguli has placed before us the Andhra State Act, 1953. State of Andhra Pradesh was formed out of the existing territory of State of Madras. Some territories of Madras were also transferred to Mysore. Our attention was drawn to Section 66 of the Act with regard to Tungabhadra Project, providing that all the rights and liabilities of the State of Madras in relation to Tungabhadra Project shall be right and liabilities of the Andhra Pradesh and Mysore, subject to such adjustment as may be made by agreement entered into by the said States after consultation with the President and in case there is no such agreement arrived at, as the President may direct by order having regard to certain aspects as

have been provided in Section 66. So this is the mechanism by which rights and liabilities were passed on to the successor States and transferred territories. Next, he has drawn our attention to the State Reorganization Act, 1956. Section 3 of the said Act provided for adding some districts to the State of Andhra Pradesh and by Section 4, some parts of the State of Travancore & Cochin were transferred and added in the State of Madras. Section 107 authorizes the Central Government to give appropriate directions to the State Government for arrangement of water supply etc. of the transferred territories. So the adjustment as a result of reorganization in the States, as indicated above, was to be made by the Central Government by issuing directions as it deemed proper. He then refers to Madhya Pradesh Reorganisation Act 2000. The State of Chhattisgarh was formed out of the territories of the existing State of Madhya Pradesh. The successor States means the existing State of Madhya Pradesh or Chhattisgarh. Section 75 of the said Act provides that where it appeared to the Central Government that the arrangement in regard to water supply for any area has been or likely to be modified to the disadvantage of that area by reason of formation of successor States, the Central Government with consultation of the successor States was authorized to give

directions to the State Government or concerned authority before the appointed date. Section 76 provided for Inter State River Water Board to be constituted with the consultation of successor States for planning and development of Inter State River and sub-section (2) provided that Inter State River Board was to decide sharing and withdrawal of water from reservoir for irrigation and power etc. It is pointed out that for sharing and utilization of water on reorganisation of States, provisions were made in the Reorganisation Act itself to provide mechanism for sharing and utilization of water. He then refers Bihar Reorganization Act. State of Jharkhand was formed out of the territories of State of Bihar. Section 78 provided that all rights and liabilities of the existing State of Bihar in relation to water resources projects, in relation to Ganga and its tributaries and Sone river and its tributaries shall on the appointed day be rights and liabilities of the successor States in such proportion as may be fixed subject to such adjustments as may be made by agreement, after consultation with the Central Government failing which the Central Government by order make such determination. It also provides for constitution of a Ganga and Sone Management Board by the Central Government . The Board would consist of a Chairman appointed by the Central

Government and representatives of each of the governments of State of UP, Bihar, Jharkhand and Madhya Pradesh to be nominated by the respective governments and two representatives of the Central Government and functions of the Board is provided for in sub-section (3) of Section 79 saying that it is for regulation of water from projects referred to in sub-section (1) of Section 78 to the States of UP, Bihar, Jharkhand and Madhya Pradesh having regard to the agreements entered into between the governments. The Board was also to perform such functions as Central Government may after consultation with the Governments of the States of UP, Bihar, Jharkhand and Madhya Pradesh entrust to it. The other Reorganization Act that he has referred to is Punjab Reorganization Act, 1966 on formation of the State of Haryana. According to Section 78, all rights and liabilities of the existing State of Punjab regarding Bhakhra, Nangal and Beas projects be the rights and liabilities of the successor States in such proportion as may be fixed or subject to such agreement after consultation with the Central Government or in case no agreement is entered into, as the Central Government may order determining the rights and liabilities having regard to purpose of the projects etc.

It is rightly pointed out by Mr. Ganguli that on reorganization of States a mechanism is always provided for utilization and sharing of the water between the successor States, by means of an agreement between them or by the Central Government if no such agreement is arrived at. In some cases, River Management Boards etc. have been constituted to go into the details of sharing of water and the related matters. But it is noticeable that besides the successor States, no other State was involved in sharing and utilization of the water of the existing States.

In all cases, the water available to the existing States has been the subject matter of sharing and utilization between the successor States alone. The successor States have only succeeded to the water as it was available with the existing State. Therefore, in the case in hand also, the water which was allocated to the existing State of Andhra Pradesh by Tribunals is only to be shared by the successor States without involving any other States. As a matter of fact, the successor States succeed or inherit the water as available to the existing State, as the predecessor in interest. The arrangement of sharing does not distribute the water which may be available to the existing State to States other than the successor States nor the

share as allocated to other riparian State after adjudication is liable to be distributed to the bifurcated States of another State.

We, however, find that in the case of Bihar Reorganisation Act, it appears that there were some agreements before the Reorganization of the State took place amongst the States of Bihar, UP and MP relating to the water of River Ganga and Sone, besides the representatives of successor States of Jharkhand and existing State of Bihar, representatives of the States of UP and MP apart from Bihar and Jharkhand had been included in the Management Board constituted under section 79 of Bihar Reorganization Act. Sub-section (3) of Section 79 provides for the function of the Board which includes ñ(a) Regulation of water from projects referred to in sub-section (1) of Section 78 to the States of UP, Bihar, Jharkhand and Madhya Pradesh having regard to the agreements etc. entered into between the Governments and clause (g) provides amongst its function ñsuch other functions as Central Government may after consultation with Governments of States of UP, Bihar, Jharkhand and Madhya Pradesh entrust to it. So where it appears that water of River Ganga was also involved which was regulated by some agreements, in such situation, the provision for sharing and utilization; as the case may be, was to be looked after by the

Management Board having representatives of the States of UP and Madhya Pradesh besides the representatives of successor States and directions if any, were to be given by the Central Government in consultation with Governments of UP, Bihar, Jharkhand and Madhya Pradesh. Factually, it is different situation altogether.

In this light, we find that a provision has been made for sharing of water between the successor States in clause (iii) of sub-section (3) of Section 84 of Act No. 6 of 2014. At one stage, Mr. Ganguli tried to explain that Section 84(3)(iii) relates to the sharing of water of new projects which may now come up. However, this is not borne out from the provision itself. Sub-section (3) enumerates the functions of the Apex council which are separately provided for under different clauses. Clause (iii) of sub-section (3) of Section 84 does not identify any kind of water in respect of which alone amicable settlement on sharing may be required. The provision is in general terms. It casts a duty or provides as one of the functions of the Apex Council to resolve any dispute amicably arising out of the sharing of river waters through negotiations and mutual agreements between the successor States. The term successor States is to be seen in context with the term existing State. Whatever is held by the existing State is to be shared by the

successor States. No inference can be drawn that it is confined to the sharing of water of only new project.

The argument of Mr. Ganguli has been that there is a legislative practice and norm to that effect to make provision for sharing of water by the successor States and that trend and pattern is followed in all such Reorganisation Act which have been placed before us. We find that following the same pattern and trend in such legislations that a provision for sharing of water has been made in Act No. 6 of 2014 as well viz. under Section 84(3)(iii) and Apex Council settles the disputes amicably by agreement between the parties, namely, the successor States. Since there is a provision for sharing of water, no question of having another provision like Section 89 again to provide for redistribution of water amongst all the four States including the successor States arises. The terms of Section 89 are quite different from any kind of sharing, redistribution or reallocation of water amongst four States. There is no mention of the State of Telangana at all.

We also find no substance in the submissions made by Mr. Ganguli that a provision for distribution of water could not be made only in respect a part of the river basin. It has to be in respect of the whole basin covering all the riparian States. There is no such mention

about distribution or reallocation of water to all the four States in Section 89 much less any mention about allocating water to the State of Telangana. It is submitted by Mr. Ganguli that it is to be drawn by inference that Section 89 relates to distribution of water to all the four States. We are not able to draw any such inference. No such intention appears from Section 89 that all the water of the basin is to be redistributed afresh amongst the four States.

Again, the allocations which have already been made as project-wise specific allocation, they are provided to be binding on the successor States. There are other provisions also as referred to earlier where the availability of water as allocated by the Tribunal has been preserved, therefore, it is difficult to say that fresh allocation in respect of all the States be made giving a go bye to the decision of the Tribunal rendered earlier. It will be an exercise against the provisions of the Act. If fresh allocation were intended to be made amongst all the four States, the allocations which are project-wise specific allocation must not have been left out, this all would have also been included. It would otherwise be an incomplete exercise to leave out the water of project-wise specific allocation, in distributing water to all four States.

Mr. Ganguli as well as on behalf of a State of Telangana, it has been submitted that the Andhra Pradesh Reorganization Act 6

of 2014 besides making provisions in relation to division of the assets and liabilities of the existing State of Andhra Pradesh to the successor States has also made certain provisions which relate to other matters as well. In this connection, our attention has been drawn to Section 90 of the Act No. 6 of 2014 which also falls in Part-IX of the Act No.6 of 2014. It is quoted below:

> *"90.Polavaram Irrigation Project to be a national project: (1) The Polavaram Irrigation Project is hereby declared to be a national project.*
>
> *(2) It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation and development of the Polavaram Irrigation Project for the purposes of irrigation.*
>
> *(3) The consent for Polavaram Irrigation Project shall be deemed to have been given by the successor State of Telangana.*
>
> *(4) The Central Government shall execute the project and obtain all requisite clearances including environmental, forests, and rehabilitation and resettlement norms".*

The Polavaram Irrigation Project, no doubt, is a project involving the States other than the existing State of Andhra Pradesh and now its successor States. It came into being in pursuance of Godavari Tribunalôs decision. The water augmented from this project was to be shared by all three States. This project has been declared to be a national project and its control and regulation has been taken over by the union in public interest. There is a deeming

clause by which consent for Polavaram Irrigation Project is deemed to have been given by the successor States of Telangana and Andhra Pradesh. All matters relating to the aforesaid project have been taken over by the Central Government including its execution and obtaining all requisite clearances and rehabilitation and settlement norms. The salient features of the bill are enumerated in clause (3) statement of objects and reasons of the Act No. 6 of 2014 and its sub-clause (f) is to the following effect:

> *"(f) it declares that the Polavaram Irrigation Project will be national project which would be executed by the Central Government expeditiously".*

It is mentioned in clause (4) that the bill seeks to achieve the aforesaid objectives. So it was one of the objects and purpose of enacting Section 90 in relation to Polavaram Irrigation Project. There also seems to be some sense of urgency, therefore, it is particularly mentioned that it would be executed expeditiously by the Central Government as mentioned in clause 3(f) quoted above. There is no doubt that this provision is other than for mere sharing of waters and other assets of the existing State of Andhra Pradesh between the successor States. But it was one of the specific and named object which was sought to be achieved by enacting Section 90 in Act No. 6 of 2014. It is not one of the general provisions

contained under different sections of the Act No. 6 of 2014, preceding section 90, relating to sharing of the assets and liabilities of the existing State of Andhra Pradesh confining to the two successor States only. Such a provision regarding proclaimed aims and objects could very well be made in Act No. 6 of 2014. It is to be read independently without taking context or colour of the preceding provisions but reading it in context of reasons and objects of the Act. It shall have no bearing in interpreting other provisions of the Act No. 6 of 2014. It may also be noted that besides taking over the Polavaram project as a national project no provision for distributing or sharing of augmented water has been made. That remains the same, no disturbance to the sharing amongst the States has been caused.

Another provision which has been referred to in the same direction by the learned counsel for both successor States, namely, the Andhra Pradesh and Telangana is Section 91. It is quoted below:

> *"91. Arrangements on Tungabhadra Board: (1) The Governments of the successor States of Andhra Pradesh and Telangana shall replace the existing State of Andhra Pradesh on the Tungabhadra Board.*

*(2) The Tungabhadra Board shall continue to monitor the release of water to High Level Canal, Low Level Canal and Rajolibanda Diversion Scheme."*

It has been submitted that Tungabhadra Board is for management and release of water amongst the State other than the existing State of Andhra Pradesh as well. Therefore, certain provisions are found to be there made in the Act No. 6 of 2014 relating to matters other than bifurcation of the existing State of Andhra Pradesh and the division of the assets between successor States. As a matter of fact, Tungabhadra Board, amongst others had representatives of existing State of Andhra Pradesh also. But the existing State of Andhra Pradesh now stands bifurcated into two States, namely, Telangana and Andhra Pradesh and erstwhile State of Andhra Pradesh is not there any more. It is succeeded by Telangana and Andhra Pradesh. Section 91 provides nothing more than substitution of the existing State of Andhra Pradesh on Tungabhadra Board by the successor States in place of the predecessor in interest. No new provision has been made bringing about any change in the position, as existing, relating to sharing, release and management of the waters of Tungabhadra Reservoir. The whole area of erstwhile State of Andhra Pradesh continues to

be represented through the representatives of the Telangana and Andhra Pradesh after physical division of existing State of Andhra Pradesh into these two States.

We are, therefore, of the opinion that the submissions made by the learned counsel for the States of Andhra Pradesh and Telangana on the analogy of Sections 90 & 91 of Act No. 6 of 2014 that matters other than bifurcation and sharing of assets were also provided for does not advance their case in any manner that Section 89 for an interpretation by inference that provides for redistribution and reallocation of water amongst all the riparian States including the State of Telangana. No such analogy, by any stretch of imagination, can be drawn to put in Section 89, redistribution and reallocation of water amongst the four States.

We find that matters other than bifurcation and sharing between the successor States, have been clearly and specifically mentioned, that too by name in the provisions especially made for that purpose i.e. to say where it related to Polavaram Irrigation Project and under Section 91 when substitution of successor States was required to be made in place of existing State of Andhra Pradesh, on Tungabhadra Board. All other matters preceding Sections 89 relate to the existing State of Andhra Pradesh and the

successor States only and distribution of assets and liabilities between them. Section 89 contains two references in clauses (a) and (b) which makes no mention of any State much less four States or that of the State of Telangana. Nor it provides for redistribution of reallocation of water afresh amongst four States. If anything else was intended to be achieved or done other than as contained in references under clauses (a) and (b), the legislature must have specified clearly about it as it has been done in Sections 90 and 91 of Act No. 6 of 2014.

We may now consider the case as taken up by the State of Telangana particularly about the purpose of enacting the Reorganisation Act No. 6 of 2014 and Section 89 of the said Act. Mr. Vaidyanathan, learned senior counsel appearing for the State of Telangana submits that the purpose of the legislation can better be seen and ascertained from the statement of the reasons and objects of the enactment and he took us through the same, a reference of which has also been made earlier since referred to by the other counsels as well. It is pointed out that the purpose of creation of a separate State of Telangana is for fulfilment of social, economic, political, democratic and other aspirations of the people of that region. It has been their long standing demand. It will ensure to the people of

Telangana region peace, goodwill, progress and prosperity among all the sections of the people of both successor States.

Mr. Vaidyanathan has, however, submitted in particular that less-availability of water in Telangana region was one of the main and primary reason which led to separation of State of Telangana from the existing State of Andhra Pradesh. It is submitted that earlier, during the Nizam period, there was an agreement between the State of Hyderabad and Mysore in respect of Tungabhadra reservoir but later on, due to various re-organisation Acts, position kept on changing and the water, which was to be taken to Telangana region from Tungabhadra reservoir, that part of the scheme was dropped and the water was diverted to Karnataka and other regions. It is also submitted that some areas, good in water resources, fell out of the Telangana region and had gone in the territories of other States on account of re-organisation Acts time and again.

It is also submitted that interest of Telangana region was not adequately and properly projected by the existing State of Andhra Pradesh before KWDT-I and KWDT-II as a result of which Telangana region remained water starved, which it badly needed. He then submitted that water can be taken to the Telangana region only from river Bhima through Narayanpur, on constructing a canal

though long one, through the State of Karnataka to carry the water to the upper reaches of Telangana region. It is submitted that there is no other way to take water to the upper reaches of Telangana. In this connection, Mr. Vaidyanathan submitted that it may require cooperation of the State of Karnataka to bring water to Telangana region. On one of the dates of hearing, Mr. Vaidyanathan brought a huge model made of some hard material to demonstrate before the Tribunal, with the aid of the model that there is no other way except to have a canal from Bhima to Dindi from where the water will flow down to the upper reaches of Telangana region.

Mr. Vaidyanathan refers to a decision reported in (1993) Supp 1 SCC page 96, (Cauvery case) paragraph 71 at page 138 on the point that distribution of water amongst the riparian States is on the basis of equal rights. He read out the observations made in (206) US page 46 in State of Kansas vs. State Colorado as quoted in paragraph 71 of Cauvery case which also speaks of equal rights of the riparian States. It is also observed there that ñquestion of the extent of limitations of the rights of the two States become a matter of justiciable disputeò. It is pointed out, as observed in the case of State of Kansas (supra) that the water rights are *publici juris* i.e. the right to use flowing water is common to all the riparian States

which is not an absolute and exclusive right of water flowing passed their land, it is for common benefit. It obviously does not mean that all the States have to be allocated equal amount of water, there is to be equitable sharing of the water amongst the riparian States and it is further observed as to what would be the equitable share, will depend upon the facts of each case.

It is submitted that Telangana region has not been fairly dealt with and much less water has been allocated to Telangana region as against its requirement. Like the arguments as advanced by Andhra Pradesh the contention of Telangana also is that KWDT-I has made enbloc allocation to the States, as a result of which the upper riparian States exceed their utilisation and diverted water to other projects for which no allocation had been made. They also diverted water to the projects which were found by KWDT-I as not worth consideration, therefore, there is surplus water available to the upper riparian States. The extra water which is being used by the upper riparian States can be allocated to State of Telangana. It is also submitted that during deficit years, States of Maharashtra and Karnataka will not suffer whereas the lower riparian States namely the Andhra Pradesh and Telangana would bear most of the suffering which is against the principle of equitable distribution of

water. To demonstrate the fact, the yield of an earlier year has been stated to be only 1200 TMC and it is submitted that Maharashtra utilised 618 TMC, 517 TMC by Karnataka and only 237 TMC by Andhra Pradesh. It appears there may be confusion about above figures since it exceeds the total yield as told, but the fact which comes out is that it is not that the Karnataka had not suffered the deficit and despite lower yield on their own admission, 237 TMC was utilised by Andhra Pradesh also. The deficit of Karnataka was also more than 200 TMC but it is not always that the deficit may be to the same extent as cited. It may be that out of 25 % of deficit years, in many years the deficit may be marginal and in some of them not very substantial. The availability, at 75% dependability, is ensured for agricultural operations. The deficit in 25% of the years is not unexpected and it may vary year to year. It is, however, also submitted that KWDT-I has allocated a considerable amount of water to Andhra Pradesh outside the basin for historical reasons on the basis of prior user. The submission is that looking to the development which have taken place in last fifty years, such allocation may be withdrawn and the water so procured may be utilised within the basin allocating it to the State of Telangana.

It is submitted that State of Telangana was not in existence before either of the two Tribunals when the allocations have been made, therefore, it had no opportunity to address its requirements for appropriate allocation. The existing State of Andhra Pradesh had also not properly placed the case of requirement of Telangana region before the Tribunal, therefore, there has been disparity in allocation for Telangana region. It is, however, an argument which is not tenable. The existing State of Andhra Pradesh had represented the whole area and population of the undivided Andhra Pradesh which included Telangana region as well. Under Section 3 of the Inter-State Water Disputes Act 1956, interest of all the inhabitants of the State is looked after by the State Govt. Therefore, it is not open to the State of Telangana to say that interest of inhabitants of Telangana region was not represented by State of Andhra Pradesh. As a matter of fact, the stress is more on the fact that the interest of Telangana region was not adequately represented. In this connection, it may be pointed out that this plea taken by the State of Telangana in writing as well, has been denied by the state of Andhra Pradesh that the interest of the Telangana region was not properly projected before the Tribunals. Mr. Ganguli, learned counsel for State of Andhra Pradesh, has taken us

through page 60 of the report of KWDT-I showing that the State of Andhra Pradesh had projected the requirement for a project catering to the upper reaches of Telangana region but after its consideration, the project was not allowed by KWDT-I. Even then it is submitted by Mr. Ganguli that State of Andhra Pradesh made a project of 20 TMC, by applying lift irrigation system catering to the needs of the upper region of Telangana. Hence, it cannot be said that interest of Telangana region was not fairly placed before the Tribunal. However, this point may not detain us any further because even if some more water was allocated for Andhra region and less for Telangana region, an appropriate adjustment can still be made at the time of sharing of water between the two successor States out of the total allocation of existing State of Andhra Pradesh.

Yet another submission has been made that many changes took place with passage of time, which are relevant in the matter of allocation of water. So during the long time that has passed between the decision of KWDT-I till date, many scientific and technological improvements have taken place in application of water to different crops and in the method of irrigation, as a result of which, much less water may be required as may have been allocated earlier to different projects. It is also submitted that

cropping pattern has also changed and all such developments and improvements in the matter of agricultural operation lead to saving of water. All that water, as may be available over and above the requirement of a project, may be allocated to Telangana. There is no substance in this submission either because the benefit of scientific and technological developments and better cropping pattern etc., would be equally applicable and beneficial to all the States, it is not that only upper riparian States would be benefited by it. All of them are at par. Again section 89 does not speak about distribution of savings in water amongst four States or to Telangana alone. All are in the same position. If it is accepted then there would be frequent redistribution every now and then.

According to the learned counsel, enbloc allocation was perceived by the Parliament to be not equitable way of distribution of water. The Parliament is presumed to have the knowledge of all such facts and enacted Section 89 for re-assessment of the requirement of each project to which allocation has not been project specific and all water that may be found over and above the requirement, may be distributed amongst the four States and also including the allocations which had been made for out of basin area of Andhra Pradesh by KWDT-I.

However, there seems to be no good reasons for the above argument. If all the States were allocated water applying same method and parameters, it cannot be said to be inequitable. It may be worth noting that no State could be allocated water matching to their demands. That much water is not available for distribution and apportionment. All the three States still have water scarcity and the areas which are drought prone. The allocation made to the erstwhile State of Andhra Pradesh is more than two and half times of the total generation of water within the erstwhile State of Andhra Pradesh. The other two States have been allocated less water though generation in those States is much more. It could be possible only by application of principles of equitable distribution on consideration of various factors as relevant for the purposes of apportionment of water. There can be no presumption that there will be over utilization of water in a project with en bloc allocation. Therefore, it cannot be assumed that en bloc allocation is inequitable especially when there is a maximum limit of total utilization by a State within a water year.

Coming to the point raised that the issue of water was the primary and the main reason which led to the separation of the State, apparently it does not appear to be so. It is not meant to be

said that there is no shortage or water related problem in Telangana region but to say that it was primary and main reason for enacting Re-organisation Act, may not be so. It is, at least, not borne out from the statement of Objects and Reasons for enactment of the Andhra Pradesh Re-organisation Act. As read out by learned counsel for the State of Telangana, the creation of separate State of Telangana, according to the statement of Objects and Reasons, was for betterment of the social, economic, political and other aspirations of the people of that region, which has also been their long standing demand. It is again said that the proposed re-organisation will meet the democratic aspirations of Telangana region and to ensure peace, goodwill, progress and prosperity among all sections of the people of both successor States. We then find that Clause 3 of Objects and Reasons of the statement contains the salient features of the Bill. Clause (a) may be beneficially quoted below:

> ñ3 (a) *: It provides for the territories of two successor State of Andhra Pradesh and Telangana, and necessary provisions relating to representation in Parliament and State Legislature, distribution of revenues, apportionment of assets and liabilities, mechanism for management and development*

*of water resources, power and natural resources and other matter."*

Clause (e) may also be quoted as under:

ñ(e) *it further makes provisions casting responsibility on the Central Govt. to promote industrialisation and economic growth in both the successor States through fiscal measures as well as through other programmes for the development of backward areas, in particular Rayalaseema and the north coastal regions of the successor State of Andhra Pradesh, by special development package to be given by the Central Government after having due regard to the resources available to the successor State of Andhra Pradesh;"*

Clause (f) reads as under:

*"(f) it declares that the Polavaram irrigation project will be national project which would be executed by the Central Government expeditiously;"*

It is to be noted that no particular or special mention about the water or water problem finds mention in the statement of Objects and Reasons for separating the state nor in the salient features for making such a legislation as provided in Clause 3 noted above. The reason about the political and democratic aspirations of the people of Telangana finds specific mention in the statement of Objects and Reasons and sub-clause (a) of Clause 3 mentions about the necessary provisions relating to representation in Parliament and

legislature whereafter other matters for apportionment of the revenues, assets and liabilities and mechanism for management and development of water resources alongwith power and natural resources, is mentioned in a general way. There is no such mention about re-distribution, re-allocation of the water amongst all four States. Water has already been allocated by the Tribunals, there is no mention about any inequitable distribution of water for Telangana region or it being a reason much less the primary reason for the separation of the State. As against that in Clause (e), we find there is a specific mention about the progress and for development of backward areas, in particular Rayalaseema and north coastal regions of the successor State of Andhra Pradesh by special development package to be given by the Central Govt. Again we find that there is a specific provision for declaring Polavaram Project as a national project.

Therefore, to say that primary reason for separation of the State of Telangana has been water problem and inequitable and faulty allocation, which reason has been stressed repeatedly, is not borne out from the statement of Objects and Reasons and the salient features of the Bill. The mention in Clause 3(a) for making provision for mechanism for management and development of

water resources, is much different an aspect than inequitable and faulty allocations which are said to have been made by KWDT-I nor there is any indication of re-allocation or re-distribution of water amongst all the four riparian States like a mention of Polavaram project. The statement of Objects and Reasons nowhere touch any aspect relating to any other riparian States. The dominant purpose of enacting the Act No. 6 of 2014 as enumerated in the Statement of Objects and Reasons are particularly for division of the boundary of the existing State of Andhra Pradesh into two separate States of Telangana and Andhra Pradesh and to make necessary provisions for distribution of revenues and apportionment of assets and liabilities and to achieve the object as enumerated in clause 3 of the statement of Objects and Reasons quoted above and to fulfil the political and democratic aspiration of the people of the region.

We may now consider about the purpose of enacting Section 89 of the Act No. 6 of 2014 as mentioned earlier. According to Mr. Vaidyanathan, it is for the purposes of re-allocation and re-distribution of water afresh amongst the four riparian States including the State of Telangana since it is required that the Tribunal shall make project-wise specific allocation in respect of

those projects which have not been allocated in that manner by a Tribunal constituted under Act 33 of 1956. This exercise, according to him, will distribute the water equitably amongst the four States. This does not, however, seem to be the purpose of Section 89. The Section 89 of Act No. 6 of 2014, does not show that it has to do anything with distribution of water much less amongst the four States or to withdraw the allocations made for utilisation outside basin, for historical reasons to the State of Andhra Pradesh, as well as the extra water which is being allegedly saved on account of recent scientific developments in the field of agriculture operations, for example, new methods of irrigation and crop pattern etc. and all that water be pooled and re-distributed amongst the four riparian States. It is also submitted that requirement of each project will have to be re-assessed and re-allocation be made which may result in change in the total State-wise allocation made by KWDT-I and KWDT-II for each State. If this was the intention of undoing the previous decisions and a fresh exercise was to be undertaken in that event why the projects in respect of which project-wise specific allocations had been made, should have been left out and those allocations have been provided to be final and binding on successor States as pointed out by us

earlier also. In case the allocation to the projects to which non-specific allocation was made, was faulty in any manner why it would also not be so in respect of those projects to which specific allocations had been made. In that case, the total water allocated to all the projects of any kind would have been provided to be pooled to be redistributed to all four States and then it would have been an exercise to achieve the purpose of Section 89 as alleged by the State of Andhra Pradesh and Telangana.

But Section 89 does not lead to any such inference or conclusion as canvassed for a fresh allocation amongst the four riparian States. There is not even a mention about the State of Telangana much less about any kind of re-allocation at all. In terms of Clause (a) of Section 89, those projects which were allocated non-specific water only in respect of such projects the allocation has to be made project-wise specific. Obviously it would relate to such projects to which the allocations had been made by the Tribunals earlier but non-specific in nature. Purpose of this provision is also not apparently well ascertainable from Section 89 itself. May be that it may have been considered to be helpful in any way at the time of sharing of water of existing State of Andhra

Pradesh between the successor States. This may only be a possibility, nothing beyond that.

The Section 84 (3)(iii) of Act No. 6 of 2014, obviously relates to distribution of water as available to the existing State of Andhra Pradesh. Like other assets and liabilities, the water is also provided to be shared between the successor States. According to the State of Telangana admittedly, the aforesaid provision namely 84(3)(iii) is for the purposes of sharing of water between the two States. But it is also the case that since a provision for distribution of water between the States is already there, Section 89 will not be again there for the same purpose, therefore, Section 89 is meant for distribution of water amongst the four States and it is not confined to two States. We find no logic in this reason given on behalf of the state of Telangana. Admittedly, since there is a provision of sharing of water of the existing State of Andhra Pradesh between the two successor States, no question arises for another distribution amongst the four riparian States under Section 89. If the fresh distribution is envisaged under Section 89 amongst all the four riparian States, there would be no occasion to distribute water of existing State of Andhra Pradesh to successor States. The submissions on behalf of the State of Telangana and Andhra Pradesh are based on

presumption that Section 89 is for the purposes of fresh distribution of water amongst the four riparian States which purpose does not emerge from the Section 89 itself nor from the statement of Objects and Reasons of the enactment. It is nowhere to be found that the decision of the Tribunals earlier, are to be given a go bye or that they would be of no effect, in absence of that the question of re-allocation or fresh allocation amongst four States does not arise more so leaving out the water of projects to which specific allocations have been made. The arguments made by the State of Telangana and Andhra Pradesh that except the part by which project-wise specific allocations have been made is saved but everything else including the total amount of water allocated to each State all goes and the earlier decision of the Tribunal become non existent leading to a fresh allocation to all four riparian States is not acceptable nor it has support of the provision viz. Section 89 of Act No. 6 of 2014.

But we find on the other hand, there are several provisions in the Act No. 6 of 2014 itself which give due weightage and require compliance of the decisions made by the Tribunals.

About Clause (b) of Section 89 of Act No. 6 of 2014, the submission on behalf of both the State of Telengana as well as the State of Andhra Pradesh is that the operational protocol can be

determined in the event of deficit flows, if the flow from the upper most riparian States to the lowest riparian States is taken into consideration. It will depend upon the fact as to how much water will flow down which will be determining factor, therefore, it is to be inferred that the operational protocol, in the years of deficit flows, will have to be determined in respect of all the riparian States, and not for the successor States only.

It is, however, not to be found in the provision itself. As discussed earlier, all the provisions preceding Section 89 are in respect of only to successor States. It cannot be linked with any text or context to infer that the mandate is to determine the operational protocol even in respect of those States which is neither existing State nor the successor States. They are not subject matter of Act No. 6 of 2014, unless specifically provided for, the provisions of Act No. 6 of 2014 shall not apply to them. Any provision in general terms is to be taken to be applicable to the existing State and the successor States. The upper riparian States are not impacted either way, by the fact of reorganisation of the existing State of Andhra Pradesh. The successor States have been carved out of the total area of existing State of Andhra Pradesh. The two successor States are

territorially bound within the area of the existing State of Andhra Pradesh. All the preceding provisions are in relation to the existing State of Andhra Pradesh and the successor States. In this context, Section 89 would obviously be in respect of successor States or so to say in respect of the area within the territorial boundary of existing State of Andhra Pradesh because it does not refer to any other area falling in any other riparian State. In case it was intended to redistribute or reallocate the water of the whole basin involving the four riparian States and then to determine operational protocol in respect of all the four States, normally it would have been so specifically indicated in the provisions itself, especially in the background that all other provisions preceding Section 89 relate to the existing State of Andhra Pradesh and the successor States. There is nothing in Section 89 saying that the decisions of the previous Tribunals stand nullified and the whole exercise including successor States of Telangana and Andhra Pradesh has to be undertaken afresh except about the projects for which project-wise specific allocations have been made but there is nothing of the kind in the provision itself. On the other hand provisions have been made after section 89 about other matters like Sections 90 and 91, there is specific mention about it. It cannot be left as a matter of inference that Section 89

relates to all the four riparian States. It may be a conjectural inference. The submission of the learned counsel for the successor States is that if it is not read in respect of all the four riparian States, it will serve no purpose for the successor States. It is not valid argument to hold that Section 89 is in respect of all the four riparian States, because purpose of successor States will not be served.

A look at sub-clause (a) of clause 3 of the statement of objects and reasons would show that the salient features of the law to be enacted amongst others are distribution of revenue, apportionment of assets and liabilities and mechanism for management and development of water resources, therefore, Section 89 is in part-IX of the Act for Management and Development of water resources. It cannot be pointer to the fact that the enactment intended to redistribute the whole water amongst the four riparian States afresh. The part relating to mechanism for the management and development of water resources would of course be confined to the successor States. There is no indication that the decisions of the Tribunals constituted under the Act No. 33 of 2014 would be of no effect and the whole thing will have to be reopened.

On the contrary, we find that there are provisions in the Act No. 6 of 2014 to show that the decisions of the Tribunals

constituted under the Act No. 6 of 2014 are to be complied with and not to be violated. Such provisions are like Section 84(3)(iv) providing that any dispute between the successor States arising out of sharing of water, shall be referred to a Tribunal constituted under Act No. 33 of 1956, which matter may not be covered under Krishna Water Disputes Tribunal. It shows that if the dispute is covered under Krishna Water Disputes Tribunal in that event no other Tribunal shall be constituted for that dispute. Some primacy is given to the matter covered under Krishna Water Disputes Tribunal. Then, we find that Section 85 relates to River Management Board. This provision relates to notified projects by the Central Government and clause (d) of sub-section (8) of Section 85 provides as follows:

> (d) making an appraisal of any proposal for construction of new projects on Godavari or Krishna rivers and giving technical clearance, after satisfying that such projects do not negatively impact the availability of water as per the awards of the Tribunals constituted under the Inter-State River Water Disputes Act, 1956 (33 of 1956) for the projects already completed or taken up before the appointed day; and

Therefore, according to the above provision while appraising a proposal of a new project, the Board will have to be satisfied that

it does not negatively impact the availability of water as per the decision of the Tribunal constituted under the Act No. 33 of 1956. Again, according to the Explanation to Section 89 itself, the project specific awards already made by the Tribunal are binding on the successor States. We may now see the Eleventh Schedule which provides principles governing the functioning of the River Management Board. Clause (1) reads as under:

> *"1. The operation protocol notified by the Ministry of Water Resources with respect to water resources arrived at based on appropriate dependability criteria after the adjudication by the Krishna Water Disputes Tribunal shall be binding on both the successor States."*

Clause 4 may also be beneficially perused it is quoted below:

> *"4. The allocations made by the River Water Tribunals with regard to various projects on Godavari and Krishna Rivers or for the regions of the existing State of Andhra Pradesh, in respect of assured water shall remain the same."*

Accordingly, the assured waters as allocated by the Tribunals is to remain the same. The above noted provisions clearly indicate that the decisions of the Tribunals have not been given a go bye rather they have given due weightage to be complied with. Therefore, the limited extent to which the earlier decisions of the Tribunals constituted under Section 33 of 1956 are affected, is to be found in Section 89 itself that where the allocations to the projects

have not been made project-wise specific, this Tribunal would make project-wise specific allocation. The other projects for which allocations have been made by the Tribunal which are project-wise specific allocations, they have been provided to be binding upon the successor States. It would obviously be in respect of the area of erstwhile State of Andhra Pradesh out of which now two States, namely, Telangana and Andhra Pradesh have been carved out. The same will be the position in respect of clause (b) of Section 89.

Mr. Nariman submits that the purpose of enacting Section 89 is nowhere to be found. He has, however, placed before us background note for the Group of Minister (GOM) regarding creation of State of Telengana from the existing State of Andhra Pradesh (Ministry of Home Affairs). Ref www.rediff.com/news/ 2013/october/creation of state of telangana pdf.

Paragraph 20 of the background note is quoted in the note on behalf of the State of Karnataka which reads as under:

> *"20. Distribution of Water Resources*
>
> *It is proposed that the Re-organisation Bill will contain specific provision to protect the status quo as well as the share in respect of water-use rights of basin States of Inter-State rivers. The water use rights of the two successor States should not only be protected but obligations of the existing State of Andhra Pradesh towards other co-basin States will*

> *similarly be required to be honoured by the two successor States. Provision would be made regarding the control and management of irrigation facilities which will provide service to both the successor States. The Central Government may be empowered to give directions in all matters relating to inter-state river water issues and also determine fair distribution and use of water between the two successor States. The constitution of Water Management Board for the river basins and declaring the Polavaram Irrigation Project to be a National Project may be considered in the provisions of the Bill.*

Another factor which is noticeable is that allocations were finally made by KWDT-1 in the year 1976 and in the year 2002-03, fresh complaints were filed by the three riparian States. None of them ever raised any grievance against the allocations made to the projects which were not project-wise specific allocations. The proceedings before KWDT-II started in 2004 and effectively in 2006 and continued up to 2013 up to the stage of proceedings under Section 5(3) of Act No. 33 of 1956. In between this period also, no such grievance was raised about non-allocation of project-wise specific allocation and to convert such allocation as project-wise specific allocation.

It is only on the bifurcation of the existing State of Andhra Pradesh by means of Act No. 6 of 2014 that a provision was made under Section 89 of the Act for project-wise specific allocations in respect of such projects where it had not been so allocated. That is

to say for near about forty years, no such grievance or point was raised by any of the three riparian States nor the Central Government had made any request for such allocations. It came up at the time of physical division of the existing State of Andhra Pradesh into two, that this question cropped up in the form of Section 89 of Act No. 6 of 2014. It leads to the conclusion that it is relevant only for the purposes of the two successor States comprising the whole territorial area of the existing State of Andhra Pradesh. The changes whatever they occurred are confined to the area comprising the erstwhile State of Andhra Pradesh now bifurcated into two successor States. All assets held by the existing State of Andhra Pradesh have been provided to be shared by the successor States so water also which was allocated to the existing State of Andhra Pradesh for utilization in the whole area of the existing State of Andhra Pradesh including Telangana region. So water is to be shared between two successor States comprising of the same area and together they hold the same population.

There is nothing to indicate in Section 89 or in any other provisions or in the statement of objects and reasons for enacting the law, that water to be shared between the successor States, would also include the water allocated to other States than which was allocated

and held by the existing State of Andhra Pradesh. Section 89 of Act No. 6 of 2014 does not envisage that some water which was allocated by KWDT-I to Andhra Pradesh for outside the basin area for the historical reasons may also be withdrawn for allocation and distribution to the State of Telengana or to the successor States as submitted by the learned counsel for the State of Telangana. It is also not envisaged that while exercising powers under Section 89 flows into upper reaches of the State of Telengana be allowed from Bhima river and Narayanpur through a long canal of about 60 kms., which may have to be constructed in the State of Karnataka. It is much too beyond the scope of Section 89. The allocations to Andhra Pradesh had been made considering the need of the whole area and its inhabitants of existing State of Andhra Pradesh. There is neither any addition in the area nor that of the population in the successor States. The boundaries of the two successor States are within the area of the existing State of Andhra Pradesh. Therefore, there is no reason to infer that the whole matter is to be reopened and allocations be made afresh. The changes which are said to have taken place during long period regarding scientific and technological developments in the field of agricultural operation which may require lesser amount of water than as allocated earlier for a project, it applies equally to all the

States. No redistribution on that count would be justified. As observed earlier, the water to the existing State of Andhra Pradesh has already been allocated considering the need of the whole area of the existing State of Andhra Pradesh and its population and other factors as in the case of other two upper riparian States. The successor States shall share whatever amount of water was allocated to the existing State of Andhra Pradesh.

As regards determining the operational protocol in the lean years, it may be mentioned here that some arrangement to mitigate the hardship in the deficit years has been made by the Tribunal for existing State of Andhra Pradesh. A carry over storage and utilization of remaining water has been allowed to be utilized by the existing State of Andhra Pradesh. Some provision has also been made for release of limited amount of water by Karnataka at the early stage of Kharif Crop. May be that it was thought as to how the two successor States would utilize the carry over storage, the remaining water and early release of water for Kharif crop, allowed by the Tribunals, for that purpose, clause (b) of Section 89 may have been framed for reference to this Tribunal so that these aspects may also be decided by the Tribunal who made the above arrangement.

Beyond whatever has been observed above as a mere possibility, there does not appear to be any other good reason for purpose for enacting Section 89.

In the result, we are of the view that Section 89 will be applicable to the successor States of existing State of Andhra Pradesh and not to the States of Maharashtra and Karnataka. And further that the water, as available to existing State of Andhra Pradesh, the successor States are to get their share only out of that amount of water.

In view of the discussion held above in connection with Issue Nos. 3, 4 and 5, our conclusion and answer to the above noted issues are as follows:

**Ans. to Issue No. 3:** **T**he issue is answered in affirmative. The project-wise allocation and determination of operational protocol for project-wise release of water is in respect of the successor States of Telangana and the Andhra Pradesh only:

**Ans. to Issue No. 4**: The answer to Issue No. 4 is that the scope of inquiry into the terms of reference under Section 89 of the Act No. 6 of 2014 is confined to only two successor States, namely, States of Andhra Pradesh and

Telangana and not for all the four States of Maharashtra, Karnataka, Andhra Pradesh and Telangana;

**Ans. to Issue No. 5:** The answer to Issue No. 5 is that the project specific allocation under clause (a) of Section 89 of Act No. 6 of 2014 is to be determined in respect of the successor States of Telangana and Andhra Pradesh out of the water allocated to the existing State of Andhra Pradesh.

We now proceed to deal with **issue No. 6** quoted below:

**Issue No. 6:** Whether the provisions of Act No. 6 of 2014 and in particular Section 85(8)(a) and Section 85(8)(e) read with Eleventh Schedule, which mandates the Krishna River Management Board (constituted under Section 85(1) to regulate the supply of water from the projects to the two successor States of Telangana and Andhra Pradesh having regard to the ñAwardsò granted by the Tribunals constituted under the Inter State River Water Disputes Act No. 33 of 1956, prohibit reopening of the Awards passed by the two Krishna Water Disputes Tribunals?

As a matter of fact, instead of considering the question as to whether provisions contained under Section 85(8)(a) and 85(8)(e) read with Eleventh Schedule and Section 85(1) of Act No. 6 of

2014, prohibit reopening of the Awards passed by the Krishna Water Disputes Tribunal or not, it would be necessary, first to examine the legal position in general as to whether or not the decision of the Water Disputes Tribunals can be reopened and interfered with. We, thus, proceed to examine the issue in that order and manner as indicated above.

On behalf of the State of Maharashtra as well as the State of Karnataka, it is submitted that the Tribunal constituted under Section 4 of the Inter State River Water Dispute Act derives jurisdiction by virtue of Article 262 of the constitution.

The Water Disputes Tribunals have exclusive jurisdiction in the matter of deciding water disputes to the exclusion all other courts or authority. The submission is that the Water Disputes Tribunals exercise the judicial powers of the States. In this connection, reliance has been placed upon the decision of the Hon'ble Supreme Court reported in 1993 Supp (1) SCC page 96, particularly, paragraphs 64 & 77 at pages 135 and 142. In paragraph 77, it has been held that the effect of Section 11 of Act No. 33 of 1956 read with Article 262 of the Constitution is that the entire judicial power of the State to adjudicate upon original dispute or complaint, in any inter-State river or river valley has

been vested in the Tribunal appointed under Section 4 of the Act No. 33 of 1956. It has further been held,

> *"Hence any executive order or legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunals is an interference with the judicial powers of State".*

It is submitted that there is separation of powers and there cannot be any interference with the judicial powers by executive or legislature. Yet another case relied on the proposition of separation of powers is reported in (2014) - 12 SCC page 696 paragraph 126 page 770 - Case of Mullaperiyar Dam holding that the doctrine of separation of powers applies to the final judgment of the court. Legislature cannot declare any decision of a court to be void or of no effect. In this view of the matter, it has been submitted that the decisions of the Tribunals are final and cannot be nullified by any provision of legislation or executive order. The legislature can only remedy the defect by amending the Act to be applied in future.

Relying upon the above noted decision in the case of Cauvery reference (supra) and Mullaperiyar case (supra), it is submitted that the provisions under the Re-organisation Act would be subject to Clause (2) of Article 262 of the constitution. Hence a

decision rendered by a tribunal constituted under Inter-state Water Disputes Act could not be interfered with or touched in a manner that it may render it ineffective or to do something indirectly which could not be directly done that is to say by making such provisions in a Legislation which may undo the decision of a Tribunal or lead to a conclusion that the decision of the Tribunal is of no effect. In the Mullaperiyar case (supra) reliance has been placed on a number of decisions of the Supreme Court including the decision in the case of Madan Mohan Pathak v. UOI (1978) 2 SCC page 50. The paragraph 126.5 at page 771 in the decision of Mullaperiyar case (supra) holds as under:

> *"126.5 The doctrine of separation of powers applies to the final judgments of the court. The legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."*

In this light of the law as declared by the Hon'ble Supreme Court, the submissions made on behalf of the State of Maharashtra and Karnataka is that the decision of the Tribunals constituted

under Act No. 33 of 1956 cannot be treated as having no effect. On the other hand, defect if any pointed out by the court, may be remedied by appropriate amendment but the decision remains binding between the parties inter se.

Mr. Ganguli submits that the facts in the Mullaperiyar case were different. The court, by means of a decision, had allowed certain height of the dam as claimed by Tamil Nadu but the State of Kerala, shortly thereafter, made a law cutting short the height of the dam to 136 feet. It is in those circumstances that the Hon'ble Supreme Court had taken that view as indicated above. In our view, facts and circumstances differ case to case but so far the principle of law, which has been laid down in the decision in the case of Mullaperiyar (supra) remains and it is binding. The case taken up by the States of Andhra Pradesh and Telangana is that by virtue of Section 89 of Act No. 6 of 2014, a fresh exercise is to be undertaken for re-allocation and re-distribution of water amongst the four riparian States. It is also submitted that the total amount of water allocated by the Tribunal to each State viz. the State of Maharashtra , Karnataka and Andhra Pradesh shall also be affected and may vary or get reduced. If accepted, we feel that it may

amount to rendering the decision of the Tribunals of ñno effectò by virtue of Section 89 of Act No. 6 of 2014.

Mr. Ganguli also placed before us paragraph 126.5 of the decision in the Mullaperiyar case (supra) quoted above, reliance has particularly been placed on the last part of the observations where it has been observed that ñotherwise, a courtôs decision must always bind unless the conditions on which it is based, are so fundamentally altered that the decision could not have been given in the altered circumstancesò. In this connection it is submitted that the position on the basis of which the allocations had been made, has in fact drastically changed in view of the bifurcation of the erstwhile State of Andhra Pradesh into the States of Telangana and Andhra Pradesh. But in our view, the main question to be considered is whether such a change of reorganization of the erstwhile State of Andhra Pradesh, has actually changed the position in connection with the allocations made to each State by the Tribunals, in a manner that those allocations could not at all have been made. It is not a straight jacket formula that once any change occurs, everything must be given a go bye. As a matter of fact, the impact of the change has to be examined as to what extent it has affected the decision rendered by a court or a Tribunal. In

this light, we may examine the position in the present case considering the fact of bifurcation of the existing State of Andhra Pradesh.

At the time KWDT-I had rendered its final decision in 1976, three States then existed namely the State of Maharashtra, Karnataka and Andhra Pradesh. Same was the position about KWDT-II also at the time the Further Report was forwarded in November 2013. Later on the Andhra Pradesh Re-organisation Act 2014 was enacted and enforced w.e.f. 2.6.2014. KWDT-I and KWDT-II while considered the case for the purposes of allocations made to the three State parties to the proceedings, the catchment area of the basin was the same as it exists presently. The yearly yield of the river Krishna is not affected by reason of bifurcation of the erstwhile State of Andhra Pradesh. The whole area within the boundary of erstwhile State of Andhra Pradesh was taken into consideration including its total population. The bifurcation effected by Act No. 6 of 2014 carving out two States of Andhra Pradesh and Telangana are within the whole boundary and territory of the erstwhile state of Andhra Pradesh . No part of any other State has been added nor the total boundary of the two newly carved States have, in any manner, changed in the matter of its total

area of existing State of Andhra Pradesh nor the population of the two States, together. On the question of need and requirement of the whole area of the erstwhile State of Andhra Pradesh and its inhabitants was taken into account that is to say all the inhabitants of the successor States were represented by the erstwhile state of Andhra Pradesh. As a matter of fact, some more water was allocated by KWDT-II for the area in Telangana region which later fell in State of Telangana.

Some water was allocated to existing State of Andhra Pradesh for use outside the basin, for historical reasons and prior user. There is no change in that position. Therefore, all the major parameters and features, as they existed at the time when the Tribunals had rendered the decisions, continue to be the same but for the fact the area of the erstwhile state of Andhra Pradesh has been divided into two, one part of it now called State of Telangana and the other remaining part as the State of Andhra Pradesh. As an effect of bifurcation, allocations made to the contesting States of Maharashtra, Karnataka and erstwhile State of Andhra Pradesh are not affected in any manner. No State has been benefitted or adversely impacted in the matters of allocations by the fact of

bifurcation of the erstwhile State of Andhra Pradesh into two States.

The Act No. 6 of 2014 has been enacted to meet out the long standing demand of Telangana region to fulfil its social, economic, political and democratic aspirations of the people of that area. According to the statement of Objects and Reasons of the Act and the salient feature contained in Clause 3, necessary provisions were to be made relating to representation of two States in Parliament and State Legislature, distribution of revenues, apportionment of assets and liabilities and to provide a mechanism for management and development of water resources, power and natural resources.

On all such occasions where re-organisation of the States was necessitated and a legislation was enacted, re-organising a State, there has always been provisions for distribution and sharing of the assets and liabilities etc., between the newly created States or to say new States are successors to the erstwhile State which is bifurcated. This is a normal consequences on carving out a separate State out of the existing one and there is also a trend and pattern or so to say legislative norm to provide for such matters. There has not been any such provision in the matter of allocation of water that there may be fresh allocation or distribution of water

even including the water which may have been allocated to the other States. The provision for sharing of whatever resources or water is available with the existing State that is distributed and shared between the newly created States.

So we find that though there is a change in the position but it is restricted only to the erstwhile State of Andhra Pradesh. This change has not impacted river flows or any other State much less beneficially or with negative impact. There is no such circumstance on the basis of which it can be said that due to this change of bifurcation of the erstwhile State of Andhra Pradesh there is need to change allocations made by the Tribunal earlier. The total amount of water allocated to the erstwhile State of Andhra Pradesh for its whole area and the population remains the same. It has only to be shared between the two successor States. Section 89 does not speak of any re-distribution or re-allocation amongst the four riparian States. Whatever change may be there, would be in between the newly created States namely the successor States.

The change to the extent, as intended, is contained in clauses (a) and (b) of Section 89. Nothing beyond it is indicated nor it would be permissible to go in for any change which is not indicated or intended. The change is without any impact on anything in the

basin. It is restricted and confined only to the erstwhile State of Andhra Pradesh as it stands bifurcated into two States. If the Parliament thought it necessary to make the allocation project-wise specific with an operational protocol in the deficit years on account of bifurcation of the erstwhile State of Andhra Pradesh divided into Telangana and Andhra Pradesh, for any reason as it thought appropriate, are liable to be made accordingly but not beyond the areas of successor States. It would certainly not be there for other riparian States who are in no way concerned, connected or impacted, beneficially or negatively by separation of state of Telangana from the State of erstwhile State of Andhra Pradesh resulting in two States called successor States of Telangana and Andhra Pradesh. The wide scope of section 89 as canvassed before us by the State of Telangana and Andhra Pradesh, is in the teeth of law laid down by the Hon'ble Supreme Court in the cases referred to above.

In the background of the discussion held above, apart from the provisions contained in Section 85(8)(a) and Section 85 (8)(e) read with Eleventh Schedule and Section 85(1), the position under the law is that the decision of the Water Disputes Tribunals cannot be reopened or interfered with. The above noted provisions of Act

No. 6 of 2014 indicated in the issue and mentioned above, lend support to the conclusion that the awards of the Water Disputes Tribunals cannot be interfered with or reopened.

**Answer to Issue No. 6 is as follows:**

The provisions contained in Section 85(8)(a) and Section 85(8)(e) read with Eleventh Schedule and Section 85(1) do not by themselves prohibit the reopening of the Awards of the Krishna Water Disputes Tribunal but lend support to the established legal position that the decisions of the Water Disputes Tribunal cannot be interfered with or reopened.

**Issue No. 7:** Whether Reference Petition No. 4 of 2011 filed by the Union of India under Section 5(3) of the Act No. 33 of 1956 raising substantially the same questions as under clause (a) and (b) of Section 89 of Act No. 6 of 2014 have been disposed of by the Tribunal by Further Report and modified Order dated November 29, 2013 under Section 5(3) of the Act No. 33 of 1956, if so, its effect?

**Answer:** This issue does not survive any more since the whole matter is now viewed in the light of reference under Section 89 of Act No. 6 of 2014 confining it between the two successor States of existing State of Andhra Pradesh.

**Issue No. 8:** Whether in the absence of any project-wise specific allocation, the upper riparian State of Maharashtra and Karnataka, any project-wise allocations only for the projects in Telangana and Andhra Pradesh would at all enable the Tribunal to determine an operational protocol for project-wise release of waters in the event of deficit flows?

**Answer:** As a matter of fact, not much has been argued on the point nor anything has been explained in support of the issue as framed. We have no reason to hold that it may not be possible to determine an operational protocol for project-wise release of water, in the event of deficit flows, only between the States of Telengana and Andhra Pradesh without project-wise specific allocation in upper riparian States. The issue is answered accordingly.

**Issue No. 9:** Whether the Report dated December 30, 2010 and Further Report dated November 29, 2013 could be termed as final and binding in the absence of the same having been notified under Section 6 of Act No. 33 of 1956 are being the subject matter of challenge in Special Leave Petition No. 10498 of 2011, Nos. 3076-79 of 2014 and Nos. 7457-7460 of 2014 pending before the Hon'ble Supreme Court?

**Answer:** Subject matter of this issue has already been discussed while dealing with Issue No. 1 holding that the decision of this Tribunal finally settles the disputes amongst the parties inter se, subject to any order passed by the Tribunal itself on a further reference under Section 12 of Act No. 33 of 1956 and it is further provided that it shall also be subject to any order which may be passed in appeal by the Hon'ble Supreme Court.

The issues as had been framed, have been answered in the manner indicated above. However, a legal point was raised during the course of the arguments on which no issue had been framed but all the parties have addressed on the point, therefore, we propose to consider and dispose of this point also.

It is indicated that Section 89 of Act No. 6 of 2014 does not raise nor relates to any dispute, hence it could not be referred to a Tribunal constituted under Section 4 of Act No. 33 of 1956. The other question is whether Section 89 is relatable to Article 4 or to Article 262 of the Constitution.

We have already noted the argument of Mr. Qadri, Learned Counsel for the Central Government that Section 89 does not raise nor relate to any dispute. On behalf of State of Karnataka, the

same question has also been raised, and it is submitted that there is no complaint of any State concerning Clauses (a) and (b) of Section 89 nor any such reference as provided under Section 3 and 4 of Act No. 33 of 1956, has been made to the Tribunal. It has rather been straightway referred to the Tribunal by taking legislative measures by enacting Section 89 in Act No. 6 of 2014.

The procedure for referring a dispute to a Water Disputes Tribunal is found under Section 3 of the Act No. 33 of 1956 which says that if it appears to a State that a water dispute with another State has arisen or it is likely to arise, prejudicially affecting the interest of that State or its inhabitants and the matter is not settled amicably, may in such a form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication. The Central Government is then required to constitute a Tribunal under Section 4 of the Act No. 33 of 1956 and refer the complain/dispute to the Tribunal. Briefly, this is how the proceedings are initiated before a Water Disputes Tribunal under Act No. 33 of 1956 for adjudication of the dispute.

In the case in hand we find that Section 89 of the Reorganisation Act No. 6 of 2014, containing the terms of reference, has been sent to this Tribunal by means of a reference

order issued by the Central Government dated June 16, 2014 enclosing there with Gazette Notification dated May 15, 2014 issued by the Ministry of Water Resources giving out the details of the forwarding of the reports by this Tribunal to the Central Government and making a mention about Section 12 of Act No. 33 of 1956 and then about Section 89 of Act No. 6 of 2014 and in the end saying that the term of this Tribunal is extended under sub-Section (3) of Section 5 of Act No. 33 of 1956 so as to addressed the terms of the reference specified in Clauses (a) and (b) of Section 89 of Act No. 33 of 1956.

It is submitted by Mr. Nariman that Section 89 is not referable to Article 262 of the constitution. It is further submitted that there is no complaint of any State as envisaged under Section 3 of Act No. 33 of 1956 on the basis of which the Central Government refers the matter to the Tribunal. The submission is that these are fresh terms of reference to the Tribunal, the KWDT-II has already adjudicated upon the complaints of all the three States, namely, Maharashtra, Karnataka and erstwhile State of Andhra Pradesh which had been referred to it the earlier. The erstwhile State of Andhra Pradesh had made a complaint under Section 3 of Act No. 33 of 1956 which was on behalf of the State as well as all

inhabitants of the State including the inhabitants of Telangana region and that matter stands duly adjudicated upon and the report and decisions had been forwarded under Section 5(2) and 5(3) of Act No. 33 of 1956.

It is further submitted that Section 89 is referable to only Article 4 of the constitution which provides that on reorganization of State under Article 3, provisions, supplemental, incidental and consequential, to give effect to reorganisation of a State, can be made, as may be deemed necessary. That being the position, the submission is that Section 89 will operate only between the successor States.

The learned counsel appearing for the State of Andhra Pradesh submitted that it is not necessary that a dispute may be referred to a Tribunal only by preferring any formal complaint or following the procedure under Sections 3 and 4 of Act No. 33 of 1956. Parliament has ample powers to straightaway refer a dispute to a Tribunal for adjudication by means of legislation as in the case of Ravi Beas, the dispute was referred by amending the Act No. 33 of 1956, inserting Section 14A in the Act. It is further submitted that a non obstante clause as contained in Section 107 of Act No. 6 of 2014 would override the provisions regarding such procedure as

provided in Sections 3 and 4 of section 33 of 1956, therefore, a dispute can be referred, in the manner as referred under Section 89, to this Tribunal. It needed no amendment in the Act No. 33 of 1956. It is also submitted that laws can be provided in one statute though referable to different sources of legislation. There are such legislations called rag bag enactments which have been held to be valid under the law, so long valid source of legislation is traceable.

Relying upon a case reported in (2006) 3SCC page 643 - Case of Mullaperiyar and Environmental Protection Forum Vs. Union of India & Ors. - our attention has been drawn by Mr. Ganguli to paragraph 21 at page 653 and it is submitted that the powers of the Parliament under Articles 3 and 4 are plenary and paramount and it is not subjected to nor fettered by Article 246 and List- II and III - of Schedule-VII of the Constitution. Therefore, the Parliament can directly make a law in exercise of its powers under Article 4 to refer the matter to a Tribunal for adjudication of a water dispute.

According to Mr. Ganguli, even if it is assumed that Section 89 of Act No. 6 of 2014 is referable to Article 4 of the constitution that by itself will not limit the scope of Section 89 of Act 6 of 2014. It is further submitted that the project-wise specific allocation

would involve an assessment of available water during the relevant period which would not be a mere administrative and mechanical function but may involve adjudication of water disputes amongst the States more so while determining an operational protocol in the event of deficit flows under clause (b) of Section 89. It is also submitted that even a dispute which is likely to arise can also be referred for adjudication. Therefore, reference under Section 89 may be treated as reference of a likely dispute under Section 3 of Act No. 33 of 1956 read with Article 262 of the Constitution. Yet another submission is that the Parliament legislatively perceived a dispute while enacting Section 89 of Act No. 6 of 2014. It is submitted that the State of Karnataka has taken up contradictory stand while saying that Section 89 provides for fresh terms of reference to the Tribunal to decide the matter between two successor States only.

Mr. Vaidyanathan rightly points out that validity of Section 89 has not been challenged by any one.

These arguments have, however, been made more particularly for the purpose that in case Section 89 is referable to Article 4, it would be limited between two successor States and not to all the four riparian States,

Secondly, which forum would be appropriate for disposing of the reference framed under Section 89 of Act No. 6 of 2014.

We find that the parties have been taking different stands at the different stages of the arguments. Initially Mr. Ganguli, on behalf of State of Andhra Pradesh had argued that Section 89 is referable to Article 4 of the Constitution, however, later on he tried to bring it within the ambit of Article 262 of the Constitution also. So far the State of Karnataka is concerned, its stand has throughout been that the Tribunal may decide the reference as contained in Section 89 of Act 6 of 2014 between the two successor States but later there was a shift and it was argued that Section 89 has been enacted in exercise of latter part of Article 4 of the Constitution, which is not referable to Article 262 of the Constitution, so this Tribunal may not have jurisdiction to try the matter. State of Maharashtra had taken a stand that this Tribunal has to answer the reference but between the successor States. So far the State of Telangana is concerned, its case is that the Parliament in exercise of its plenary powers, has right to make a direct reference to the Tribunal. It is also their case that the reference is not to be treated as one falling under Section 5(2) or Section 5(3) of the Act 33 of 1956. So the scope of inquiry in the reference need not be confined

to the provisions of Act 33 of 1956, but at the same time, it is also their case that since this Tribunal was not yet dissolved and is available, therefore, the reference has been made to it under Section 12 of Act No. 33 of 1956. But we find that Section 12 is also a part of Act No. 33 of 1956 and the Central Govt. may make a further reference to the Tribunal only under Section 12 before publication of the decision in the official Gazette.

The position on the point as taken up by different States has been pointed out in the preceding paragraph. In our view the stand as taken by the State of Telangana as well as the States of Karnataka and Maharashtra is correct that the reference is not referable to Section 5(2) and 5(3) of Act No. 33 of 1956 since all such proceedings are over and the Further Report had also been forwarded to the Central Govt. There was, however, still a little window open for making a further reference only under Section 12 of Act No. 33 of 1956. According to the State of Telangana, the reference has been made under Section 12 of Act No. 33 of 1956

The question then arises whether Section 89 raises a dispute and in case it does, this Tribunal may be an appropriate forum to entertain the matter, not otherwise. We have already noted that it was for the first time after the year 1976 when KWDT had finally

given its decision that now in the year 2014 i.e. after near about forty years, the question of project-wise specific allocation has been raised by means of Section 89 of Act No. 6 of 2014 only on the event of bifurcation of the State of Andhra Pradesh. Therefore, it is clear that requirement of Section 89 has some nexus or has something to do with the bifurcation of the erstwhile state of Andhra Pradesh. It is a normal feature that on creation of new state out of an existing state, the assets and liabilities are shared and distributed between the two successor States, may be, therefore, that the Legislature may have thought that it may be helpful in the division of water between the two States. Again project-wise specific allocations may also have some impact on determining the operational protocol in the deficit years.

This Tribunal was referred, to decide, the dispute as raised in the year 2002 amongst the three States namely Maharashtra, Karnataka and the erstwhile State of Andhra Pradesh. It is within the territorial boundary of the erstwhile State of Andhra Pradesh that now present States of Telangana and Andhra Pradesh are situate. This Tribunal had decided the dispute amongst the three States and had also declared the shares of each of the three State in the yield of river Krishna and also upheld the allocations made by

KWDT-I at 75% dependability and further distributed water available between 75% dependability and the average flow amongst the three States.

But before the decision of this Tribunal was published, the Andhra Pradesh Re-organisation Act 2014 was enacted for bifurcation the existing State of Andhra Pradesh into the State of Telengana and Andhra Pradesh. With two new States coming into being, as above, Section 89 of Act No. 6 of 2014 provided for reference in terms as contained in clauses (a) and (b) of Section 89.

This Tribunal while considering the question of hardship which was projected by the erstwhile state of Andhra Pradesh during the deficit years, had made provision for mitigating such hardships by allowing a carry over storage to the extent of 150 TMC and further allowing the existing state of Andhra Pradesh to utilise the remaining water as well and also made a provision for early release of some water by the state of Karnataka to the extent of 10 to 12 TMC for the purposes of early sowing season of Kharif in Andhra Pradesh.

May be it was thought that this matter also, as contained under Section 89, be considered more appropriately by this

Tribunal since this Tribunal had made provisions for mitigating the hardship of the erstwhile State of Andhra Pradesh in the dispute referred earlier. Now, after bifurcation, the allocations to the existing State of Andhra Pradesh have since now passed on to the successor States, therefore disbursement of the water, for mitigating the hardship specially provided for to the erstwhile State of Andhra Pradesh, may for this limited purpose, be also referred to this Tribunal.

As we have already discussed earlier, the purpose of Section 89 is nowhere indicated but since the reference has been made to this Tribunal, the conceivable possibility, but nothing beyond it, of choosing this forum, may be as discussed in the preceding paragraph. However, it may once again be observed that since it all occurred on the event of bifurcation of the erstwhile state of Andhra Pradesh and not before, it is a pointer to the direction that it relates to successor States only. It is only an additional factor besides what we have already discussed earlier.

In our view, there is no doubt about the powers of the Parliament for making incidental and consequential provisions on re-organisation of a state, its plenary powers are also not in doubt.

This Tribunal was not yet dissolved and Section 12 of Act 33 of 1956 permitted a further reference which provision has been utilised to make the reference. Even though Section 89 of Act 6 of 2014 may not be strictly referable to Article 262 of the Constitution but in the background of the peculiar facts of the case, it may not be considered totally divorced of it. In that view of the matter, we feel that the question referred under Section 89 can be entertained by this Tribunal.

O R D E R

All the issues as framed, have been answered as well as the legal question raised during the course of arguments. Thus this matter before us stands finally disposed off in terms indicated above.

The parties viz. the successor States of Telangana and Andhra Pradesh shall file their statement regarding clauses (a) and (b) of Section 89 of Act No. 6 of 2014 within a period of four weeks and reply thereto within two weeks, rejoinder, if any, within a week thereafter.

List on 14th December 2016.

Sd/- Sd/- Sd/-

(Ram Mohan Reddy) (B.P. Das) (Brijesh Kumar)
Member Member Chairman