REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2453 OF 2007

STATE OF KARNATAKA …Appellant(s)

VERSUS

STATE OF TAMIL NADU & ORS. …Respondent(s)

WITH

CIVIL APPEAL NO. 2454 OF 2007

CIVIL APPEAL NO. 2456 OF 2007

J U D G M E N T

Dipak Misra, J.

In these Civil Appeals the assail by the States of Karnataka, Kerala and Tamil Nadu is to the final order dated 05.02.2007 passed by the Cauvery Water Disputes Tribunal (for short, "the tribunal") constituted under the Inter-State

River Water Disputes Act, 1956 (for short, "the 1956 Act"). It is apt to note here that certain interlocutory applications were filed by the State of Tamil Nadu for release of water highlighting the scarcity of water faced by it and further laying stress on the predicament of the farmers. This Court had passed certain interim directions on 27th of September, 2016 while dealing with I.A. Nos. 15 and 16 of 2016. The Court sought the assistance of the learned Attorney General for India to find out the view of the Union of India, whether it would facilitate a discussion so that the impasse between the two States would appositely melt. The matter was adjourned to 30th of September, 2016 and on that day, Mr. Mukul Rohatgi, learned Attorney General for India apprised this Court that the meeting had been held under the Chairmanship of Union Minister of Water Resources, River Development and Ganga Rejuvenation and the Minutes of the said meeting were produced before the Court. The Minutes indicated that despite best efforts to make both the States to arrive at a consensus on release of Cauvery water, they took such divergent stands as a consequence of which nothing could be resolved. After

noting various aspects, the Court enquired from the learned Attorney General with regard to constitution of the Cauvery Management Board to which he responded that the Board would be constituted on or before 4th of October, 2016. Keeping in view the submissions, the Court directed the States, namely, Tamil Nadu, Karnataka and Kerala and Union Territory of Puducherry to nominate their respective representatives as per the final order passed by the tribunal. The earlier order to release 6000 cusecs of water was reiterated. The matter was adjourned to 6th of October, 2016.

2. Before the matter could be listed on the date fixed, the learned Attorney General for India mentioned the matter on 03.10.2016 that Union of India had sought for some modification of the earlier order. The matter was taken up on 4th of October, 2016. On that day, the Court noted that the order passed by it relating to release of water had been complied with. Thereafter, it adverted to the I.A. 18 of 2016 which had been filed on behalf of the Union of India seeking modification of the orders dated 20th of September, 2016 and

30th of September, 2016. After reproducing the prayer, the Court dwelled upon the submissions of Mr. Rohatgi, learned Attorney General for India, Mr. F.S. Nariman and Mr. Shekhar Naphade, learned senior counsel appearing for the States of Karnataka and Tamil Nadu respectively and thereafter passed the following order:-

> "It is the submission of Mr. Rohtagi that as it is a debateable issue, the Court may not advert to the issue of review or recall but defer it to be considered at the time of the final disposal of the appeal. As advised, at present, we think it appropriate to defer the same.
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> At this stage, we are obliged to state that in course of hearing, we asked Mr. Nariman, learned senior counsel that the note he has filed (which we have reproduced hereinabove) covers the time till 6.10.2016 and the appeals can be heard as directed earlier on 18.10.2016 and, therefore, what should be the arrangement for the said period. Mr. Nariman submitted that he has no instructions in the matter and he does not intend to make any statement in that regard. Thereafter, we enquired who would be in a position to obtain instructions from the State of Karnataka and Mr. Mohan and Mr. Raghupathy, appearing for the State sought some time to obtain instructions. As suggested by us, the matter was adjourned by half an hour and we took up the matter at 3.20 p.m.
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> At 3.20 p.m., Mr. M.R. Naik, learned Advocate General for the State of Karnataka has filed a note which reads as follows :

> "In response to the Hon'ble Court's query and in view of the Hon'ble Court suggesting that the pending IAs and objections to the Supervisory Committee's recommendations cannot be heard before 18th October, 2016 and taking into account the drinking water requirement in the State, it will not be possible to release water at the inter state border Biligundlu, of a quantity not more than 1500 cusecs per day on an average limited for a period of 10 days from 7th October, to 16th October, 2016."

Mr. Naik and Mr. Mohan submitted that from 5.09.2016 to 30.09.2016, State of Karnataka has released 17.5 TMC of water. The said aspect has been disputed by Mr. Naphade after obtaining instructions. According to him, the State of Karnataka has released 16.9 TMC of water. Learned senior counsel for the State of Tamil Nadu would submit that the State of Karnataka is in deficit of 4.6 TMC of water for the month of September and State of Karnataka under the final order of the Tribunal is required to give 22 TMC of water for the month of October. If the note of the State of Karnataka is taken into consideration, 3.1 TMC of water will be released between 1.10.2016 to 6.10.2016. The learned Advocate General submitted that he has filed the note after obtaining instructions. Mr. Nariman would contend that this Court should confine the release to the instructions obtained by the learned Advocate General as a real plight faced by the inhabitants of State of Karnataka.

Before we enter into the said arena, we think it appropriate to dwell upon the facet relating to have a report pertaining to the ground reality in both the

States relating to the Cauvery basin. Mr. Rohtagi, learned Attorney General submitted that in paragraph 15 of the IA No.18 of 2016, he has given certain suggestions. Paragraph 15 reads as follows :

> "(15) it is submitted that it would be in the fitness of things that a High Powered Technical Team is appointed by the Chairman of the Supervisory Committee who is the Secretary of the Ministry of Water Resources. The composition of the Technical Team would Shri G.S. Jha, Chairman/Member, Central Water Commission (CWC), Government of India (who would be the Chairman of the said Team), Shri Syed Masood Hussain, Member (CWC), Shri R.K. Gupta, Chief Engineer (CWC) and such other experts as decided by Secretary, Ministry of Water Resources in consultation with Chairman, CWC to proceed immediately to the site so that an inspection of the entire Basin is done for assessing the ground realities and prepare a report forthwith for being placed before this Hon'ble Court.
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> This Technical Team will inspect the entire Basin, make an assessment of the entire issue, prepare a report forthwith within 30 days thereof.
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> It is found that Karnataka has the following reservoirs:
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> (i) Hemavathi
> (ii) Harangi
> (iii) Krishan Raj Sagar
> (iv) Kabini
>
> The State of Tamil nadu has the following two reservoirs:

(i) Mettur
(ii) Lower Bhavani Dam
(iii) Amaravati"

Mr. Naphade, learned senior counsel appearing for the State of Tamil Nadu submitted that he has no objection for the same but it should include a technical person from each of the State and the Chief Secretary of the States. Mr. Naik, learned Advocate General for the State of Karnataka also acceded to the same. In view of the aforesaid, we direct the technical team headed by Mr. G.S. Jha, Chairman, Central Water Commission (CWC), Government of India shall be constituted. It shall have, Shri Syed Masood Hussin, Member, CWC, Shri R.K. Gupta, Chief Engineer, CWC and a Chief Engineer or any competent authority nominated by the State of Karnataka and State of Tamil Nadu and the Chief Secretaries or their nominee of both the States. Mr. G. Prakash, learned standing counsel for the State of Kerala submitted that a Chief Engineer shall also be included in the team. Mr. Nambiar, learned senior counsel appearing for the Union Territory of Puducherry also submitted that a Chief Engineer from Puducherry shall also be included in the team. It is so directed. They shall also be included in the team.

The said team shall go to the area in question and submit a report relating to the ground reality before this Court on 17.10.2016. Needless to say, the report shall be served on the learned counsel for the parties prior to that.

Let the I.As. and appeals be listed on 18.10.2016. Needless to say, the I.As., objections thereto and the report shall be considered on 18.10.2016. Registry is also directed to list the appeals on that day.

> As far as the interim arrangement is concerned till 18.10.2016, we direct that the State of Karnataka shall release 2000 cusecs of water from 7.10.2016 till 18.10.2016."

3. On 18th of October, 2016, the learned Attorney General being assisted by learned Additional Solicitor General filed the report of the Committee which pertained to social aspects and technical aspects. It is worthy to note that the Committee had not suggested anything with regard to quantity of water that could be released by the State of Karnataka. At that point of time, learned Attorney General submitted that the appeals, by special leave, preferred by the States, namely, Tamil Nadu, Karnataka and Kerala are not maintainable. The submission of Mr. Rohatgi was echoed by Mr. A.S. Nambiar, learned senior counsel appearing for the Union Territory of Puducherry. In view of the aforesaid submission, it was decided to hear the maintainability of the appeals and the interim order passed on earlier occasion was directed to be continued until further orders. The issue of maintainability of appeals was heard and ultimately the order was reserved.

4. Mr. Rohatgi, while questioning the maintainability of the appeals by special leave, submitted that Article 262(2) of the Constitution read with Section 11 of the 1956 Act bars the jurisdiction of this Court to adjudicate upon any water dispute as defined under Section 2(c) of the 1956 Act. Expatiating the said proponment, it is urged by him that Article 262 begins with a *non-obstante* clause and authorizes the Parliament to provide by law to exclude the jurisdiction of this Court or any other court in respect of a dispute or complaint that has been referred to in clause (1) of Article 262 and hence, this Court does not have the jurisdiction to decide anything that pertains to or emerges from water dispute. It is canvassed by him that the Court does not have power to deal with the *lis* either under Article 131 or Article 32 of the Constitution and, therefore, it cannot entertain an appeal by special leave under Article 136 of the Constitution of India that assails the final order of the tribunal. To bolster the aforesaid proposition, he has commended us to the authorities in ***In Re: Cauvery Water Dispute Tribunal***[1], ***State of Karnataka v. State of A.P.***

[1] 1993 Supp (1) SCC 96 (2)

and Ors.[2]***, State of Haryana v. State of Punjab and Anr.***[3]***, State of Himachal Pradesh v. Union of India and Ors.***[4]***, Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India and Ors.***[5]***, Narmada Bachao Andolan v. Union of India and Ors.***[6]***, Mullaperiyar Environmental Protection Forum v. Union of India and Ors.***[7]***, Atma Linga Reddy & Ors. v. Union of India and Ors.***[8]***, Networking of Rivers, In Re***[9]***, State of Tamil Nadu v. State of Karnataka and Ors. with Union Territory of Pondicherry v. State of Karnataka and Ors.***[10].

5. It is further propounded by Mr. Rohatgi that the 1956 Act framed by Parliament is a complete code in itself and if the scheme of the said Act is scrutinized and appreciated in proper perspective, it is clear as crystal that this Court has no

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[2] (2000) 9 SCC 572
[3] (2002) 2 SCC 507
[4] (2011) 13 SCC 344
[5] (1990) 3 SCC 440
[6] (2000) 10 SCC 664
[7] (2006) 3 SCC 643
[8] (2008) 7 SCC 788
[9] (2012) 4 SCC 51
[10] (1991) Supp (1) SCC 240

jurisdiction to exercise the appellate power by granting leave. The said submission is sought to be pyramided by placing reliance on Section 6(2) of the 1956 Act which provides that decision of the tribunal after its publication in the Official Gazette by the Central Government shall have the force of an order or decree of the Supreme Court. Elucidating the said aspect, it is contended by him that once the statutory provision postulates that the award has the same force as that of the decree of this Court, there cannot be an appeal assailing the same, for the simon pure reason that the concept of intra-court appeal is alien to the adjudicatory process of this Court and remotely not conceived of under the constitutional scheme or by any precedent. For the said purpose, he has drawn inspiration from the authority in ***Rupa Ashok Hurra v. Ashok Hurra & Anr.***[11].

6. Mr. Nariman, learned senior counsel appearing for the State of Karnataka resisting the submissions of the learned Attorney General has referred us to the Draft Constitution dated 21.02.1948 prepared by the Drafting Committee which

[11] (2002) 4 SCC 388

contained the progenitor of Article 136 of the Constitution; the Constituent Assembly debates pertaining to Article 112(1) and (2); history of Article 262 and submitted that the protective, preclusive or ouster clauses are not unknown to the legislature and the legislature has frequently used the provisions for restricting or eliminating power of judicial review, but the judicial pronouncements in this country are consistent that the jurisdiction of the courts of superior jurisdiction are unaffected by such provisions. The learned senior counsel has referred to many authors and tests to highlight the principle that the jurisdiction of the Supreme Court is guaranteed by the constitutional provisions, and the exclusion of its jurisdiction is not to be easily inferred. It is propounded by Mr. Nariman that the decisions upon which reliance has been placed by the learned Attorney General lead to the indubitable conclusion that only in respect of the original dispute or complaint, the jurisdiction of the courts including the Supreme Court under Article 131 stands excluded, but do not in any manner affect the jurisdiction conferred upon this Court under Article 136 of the

Constitution. He has placed heavy reliance on the three-Judge Bench decision in ***State of Tamil Nadu v. State of Karnataka and Ors. with Union Territory of Pondicherry v. State of Karnataka and Ors.*** (supra) to strengthen the stance that the Court has clearly expressed the opinion that an appeal by special leave under Article 136 of the Constitution is available to the party aggrieved by an order of the Cauvery Water Disputes Tribunal and hence, the plea of maintainability has no space for any kind of debate. According to the learned senior counsel, plentitude of power under Article 136 of the Constitution has been authoritatively stated by the Constitution Bench in ***Durga Shankar Mehta v. Thakur Raghuraj Singh and Ors.***[12] and further in ***Associated Cement Companies Ltd v. P.N. Sharma***[13], ***Jose Da Costa and Anr. v. Bascora Sadasiva Sinai Narcornim and Ors.***[14], ***Arunachalam v. P.S.R. Sadhanantham and Anr.***[15], ***P.S.R. Sadhanantham v. Arunachalam and Anr.***[16], ***Union Carbide Corporation and Ors. v. Union of***

[12] 1955 (1) SCR 267 : AIR 1954 SC 520
[13] (1965) 2 SCR 366
[14] (1976) 2 SCC 917
[15] (1979) (2) SCC 297
[16] (1980) 3 SCC 141

India and Ors.[17], ***Prashant Ramachandra Deshpande v. Maruti Balaram Haibatti***[18], ***Mahendra Saree Emporium (II) v. G.V. Srinivasa Murthy***[19], ***U. Sree v. U. Srinivas***[20] and ***Mathai v. George and Anr.***[21] and the exercise of the said power by the Court has not been curtailed by the original constitutional provision, that is, Article 262 and could not have been crippled by any statutory provision and, in fact, has not been taken away by the 1956 Act, for it has its source in Article 262 which does not so envisage.

7. In reply to the submission pertaining to Section 6(2) of the 1956 Act that the final order by the tribunal once published in the Gazette has the force of an order or decree of this Court, it is argued by him that the said provision, by no means, deprives this Court to interfere with such decision by way of appeal by special leave because it is a decision rendered by the tribunal and a tribunal always remains a tribunal, for all purposes, and it is impossible to draw the

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[17] (1991) 4 SCC 584
[18] (1995) Supp (2) SCC 539
[19] (2005) 1 SCC 481
[20] (2013) 2 SCC 114
[21] (2010) 4 SCC 358

inference that it ousts the jurisdiction of this Court under Article 136 of the Constitution. According to him, acceptance of such a stand would tantamount to rewriting Article 136 itself. Elucidating further, Mr. Nariman contends that Section 6(2) has been inserted by the Amending Act 14 of 2002 with effect from 06.08.2002 to give teeth to the final order of the tribunal in accordance with the Sarkaria Commission's recommendations given in its report on Center-State Relations, 1980. That apart, submits learned senior counsel that it is the settled principle of law that even when there is a legal fiction, like a deeming provision, the interpretation of the said provision should not go beyond the purpose for which the fiction was created or expand the horizon which it was never meant to reach. For reinforcing the contention, reliance has been placed on ***Aneeta Hada v. Godfather Travels and Tours Private Limited***[22] and ***State of Uttar Pradesh v. Hari Ram***[23].

8. Mr. Naphade, learned senior counsel appearing for the State of Tamil Nadu has submitted that in Article 262(2) of the

[22] (2012) 5 SCC 661
[23] (2013) 4 SCC 280

Constitution as well as in Section 11 of the 1956 Act, the words used are "in respect of any dispute" and the ouster clause is to the effect that "no court including the Supreme Court shall exercise the jurisdiction in respect of such dispute or complaint" and the ouster of jurisdiction of this Court is limited and by no stretch of imagination it allows any room for expansion. It is put forth by him that under Article 136 power of judicial review is conferred on this Court by the Constitution of legislative action, judicial decision and administrative action and the said power of judicial review is the basic feature of the Constitution which cannot be curtailed by a statutory provision as enshrined under Sections 6(2) and 11 of the 1956 Act. For the aforesaid purpose, learned senior counsel has commended us to the authorities in ***L. Chandra Kumar v. Union of India and Ors.*** [24], ***Minerva Mills Ltd. and Ors. v. Union of India and Ors.*** [25], ***Kihoto Hollohon v. Zachilhu and Ors.***[26], ***M. Nagaraj and Ors. v. Union of India and Ors.***[27] and ***Nabam Rebia and Bamang Felix v. Dy.***

[24] (1997) 3 SCC 261
[25] (1980) 3 SCC 625
[26] (1992) 1 SCC 309
[27] (2006) 8 SCC 212

Speaker, Arunachal Pradesh Legislative Assembly and Ors.[28].

9. It is further contended by Mr. Naphade that the tribunal is bound by the Constitution and rule of law and denial of power of judicial review to this Court under Article 136 of the Constitution would be an obstruction in the process of adjudication and justifiable decision making process, for it is the duty of the tribunal to render a decision which should be made by application of established principles of law, namely, adherence to principles of natural justice, good conscience, absence of arbitrariness, just and appropriate appreciation of evidence on record, showing respect for precedents, demonstrable ratiocination that would show application of mind and in such an adjudicatory process, it is inconceivable that the founding fathers of the Constitution had contemplated creation of a tribunal with unguided, uncontrolled or uncanalised judicial powers. He has anchored on the authority ***P. Sambamurthy and Ors. v. State of***

[28] (2016) 8 SCC 1

Andhra Pradesh and Anr.[29] to bolster the proposition that it is a basic principle of rule of law that exercise of power by any authority must not only be conditioned by the Constitution but must also be in accordance with law and that power of judicial review is conferred by the Constitution with a view to ensure that the supremacy of law is sustained. It is further put forth by him that the tribunal which is constituted under Section 4 of the 1956 Act is not a constitutional functionary as contemplated by the Constitution and, therefore, the argument on behalf of the Union of India that Article 262 being a part of the original Constitution, any law made under Article 262 can oust the jurisdiction of this Court including the power of judicial review under Article 136 is wholly untenable. It is additionally expounded in this regard that there is a qualitative difference between the provisions of the Constitution and the law made under the Constitution. For the aforesaid purpose, he has drawn inspiration from certain passages from ***Nabam Rebia*** (supra).

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[29] **(**1987) 1 SCC 362

10. Mr. Naphade has scanned the anatomy of the 1956 Act to substantiate that the legal fiction contemplated under Section 6(2) of the 1956 Act operates only with regard to the execution of the decision of the tribunal which has the same force as an order or decree of this Court and cannot be allowed to travel beyond the same. Developing the said argument, it is astutely urged by him that the provision under Section 6(2) has to be understood in the limited sense, that is, the decision has to be enforced as a decree of this Court as per the rules framed by this Court, but that does not create an impediment to entertain an appeal by special leave and further such kind of curtailment of power of judicial review is not provided for under Article 262 of the Constitution. Learned senior counsel would contend that a procedural power for implementation cannot be equated with the substantive exercise of power or reexamination or review of the correctness of the decision of the tribunal, and if such an interpretation is placed, the said provision of the 1956 Act would become unconstitutional. He has referred us to a passage from Interpretation of Statutes by

G.P. Singh (12th Edition, Pg 381) and relied upon ***Kihota Hollohon*** (supra).

11. Keeping in view the aforesaid submissions raised at the Bar, it is necessary to have a keen scrutiny of the Articles of the Constitution that have been referred to by the learned Attorney General for Union of India and the learned senior counsel for the Union Territory of Puducherry to support the stand that an appeal by special leave is not maintainable or this Court has no jurisdiction under any Article of the Constitution to entertain any proceeding pertaining to a dispute or complaint as regards the use, distribution or control of the waters or in any inter-State river or river valley, and the arguments advanced in oppugnation by the learned senior counsel for the States involved.

12. Article 131 defines the original jurisdiction of the Supreme Court which reads as follows:-

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

> (a)between the Government of India and one or more States; or
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> (b) between the Government of India and any State or States on one side and one or more other States on the other; or (c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."
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> [Emphasis supplied]

13. At a later part of our decision, we shall delve into the authorities that have dealt with the said provision to appreciate the purpose, impact and the ambit of the same, but it is suffice to say at this stage that the power under Article 131 of the Constitution, subject to the other provisions of the Constitution, can be exercised in respect of any original dispute.

14. At this stage, it is essential to understand the constitutional scheme as regards the conferment of power on the judiciary. Articles 132 to 134(2) deal with appellate

jurisdiction of Supreme Court in appeal from High Courts in certain cases, appellate jurisdiction of Supreme Court in appeal from High Courts in case of civil matters and appellate jurisdiction of Supreme Court with regard to criminal matters. To have a complete picture, the aforesaid three Articles are reproduced below:-

> "132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134-A that the case involves a substantial question of law as to the interpretation of this Constitution.
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> (2) Omitted
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> (3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.
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> Explanation- For the purposes of this article, the expression "final order" includes an order declaring an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case
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> 133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134-A

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

134. Appellate jurisdiction of Supreme Court in regard to criminal matters

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court –

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

> (c) certifies under Article 134-A that the case is a fit one for appeal to the Supreme Court:
>
> Provided that an appeal under sub clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require
>
> (2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

15. Article 134-A provides for Certificate for appeal to the Supreme Court by every High Court passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134 either on its own motion, if it deems fit so and upon oral application made by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, after determination whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in

respect of that case. Article 135 states about jurisdiction and powers of the Federal Court under any existing law to be exercisable by the Supreme Court. In the instant case, the controversy centres around Article 136. The said Article reads as follows:-

> "136. Special leave to appeal by the Supreme Court
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> (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India
>
> (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

16. The Draft Constitution of 21.02.1948 prepared by the Drafting Committee had the draft of Article 109 and draft of Article 112. Draft Article 109 after deliberation came in the shape of Article 131 and similarly, the draft Article 112 took the shape of Article 136. Draft Article 109 read as follows:-

> "109. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute:-

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

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

(c) between two or more States.

If in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to –

(i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has; or has been; continued in operation after that date;

(ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute."

17. The draft Article 112 was couched in the following language:-

"112. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of

> India except the States for the time being specified in Part III of the First Schedule in cases where the provisions of article 110 or article 111 of this Constitution do not apply."

18. On 16.10.1949 draft Article 112 was substituted by a new draft Article 112(1) and (2). Articles 112(1) and (2) which were adopted and added to the Constitution by the Constituent Assembly, read as follows:-

> "112(1) The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.
>
> (2) Nothing in Clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court of tribunal constituted by or under any law relating to the Armed Forces."

19. Be it noted, on 16.10.1949 Clause (2) of Draft Article 112 (Corresponding to Article 136 of the Constitution of India, 1950) was added to exclude from the jurisdiction of the Supreme Court any determination, sentence or order passed or made by any Court or tribunal constituted under any law related to the armed forces.

20. While moving the alteration, Mr. T.K. Krishnamachari spoke:-

> "The reason for introducing these two new amendments is the view expressed by the Defence Ministry that such protection is necessary in respect of the decisions of courts-martial which deal with the Armed Forces and the analogy of what obtains in other countries was brought before us. We therefore felt there was a case for putting in a provision of this nature in articles 112 and 203."

21. In his speech to Constituent Assembly Dr. B.R. Ambedkar (on 16.10.1949) explained why Clause 2 was added in Draft Article 112:-

> "This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a Court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause (2) has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause (2) of article 112."

22. With this background, Article 136 has been given the shape as it is found in the Constitution today. Article 32 of the Constitution, which occurs in Part III, deals with fundamental rights. It provides for remedies for enforcement of the rights conferred by the said Part of the Constitution. The said Article reads as follows:-

> "32. Remedies for enforcement of rights conferred by this Part
>
> (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
>
> (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
>
> (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

23. This Court, interpreting the broad canvas of Article 32 of the Constitution, has ruled that it is the duty of the Supreme

Court to provide a protective umbrella for the sustenance of the fundamental rights of the citizens of India. It is the sacred duty of the Court to see that the citizens who follow the path of law are protected from those who engage themselves in such activities by which other's fundamental rights are jeopardized.

24. In ***I.R. Coelho (dead) by LRS. v. State of T.N.***[30] the larger Bench has held that the judiciary is the best institution to protect fundamental rights, given its independent nature and also because it involves interpretation based on the assessment of values besides textual interpretation. It enables application of the principles of justice and law. It has also been laid down therein that the role of the judiciary is to protect fundamental rights. A modern democracy is based on the twin principles of majority rule and the need to protect fundamental rights. The Court has referred to the statement of principle that lays down that it is the job of the judiciary to balance the principles ensuring that the Government on the basis of number does not override fundamental rights.

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[30] (2007) 2 SCC 1

25. We have referred to the aforesaid authority to show how the Constitution has conferred the power on this Court under Article 32 to protect the fundamental rights of the citizens. It would not be out of place to mention here that various Articles occurring in Part III of the Constitution have been bestowed the extended meaning through interpretative process to fructify the constitutional obligations because the provisions in the Constitution have to be understood and interpreted keeping in view the social progress, economic growth of environment of law and the global development of law. Protection of fundamental rights as a concept cannot remain static. They grow by encompassing a rainbow of views that advocate new rights that the globe perceives. But the authority conferred under Article 32 has its limitations when the *lis* under Article 262 emerges. It is interesting to note that the Constitution has not provided machinery for resolution of the disputes in the Constitution but has empowered the Parliament to make laws to provide to exclude the power of the Supreme Court or any other court with regard to jurisdiction in respect of complaints or disputes that find mention in

Article 262(1). The 1956 Act bars the exercise of jurisdiction under Article 32 of the Constitution. In spite of the same, there is certain scope for exercise of jurisdiction. In this context, we may refer to certain authorities.

26. In ***State of Orissa v. Government of India and Anr.***[31] Kabir, J. (as His Lordship then was) taking note of the fact that though a complaint had been made by the State of Orissa, yet the Central Government had not taken any action in the matter and further considering the facts in issue, opined that the controversy that had arisen between the States of Orissa and Andhra Pradesh must be held to be a "water dispute" within the meaning of Section 2(c)(i) of the 1956 Act which refers to any dispute between two or more State Governments with regard to use, distribution or control of the waters of, or in, any inter-State river or river valley. The issue arose relating to the power of the Court to pass interim order inasmuch the tribunal had not yet been constituted. Analyzing the law, the learned Judge opined thus:-

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[31] (2009) 5 SCC 492

> "49. Coming to the question of grant of interim order during the interregnum, I am satisfied that unless some interim protection is given till the constitution of the Water Disputes Tribunal by the Central Government, the objection raised by the State of Orissa will be rendered infructuous, which certainly is not the intention of the 1956 Act.
>
> 50. Notwithstanding the powers vested by Section 9 of the Act in the Water Disputes Tribunal to be constituted by the Central Government under Section 4, which includes the power to grant the interim order, this Court under Article 32 of the Constitution has ample jurisdiction to pass interim orders preserving the status quo till a Tribunal is constituted which can then exercise its powers under Section 9.
>
> 51. The bar under Section 11 of the Act will come into play once the Tribunal is constituted and the water dispute is referred to the said Tribunal. Till then, the bar of Section 11 cannot operate, as that would leave a party without any remedy till such time as the Tribunal is formed, which may be delayed."

Katju, J. concurred with the opinion given by Kabir, J. though he added certain other aspects.

27. The purpose of referring to the said decision is that this Court has exercised the power under Article 32 to issue certain interim directions as the tribunal was not constituted. The said directions are as under:-

> "52. I, accordingly, allow the writ petition and direct the Central Government to constitute a Water Disputes Tribunal within a period of six months from the date and to refer to it the dispute relating to the construction of the Side Channel Weir and Flood Flow Canal Project at Katragada on River Vansadhara by the State of Andhra Pradesh for diversion of the waters of the said river which could adversely affect the supply of water from the said river to the State of Orissa.
>
> 53. I also direct that pending constitution of the Water Disputes Tribunal and reference of the above dispute to it, the State of Andhra Pradesh will maintain status quo as of date with regard to the construction of the side channel weir and the flood flow canal at Katragada. Once the Tribunal is constituted the parties will be free to apply for further interim orders before the Tribunal."

28. At this juncture, we may hasten to add that we have referred to the aforesaid authority only for the sake of stating how and under what circumstances the Court had exercised jurisdiction under Article 32 of the Constitution. And nothing more.

29. In this context, it is seemly to refer to the authority ***Networking of Rivers, In Re*** (supra) wherein a three-Judge Bench was dealing with a writ petition filed under Article 32 of the Constitution seeking the relief for issue of an appropriate

writ, order or direction, more particularly a writ in the nature of mandamus directing the respondent No. 1 therein to take appropriate steps/action to nationalize all the rivers in the country. That apart, further directions were also sought. Interpreting Article 262 of the Constitution, the Court held:-

> "66. … Under the constitutional scheme, there is a clear demarcation of fields of operation and jurisdiction between the legislature, judiciary and the executive. The legislature may save unto itself the power to make certain specific legislations not only governing a field of its legislative competence as provided in the Seventh Schedule of the Constitution, but also regarding a particular dispute referable to one of the articles itself. Article 262 of the Constitution is one of such powers. …"

Further elaborating the said Article, the three-Judge Bench observed:-

> "67. …Parliament can reserve to itself, the power to oust the jurisdiction of the courts, including the highest Court of the land, in relation to a water dispute as stated under this article. The jurisdiction of the Court will be ousted only with regard to the adjudication of the dispute and not all matters incidental thereto. For example, the Supreme Court can certainly direct the Central Government to fulfil its statutory obligation under Section 4 of the Act, which is mandatory, without deciding any water dispute between the States…."

And again:-

"68. One of the possible views taken with regard to Article 262 is that the use of expression "may" in the Constitution does not indicate a clear legislative intent, thus, it may be possible that Section 11 of the Act could refer only to such disputes as are already referred to a Tribunal and which are outside the purview of the courts. Once a specific adjudicatory mechanism is created, that machinery comes into operation with the creation of the Tribunal and probably, then alone will the Court's jurisdiction be ousted.

x x x x x

71. The River Boards Act, 1956 was enacted by Parliament under List I Entry 56. The Inter-State River Water Disputes Act was also enacted with reference to the same entry. Whereas the mandate of the latter is to provide a machinery for the settlement of disputes, the former is an Act to establish boards for the regulation and development of inter-State river basins, through advice and coordination, and thereby to reduce the friction amongst the States concerned. It is this kind of coordination which is required to be generated at all levels to implement the Interlinking of Rivers Programme, as proposed. Huge amounts of public money have been spent at the planning stage itself and it will be a travesty of good governance and the epitome of harm to public interest, if these projects are not carried forward with a sense of sincerity and a desire for its completion.

72. In a more recent judgment of this Court in *State of Karnataka* v. *State of A.P. (supra)* a Constitution Bench of this Court took the view that in Section 11 of the Act, the expression "use, distribution and control of water in any river" are the keywords in determination of the scope of power conferred on a

> Tribunal constituted under Section 3 of the Act. If a matter fell outside the scope of these three crucial words, the power of Section 11 in ousting the jurisdiction of the courts in respect of any water dispute, which is otherwise to be referred to the Tribunal, would not have any manner of application. The test of maintainability of a legal action initiated by a State in a court would thus be, whether the issues raised therein are referable to a Tribunal for adjudication of the manner of use, distribution and control of water."
>
> [Emphasis supplied]

30. This is how this Court has perceived the test of maintainability of an action initiated by a State in the context of Article 32 of the Constitution to sustain a legal action before this Court, that is, the *lis* must fall outside the scope of Section 11 of the 1956 Act.

31. Presently, let us proceed to analyse what has been precisely conveyed under Article 262 of the Constitution. Article 262 comes under Part XI of the Constitution that deals with relations between the Union and the States. Chapter I of Part XI provides for legislative relations and Chapter II deals with administrative relations. Article 262 comes under Chapter II and it comes under the heading "Dispute relating to waters". The said Article reads as follows:-

> "262. Adjudication of disputes relating to waters of inter-State rivers or river valleys.-
>
> (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley
>
> (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)."

32. The said Article, as the written submissions of Mr. Nariman would reflect, has a history. Draft Articles 239 to 242 (Interference with Water Supplies) of the Draft Constitution prepared by the Draft Committee on 21.02.1948 were somewhat similar to the provisions of Sections 130 to 133 (with some alterations) of the Government of India Act, 1935. They provided for:

> "(a) Complaints as to Interference with Water supplies by the Government of any State specified in Part I or Part III of the First Schedule regarding Executive action or legislation taken or passed or proposed to be taken or passed with respect to use, distribution or control of water;
>
> (b) Such complaints were to be lodged with the President of India;

(c) If the President received such complaints he was authorized to appoint a Commission consisting of persons having special knowledge and experience in irrigation, engineering, etc., to investigate the complaint;

(d) The Commission would investigate the matter referred to them and present to the President a Report setting out the facts as found by them and making recommendations as they think proper;

(e) "If upon consideration of the Commission's Report the President was of the opinion that anything therein contained involved a substantial question of law, he was obliged to refer the question to the Supreme Court, ("shall refer") under Draft Article 119 (now Article 143 of the Constitution), and on receipt of the Opinion of the Supreme Court thereon, the President would return the Report to the Commission together with the opinion on the substantial question of law by the Supreme Court and the Commission had to thereupon make ("shall make") such modifications in the Report as were necessary to bring it in accord with the opinion of the Supreme Court and present the Report so modified to the President;

(f) Effects had to be given in any State to any order made by the President and any act of the Legislature of a State repugnant to the Presidential order would be, to the extent of repugnancy, void; and

(g) "Notwithstanding anything in the Constitution neither the Supreme Court nor any other Court would have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the preceding Articles by the Government of a State or the President."

33. The actual Articles in the Draft Constitution prepared by the Drafting Committee on 21.02.1948 read as follows:-

> "239. If it appears to the Government of any State for the time being specified in Part I or Part III of the First Schedule that the Interests of that State, or of any of the inhabitants thereof, in the water from any natural source of supply in any State have been or are likely to be affected prejudicially by –
>
> (a) any executive action or legislation taken or passed, or proposed to be taken or passed; or
>
> (b) the failure of any authority to exercise any of their powers;
>
> With respect to the use, distribution or control of water from that source, the Government of the State may complain to the President.
>
> 240. (1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.
>
> (2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the President upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purposes of assisting a Commission appointed under this Article in investigating any matters referred to them, the Supreme Court, of requested by the Commission so to do, shall make such orders for the purposes of the proceedings of the Commission as they may make in the exercise of the jurisdiction of the court.

(5) The report of the Commission shall include a recommendation as to the Government or persons by whom the expenses of the Commission and any costs incurred by any State or persons in appearing before the Commission are to be paid and as to the amount of any expenses or costs to be paid; and an order made by the President under this article, in so far as it relates to expensed or costs, may be enforced as if it were an order made by the Supreme Court.

(6) After considering any report made to him by the Commission the President shall, subject as hereinafter provided, make orders in accordance with the report.

(7) "If upon consideration of the Commission's report the President is of the opinion that anything therein contained involves a substantial question of law he shall refer the question to the Supreme Court under Article 119 of this Constitution and on receipt of the opinion of the Supreme Court thereon shall, unless the Supreme Court has agreed with the Commission's report, return the report to the

Commission together with the opinion and the Commission shall thereupon make such modifications in the report as may be necessary to bring it in accord with such opinion and present the report as so modified to the President."

(8) Effect shall be given, if any State affected, to any order made under this article by the President, and any Act of the Legislature of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(9) The President, on application made to him by the Government of any State affected, may at any time, if a Commission appointed as aforesaid so recommend, vary any order made under this article.

241. If it appears to the President that the interests of any State for the time being specified in Part II of the First Schedule, or of any of the inhabitants of such a State, in the water from any natural source of supply in any State for the time being specified in Part I or III of the First Schedule have been or are likely to be affected prejudicially by –

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers;

With respect to the use, distribution or control of water from that source, he may, if he thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding article and thereupon those provisions shall apply as if the State for the time being specified in Part II of the First Schedule were a State for the time being specified in Part I of that Schedule and as if a complaint with respect to the matter had been made by the Government of that State to the President.

> 242. Notwithstanding anything in this Constitution, neither the Supreme Court nor any other Court shall have jurisdiction to entertain any action or suit in respect of any matter, if action in respect of that matter might have been taken under any of the three last proceedings articles by the Government of a State or the President."

34. This is how Article 262 took the present shape and was incorporated in the Constitution. The question that emanates for consideration is whether the language employed under Article 262 intends to oust the jurisdiction of this Court on all scores and counts. At the outset, it has to be kept in mind that the said Article is a part of the original Constitution and, therefore, the question which requires to be posed is whether the framers of the Constitution have used the express vehicle of language in this Article so as not to bestow any power on the courts including the Supreme Court. The submission of the learned Attorney General is that it being a part of the original Constitution and the founding fathers having thought it apposite not to confer such power on the Supreme Court, the law relating to basic structure or judicial review would not apply as jurisdiction or authority has not been conferred at

the commencement of the Constitution. As indicated earlier, Mr. Nariman and Mr. Naphade appearing for the States of Karnataka and Tamil Nadu respectively would contend that it is neither the intention of the founding fathers of the Constitution nor the language employed in the said Article even remotely so suggest that the architects of the Constitution had ever intended that a final order passed by a tribunal created by the Parliament for adjudication would be free from challenge and remain absolutely immune from assail.

35. In this backdrop, it is necessary to peruse and analyse the authorities cited by the learned counsel for the parties. The Constitution Bench in ***In Re : Cauvery Water Disputes Tribunal*** (supra) was dealing with the reference made by the President under Article 143 of the Constitution wherein three questions were referred for the opinion of this Court. As the factual matrix would show, in pursuance of direction given by this Court in ***Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu***

Sangam (supra) the Union Government by its notification dated 02.06.1990 constituted the Cauvery Water Dispute Tribunal and by notification of even date referred to it the water dispute emerging from Tamil Nadu's Letter of Request dated July 6, 1986. The State of Tamil Nadu sought interim relief from the tribunal and the interim relief claimed was that the State of Karnataka be directed not to impound or utilize water of Cauvery river beyond the extent impounded or utilised by them as on May 31, 1972. An application was filed by the Union Territory of Pondicherry (as it was then) seeking a direction from the tribunal to direct both the Karnataka and Tamil Nadu to release the water already agreed to during the months of September to March. The tribunal considered simultaneously both the applications for interim relief and directed the States to file their respective counter statements and replies to the statements of case filed in the main dispute. Before the disputant States could submit their statements in the case, the tribunal heard the application for interim reliefs since Tamil Nadu had filed an application to direct Karnataka as an emergent measure to release at least 20 TMC of water as

the first instalment, pending final orders on their interim application. Besides contesting the application on merits, both Karnataka and Kerala raised a preliminary objection as regards the jurisdiction of the tribunal to entertain the said application and to grant any interim relief. Preliminary objection was that the tribunal constituted under the 1956 Act had a limited jurisdiction and it had no inherent powers as an ordinary civil court has and there was no provision of law which authorized or conferred jurisdiction on the tribunal to grant any interim relief. The tribunal heard the parties both on the preliminary objection and on merits and eventually came to hold that it could not entertain the said applications for grant of interim relief as they were not maintainable in law and resultantly, dismissed the same. Being dissatisfied, the State of Tamil Nadu approached this Court by means of special leave petitions which were later on converted into Civil Appeals. The Court in ***State of Tamil Nadu v. State of Karnataka and Ors. with Union Territory of Pondicherry v. State of Karnataka and Ors.*** (supra) referred to Article

262 of the Constitution and Section 11 of the 1956 Act and in that context, ruled that:-

> "12**.** A perusal of the above provisions leaves no manner of doubt that notwithstanding anything in the Constitution, Parliament is authorised by law to provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any dispute or complaint relating to the use, distribution or control of the waters of, or in, any interstate river or river valley. The dispute referred by the Central Government to the Tribunal under the Act relates to the above controversy and as such this Court has no jurisdiction to decide the merits of the dispute raised by the appellants and pending before the Tribunal. The controversy, however raised by the appellants in these appeals is that they had submitted the applications before the Tribunal for granting interim relief on the ground of emergency till the final disposal of the dispute and the Tribunal wrongly held that it had no jurisdiction to entertain the same. The Tribunal is a statutory authority constituted under an Act made by the Parliament and this Court has jurisdiction to decide the parameters, scope, authority and jurisdiction of the Tribunal. It is the judiciary i.e. the courts alone that have the function of determining authoritatively the meaning of a statutory enactment and to lay down the frontiers of jurisdiction of any body or Tribunal constituted under the statute."

And again:-

> "14. In the dispute relating to river Cauvery itself an application under Article 32 of the Constitution was filed by the Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimal Padhugappu

Sangam which was said to be a society registered under the Tamil Nadu Societies Registration Act asking this Court for direction to the Union of India to refer the dispute under Section 4 of the Act and this Court in *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam* v. *Union of India (supra)* allowed the petition and directed the Central Government to fulfil its statutory obligation and notify in the official gazette the constitution of an appropriate tribunal for the adjudication of the water dispute.

15. Thus, we hold that this Court is the ultimate interpreter of the provisions of the Interstate Water Disputes Act, 1956 and has an authority to decide the limits, powers and the jurisdiction of the Tribunal constituted under the Act. This Court has not only the power but obligation to decide as to whether the Tribunal has any jurisdiction or not under the Act, to entertain any interim application till it finally decides the dispute referred to it. There is thus no force in the above argument raised by Dr Y.S. Chitale.

16. We would now examine the controversies raised on merits in these appeals. It was contended on behalf of the appellants before the Tribunal that it had jurisdiction to entertain these miscellaneous petitions for interim relief. Firstly, for the reason that when the Tribunal while exercising powers of granting interim relief it will be only exercising 'incidental and ancillary powers', as the interim reliefs prayed for arise out of the water dispute which has been referred to the Tribunal. Secondly, under Article 262 of the Constitution of India, once the Parliament has enacted the Act providing for adjudication of a dispute in regard to sharing of water of Cauvery Basin, no other court in the country has the jurisdiction to grant an interim relief and, as

such, the Tribunal has the inherent powers to grant the interim relief, otherwise petitioners shall be left with no remedy for the enforcement of their rights.

x x x x x

22. The above passage clearly goes to show that the State of Tamil Nadu was claiming for an immediate relief as year after year, the realisation at Mettur was falling fast and thousands of acres in their ayacut in the basin were forced to remain fallow. It was specifically mentioned that the inordinate delay in solving the dispute is taken advantage of by the Government of Karnataka in extending their canal systems and their ayacut in the new projects and every day of delay is adding to the injury caused to their existing irrigation. The Tribunal was thus clearly wrong in holding that the Central Government had not made any reference for granting any interim relief. We are not concerned, whether the appellants are entitled or not, for any interim relief on merits, but we are clearly of the view that the reliefs prayed by the appellants in their C.M.P. Nos. 4, 5 and 9 of 1990 clearly come within the purview of the dispute referred by the Central Government under Section 5 of the Act. The Tribunal has not held that it had no incidental and ancillary powers for granting an interim relief, but it has refused to entertain the C.M.P. Nos. 4, 5 and 9 on the ground that the reliefs prayed in these applications had not been referred by the Central Government. In view of the above circumstances we think it is not necessary for us to decide in this case, the larger question whether a Tribunal constituted under the Interstate Water Disputes Act has any power or not to grant any interim relief. In the present case the appellants become entitled to succeed on the basis of the finding recorded by us in their favour that the reliefs prayed

> by them in their C.M.P. Nos. 4, 5 and 9 of 1990 are covered in the reference made by the Central Government."

36. We have referred to the aforesaid decision in extenso as this Court had allowed the appeals by holding that it had the authority to decide the limits, powers and the jurisdiction of the tribunal constituted under the 1956 Act and further it held that not only this Court had the power but also obligation to decide as to whether the tribunal has any jurisdiction under the 1956 Act to entertain any interim relief till it finally decides the dispute referred to it.

37. Be it noted, in pursuance of the judgment passed by this Court, certain applications were filed before the tribunal and before it objections were again raised with regard to maintainability of the applications filed by Tamil Nadu and Pondicherry for interim relief which were rejected on the ground that the direction given by this Court was binding on it. Thereafter, the tribunal decided the applications on merits and issued certain directions. Thereafter, the Governor of Karnataka issued an Ordinance namely "the Karnataka Cauvery Basic Irrigation Protection Ordinance, 1991". After

the Ordinance was issued, the State of Karnataka instituted a suit under Article 131 against the State of Tamil Nadu and others for declaration that the tribunal's order granting interim relief was without jurisdiction and, therefore, null and void. The Ordinance that was issued was replaced by Act 27 of 1991. The provisions of the said Act were a verbatim reproduction of the provisions of the Ordinance except that in Section 4 of the said Act the words "any court or" were omitted. The omission of the above words excluded this Court's order dated April 26, 1991 from the overriding effect of the said provision. It is in this context that the President made the Reference under Article 143 of the Constitution.

38. While dealing with question No. 1, that is, whether the Ordinance and the provisions thereof are in accordance with the provisions of the Constitution, the Court referred to Article 131 and thereafter opined thus:-

> "56. It is clear from the article that this Court has original jurisdiction, among other things, in any dispute between two or more States where the dispute involves any question whether of law or fact on which the existence and extent of a legal right depends except those matters which are specifically excluded from the said jurisdiction by the proviso.

However, the Parliament has also been given power by Article 262 of the Constitution to provide by law that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any dispute or complaint with respect to the use, distribution or control of the water of, or in, any inter-State river or river valley. Section 11 of the Act, namely, the Inter-State Water Disputes Act, 1956 has in terms provided for such exclusion of the jurisdiction of the courts. It reads as follows:—

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

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

Proceeding further, it stated:-

"77. The effect of the provisions of Section 11 of the present Act, viz., the Inter-State Water Disputes Act read with Article 262 of the Constitution is that the entire judicial power of the State and, therefore, of the courts including that of the Supreme Court to adjudicate upon original dispute or complaint with respect to the use, distribution or control of the water of, or in any inter-State river or river valleys has been vested in the Tribunal appointed under Section 4 of the said Act. It is, therefore, not possible to accept the submission that the question

> of grant of interim relief falls outside the purview of the said provisions and can be agitated under Article 131 of the Constitution. Hence any executive order or a legislative enactment of a State which interferes with the adjudicatory process and adjudication by such Tribunal is an interference with the judicial power of the State. In view of the fact that the Ordinance in question seeks directly to nullify the order of the Tribunal passed on June 25, 1991 it impinges upon the judicial power of the State and is, therefore, ultra vires the Constitution."

39. Relying on the aforequoted passages, it is contended by Mr. Rohatgi that it has been clearly spelt out by the Constitution Bench that the power of the Supreme Court to adjudicate is ousted under Article 262(2) read with Section 11 of the 1956 Act. Mr. Nariman and Mr. Naphade appearing for the States of Karnataka and Tamil Nadu respectively would contend that the opinion of the Constitution Bench has to be appositely understood since it clearly lays down that ouster of the judicial power of the Supreme Court to adjudicate upon original dispute or complaint with regard to use, distribution or control of the waters or in any inter-State river or river valley which has been vested in the tribunal. It is highlighted by them that as per the dictum of the Constitution Bench, this

Court cannot take cognizance of an original dispute or complaint, but within that purview the assail to final order of the tribunal does not come and hence, the power of the Court in that regard remains unaffected.

40. In ***State of Karnataka v. State of A.P.*** (supra), another Constitution Bench was dealing with a suit filed under Article 131 of the Constitution. While expressing the opinion, Pattanaik, J. (as His Lordship then was) has held:-

> "24. Article 131 being subject to the other provisions of the Constitution including Article 262, if Parliament has made any law for adjudication of any water dispute or a dispute relating to distribution or control of water in any inter-State river or river valley, then such a dispute cannot be raised before the Supreme Court under Article 131, even if the dispute be one between the Centre or the State or between two States. In exercise of constitutional power under Article 262(1), Parliament, in fact has enacted the law called the Inter-State Water Disputes Act, 1956 and Section 11 of the said Act provides that neither the Supreme Court nor any other court shall have jurisdiction in respect of any water dispute which could be referred to a tribunal under the Act. This being the position, what is necessary to be found out is whether the assertions made in the plaint filed by the State of Karnataka and the relief sought for, by any stretch of imagination can be held to be a water dispute, which could be referred to the Tribunal, so as to oust the jurisdiction of the Supreme Court under Article 131."

41. Majmudar, J. concurring with the view of Pattanaik, J. has opined that:-

> "It is not in dispute between the parties that the Inter-State Water Disputes Act, 1956 (hereinafter referred to as "the Disputes Act") is a legislation passed under Article 262 of the Constitution. It is equally not in dispute that Section 11 thereof excludes the jurisdiction of this Court in respect of water disputes referred to the Tribunal. It will, therefore, have to be seen whether the State of Andhra Pradesh, as plaintiff, having invoked the jurisdiction of this Court under Article 131 has, in substance, raised "water dispute" which will exclude the jurisdiction of this Court as per Section 11 of the Disputes Act read with Article 262 clause (2). In other words, if in substance, the plaintiff wants adjudication of any "water dispute" between it and the other contesting States, namely, the State of Karnataka or the State of Maharashtra which are upper riparian States located in the Krishna basin through which River Krishna, which is admittedly an inter-State river, flows."

42. Banerjee, J. supplementing the view has opined:-

> "123. Incidentally, whereas Article 262 pertains to legislative enactments containing an ouster of jurisdiction of the Supreme Court, Article 131 relates to conferment of the jurisdiction of the Supreme Court in the event of there being any dispute between two States or between one or more States on the one hand and another on the other hand or between the Union of India and other States. Let us, however, analyse the issue of ouster of jurisdiction under Article 262 as contended by Mr Salve, the learned Solicitor General of India. The heading of Article 262 is rather significant since it

> reads as "Disputes relating to waters" and in the body of the article it is provided that in the event of there being any dispute, Parliament may by law provide for adjudication of any dispute in regard to use, distribution or control of the waters of, or in, any inter-State river or river valley. Article 262 is specific as regards adjudication of disputes pertaining to water whereas Article 131 provides for a general power and conferment of jurisdiction of the Supreme Court in the event of there being any dispute between two States etc. etc. There is neither any conflict between Article 262 and Article 131 nor, thus, the fields covered therein overlap each other, a specific exclusion has been thought of by our Constitution-framers and been provided for in the Constitution."

The learned Judge referred to authority in the earlier Constitution Bench decision rendered in ***In Re: Cauvery Water Dispute Tribunal*** (supra) to express the aforesaid view.

43. The said pronouncement has to be appreciated in a seemly perspective. The issue arose whether the suit filed under Article 131 of the Constitution pertained to water dispute which required to be referred to the tribunal under the 1956 Act. In that context, the Court opined that if it is a water dispute, jurisdiction of this Court is excluded but Court has to see the averments in the plaint. It has also been opined that

there is no conflict between Article 131 and Article 262 of the Constitution. As regards entertaining a water dispute, it is to be scrutinized whether the controversy that is the subject matter of the suit invites the bar of jurisdiction of this Court, for it depends upon the nature of dispute. Thus, the view has been expressed in the context of Article 131 of the Constitution.

44. In ***State of Haryana*** (supra) the Court was dealing with a suit filed under Article 131 of the Constitution for seeking certain reliefs impleading State of Punjab as defendant No. 1 and Union of India as defendant No. 2. The issue of maintainability of the suit arose for consideration. Dealing with the said issue, the two-Judge Bench referred to Article 262 of the Constitution and Section 11 and Section 2(c) of the 1956 Act that defines water dispute and in that context ruled thus:-

> "7. There cannot be any dispute with the proposition that in the event the present dispute between the two States would come within the definition of "water dispute" in Section 2(*c*) of the Act and as such is referable to a Tribunal under Section 11 of the Act, then certainly the jurisdiction

> of this Court would be barred, in view of Article 262 of the Constitution read with Section 11 of the Act."

45. In ***Mullaperiyar Environmental Protection Forum*** (supra) a three-Judge Bench was dealing with safety of the Mullaperiyar reservoir. In that context, the Court posed the question whether the jurisdiction of this Court is barred in view of Article 262 read with Section 11 of the 1956 Act. Analysing the provisions of the Constitution and scrutinizing the import of the statutory provisions, it was ruled that:-

> "22. Article 262 provides that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley. The jurisdiction of the courts in respect of any dispute or complaint referred to in Article 262(1) can be barred by Parliament by making law. The Inter-State Water Disputes Act, 1956 was enacted by Parliament in exercise of power under Article 262 of the Constitution. Section 11 of the said Act excludes the jurisdiction of the Supreme Court in respect of a water dispute referred to the Tribunal. Section 2(*c*) of this Act defines "water dispute". It, inter alia, means a dispute as to the use, distribution or control of the waters of, or as to the interpretation or implementation of the agreement of such waters."

After so observing, the Court held that the dispute in the said case was not one contemplated by Section 2(c) of the 1956 Act. The Court so held as the main issue was about the safety of the dam on increase of the water level and for determining the said issue, neither Article 262 of the Constitution nor the provisions of the 1956 Act had any applicability. Being of this view, it repelled the contention that the jurisdiction of the Court in regard to the controversy raised was barred under Article 262 read with Section 11 of the 1956 Act.

46. In ***Atma Linga Reddy*** (supra), a writ petition was filed by the petitioners as *pro bono publico* praying for issue of an appropriate writ, direction or order restraining the State of Karnataka and Sree Swarna Energy Limited from constructing a mini hydro power project at Rajolibanda Diversion Scheme (RDS), Raichur District, Karnataka by quashing and cancelling the power project. A prayer was also made to direct the State of Karnataka to regulate water at RDS anicut and to ensure smooth flow of water in RDS canal to the extent of full allocated water of 15.9 TMC to the State of Andhra Pradesh.

Addressing the issue with regard to maintainability, the Court opined that:-

> "33. In the light of the scheme as envisaged by the makers of the Constitution as also by Parliament under Act 33 of 1956 in connection with water disputes between States, it is clear to us that such disputes cannot be made subject-matter of petition either in a High Court under Article 226 or in this Court under Article 32 of the Constitution. *Probably*, Article 262 is the *only* provision which enables Parliament to oust and exclude jurisdiction of all courts including the Supreme Court (this Court).
>
> 34. It is also pertinent to note that clause (2) of Article 262 contains a non obstante clause (Notwithstanding anything in this Constitution). It is no doubt true that Article 262 of the Constitution is not self-executory inasmuch as it does not, by itself, take away the jurisdiction of this Court in respect of disputes relating to waters of inter-State rivers or river valleys. It is an enabling provision and empowers Parliament to enact a law providing for adjudication of such disputes or complaints, excluding the jurisdiction of all courts including this Court (Supreme Court).
>
> 35. Article 131 of the Constitution which enables the Central Government or a State Government to institute a suit in this Court on its Original Side in certain cases also cannot be invoked in inter-State water disputes in view of Section 11 of the Act (vide *T.N. Cauvery Etc. Sangam* v. *Union of India (supra)*. In other words, the provisions of Article 131 of the Constitution have to be construed harmoniously subject to the provisions of Article 262 of the

> Constitution. A petition under Article 32 of the Constitution, hence, cannot be entertained by this Court."

47. After so stating, the Court adverted to the stand of the petitioners therein that if this Court holds that a petition is not maintainable in this Court, they have no remedy for the enforcement of their right recognised by the Constitution and guaranteed by Article 32 enshrined in Part III of the Constitution and also it would violate basic philosophy of the rule of law reflected in the well-known maxim *ubi jus ibi remedium* (wherever there is right, there is remedy). Dealing with the said stand, the Court held as follows:-

> "38. In our considered opinion, however, preliminary objections raised on behalf of the contesting respondents are well founded and are required to be upheld. We have already extracted the relevant provisions of the Constitution as also of Act 33 of 1956. The Founding Fathers of the Constitution were aware and conscious of sensitive nature of inter-State disputes relating to waters. They, therefore, provided machinery for adjudication of such disputes relating to waters of inter-State rivers or river valleys. By enacting Article 262, they empowered Parliament to enact a law providing for adjudication of any dispute or complaint with respect to the use, distribution or control of waters of any inter-State river or river valley. They, however, did not stop there. They went ahead and empowered Parliament to exclude the

> jurisdiction of all courts including the final court of the country in such disputes. The intention of framers of the Constitution, in our opinion, was clear, obvious and apparent. It was thought proper and appropriate to deal with and decide such sensitive issues once and for all by a law made by Parliament."

48. Thereafter, the Court referred to clause (c) of Section 2 of the 1956 Act that defines "water dispute" and Section 3 which provides for complaints by the State Governments as to water dispute. Commenting on the same, the Court expressed:-

> "41. Bare reading of the above provisions leaves no room for doubt that they are very wide. Section 3 deals with situations not only where a water dispute has actually arisen between one State and another State, but also where such dispute is "likely to arise". Moreover, it applies not only to those cases in which interest of the State has been prejudicially affected, but also embraces within its sweep interest of any of the inhabitants thereof which has been affected or is likely to be affected. To us, therefore, it is abundantly clear that such a dispute is covered by Article 262 of the Constitution and should be dealt with in accordance with the provisions of Act 33 of 1956 and it cannot be challenged in any court including this Court.
>
> x x x x x
>
> 46. Ultimately, what is contemplated by the Act is to look into, to protect and to safeguard interests of the State as also of its subjects and citizens.

> Precisely for that reason, Section 3 has been worded widely. It provides for constitution of a tribunal for adjudication by the Central Government on a dispute raised or complaint made by any State that interest of the State or any of the inhabitants thereof has been prejudicially affected or is likely to be affected. In our considered opinion, therefore, the present petition under Article 32 is not maintainable.
>
> x x x x x
>
> 52. From the relevant provisions of the Constitution, Act 33 of 1956 and the decisions referred to hereinabove, there is no doubt in our mind that the present writ petition under Article 32 of the Constitution is not maintainable."

The aforesaid decision, as is limpid, has been delivered in the context of a writ petition preferred under Article 32 of the Constitution, by way of public interest litigation and the *lis* as the court perceived was squarely covered by the connotative expanse of "water dispute".

49. In the ***State of Himachal Pradesh*** (supra) the Court was dealing with the maintainability of a suit under Article 131 of the Constitution. One of the issue that was framed by the Court was whether the suit was maintainable under Article 131. Dealing with the said issue, the Court referred to

the authority in ***State of Karnataka v. State of A.P.*** (supra) and ***State of Haryana*** (supra) and opined that when a contention is raised that a suit filed under Article 131 of the Constitution is barred under Article 262(2) of the Constitution read with Section 11 of the 1956 Act, what is necessary to be found out is whether the assertions made in the plaint and the relief sought for, by any stretch of imagination, can be held to constitute a water dispute so as to oust the jurisdiction of this Court under Article 131 of the Constitution. Thereafter the Court proceeded to hold that from the assertions made in the entire plaint as well as the reliefs claimed therein by the plaintiff, the dispute did not relate to inter-State river water issue or the use thereof, and actually relate to sharing of power generated in the Bhakra-Nangal and the Beas Projects and such a dispute did not attract the law was not barred under clause (2) of Article 262 of the Constitution read with Section 11 of the 1956 Act. Thus, the emphasis was laid on the nature of the dispute in the context of exercise of original jurisdiction.

50. The crux of the matter is whether the interpretation placed by this Court on the aforesaid decisions lays down the ratio that Article 262 read with Section 11 of the 1956 Act ousts the jurisdiction of Article 136 of the Constitution. On an anxious perusal and studied scrutiny of the aforesaid authorities, we find that what has been ousted is the jurisdiction of this Court to take cognizance of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter State river or river valley. The Constitution Bench in ***In Re: Cauvery Water Dispute Tribunal*** (supra) has opined that this Court cannot take cognizance of the original complaint or dispute relating to what has been mentioned in Article 262. Article 262(2) empowers the Parliament, by law, to provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1). Thus, the legislation is relatable to the disputes which have been referred to in Article 262(1). In this regard, we may refer to Section 2(c) of the 1956 Act that defines "water dispute". It reads as follows:-

> "2.(*c*) 'water dispute' to mean any dispute or difference between two or more State Governments with respect to—
>
> (*i*) the use, distribution or control of the waters of, or in, any inter-State river or river valley; or
>
> (*ii*) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or
>
> (*iii*) the levy of any water rate in contravention of the prohibition contained in Section 7."

51. Section 3 deals with complaints by State Governments as to water disputes. It provides that:-

> "3. *Complaints by State Governments as to water disputes.*—If it appears to the Government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or of any of the inhabitants thereof, in the waters of an inter-State river or river valley have been, or are likely to be, affected prejudicially by—
>
> (*a*) any executive action or legislation taken or passed, or proposed to be taken or passed, by the other State; or
>
> (*b*) the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters; or
>
> (*c*) the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters,
>
> the State Government may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication."

52. Section 5 provides for adjudication of water disputes. Section 11 stipulates that neither the Supreme Court nor any other Court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a tribunal under the 1956 Act. The tribunal is constituted when a request is made under Section 3 from any State Government in respect of any water dispute. Section 4 of the 1956 Act provides that the Central Government shall constitute a Water Disputes Tribunal if it is of the opinion that the water dispute cannot be settled by negotiations. The 1956 Act, as we perceive, is in consonance with Article 262 which empowers the Parliament to provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint but the same has to pertain to Article 262(1).

53. Thus, the bar on the jurisdiction of this Court has to be in accord with the language employed in Article 262(1). Section 11 bars the jurisdiction of this Court pertaining to original dispute or complaint. The submission of Mr. Rohatgi is that dispute or complaint as mentioned in Article 262 and Section 11 of the 1956 Act not only covers the dispute before

the tribunal but also encompasses any appeal by special leave because it still has the characteristics of a dispute. On a first blush, the aforesaid submission may look attractive but on a keener scrutiny, we are disposed to think, it does not deserve acceptance. The language used in Article 262(1) and Section 11 relate to a water dispute or complaint. It pertains to a dispute or a complaint at the pre-adjudicatory stage. A complaint by the State Government is in a different realm altogether. It is meant to invite the attention of the Central Government pertaining to the fact that a water dispute had arisen or is likely to arise and it needs to be addressed by constituting a tribunal. Once a water dispute is adjudicated, it is extremely difficult to put it in the compartment of "any water dispute". After the adjudication, one of the States or both the States may have a grievance but a contention cannot be advanced by them or by the Union of India that the controversy is still at the stage of dispute that has been intended to be covered either under Article 262(1) of the Constitution or under the scheme of the 1956 Act and, therefore, the jurisdiction of this Court stands excluded.

Needless to emphasise, it has to pertain to the original dispute or original complaint and that is why, the Constitution bench in ***In Re: Cauvery Water Dispute Tribunal*** (supra) had held that this Court cannot take cognizance of an original dispute or complaint. The Constitution Bench analyzing the scheme of the 1956 Act has opined that the tribunal had the jurisdiction to grant interim relief. It has also been categorically ruled that this Court cannot take cognizance of original dispute. The majority in ***State of Tamil Nadu v. State of Karnataka and Ors. with Union Territory of Pondicherry v. State of Karnataka and Ors.*** (supra) has opined that this Court has jurisdiction to decide the parameters, scope, authority and jurisdiction of the tribunal. It has been further held that it is the judiciary i.e. the courts alone that have the function of determining authoritatively the meaning of a statutory enactment and to lay down the frontiers of jurisdiction of any body or tribunal constituted under the statute.

54. At this stage, we may also refer to the scope of certain aspects which have been highlighted by Mr. Nariman, learned senior counsel appearing for the State of Karnataka.

According to him, the protective, preclusive or ouster clauses are to be construed strictly. He has relied on the classic text of Administrative Law by Sir William Wade (9th Edn.) wherein it has been said that "... first it must be stressed that there is a presumption against any restriction of the supervisory powers of the court". He has also relied upon case of ***R. v. Medical Appeal Tribunal ex parte Gilmore***[32] wherein Denning LJ said that "I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words." Lord Reid in the ***Anisminic Ltd. v. Foreign Compensation Commission***[33] has recalled that:-

> "It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly – meaning, I think that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court".

55. Having stated about the aspect pertaining to the approach of the Court with regard to interpret the ouster provisions, we may profitably refer, being commended, to

[32] (1957) 1 QB 574 [at 583]
[33] (1969) 2 AC 147 [at 170C-D]

certain authorities as to how the Court has perceived its jurisdiction under Article 136 of the Constitution.

56. In ***Durga Shankar Mehta*** (supra), it has been held thus:-

> "It is now well settled by the majority decision of this Court in the case of *Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd.*[34]that the expression "Tribunal" as used in article 136 does not mean the same thing as "Court" but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. The only Courts or Tribunals, which are expressly exempted from the purview of article 136, are those which are established by or under any law relating to the Armed Forces as laid down in clause (2) of the article. It is well known that an appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself. The powers given by article 136 of the Constitution however are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The article itself is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting of special leave, against any kind of judgment or order made by a Court or Tribunal in any cause or matter and the powers could be exercised in spite of the specific provisions for

[34] 1950 SCR 459

> appeal contained in the Constitution or other laws. The Constitution for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this article in any way."
>
> [Emphasis added]

And again:-

> "In the first place article 136 is a constitutional provision which no Parliamentary legislation can limit or take away. In the second place the provision being one, which overrides ordinary laws, no presumption can arise from words and expressions declaring an adjudication of a particular Tribunal to be final and conclusive, that there was an intention to exclude the exercise of the special powers. As has been said already, the non obstante clause in article 329 prohibits challenge to an election either to Parliament or any State Legislature, except in the manner laid down in clause (2) of the article. But there is no prohibition of the exercise of its powers by the Supreme Court in proper cases under article 136 of the Constitution against the decision or determination of an Election Tribunal which like all other judicial, tribunals comes within the purview of the article. It is certainly desirable that the decisions on matters of disputed election should, as soon as possible, become final and conclusive so that the constitution of the Legislature may be distinctly and speedily known. But the powers under article 136 are exercisable only under exceptional circumstances. The article does not create any general right of appeal from decisions of all Tribunals."

Though the context is different, we have referred to the said authority to appreciate the width and plentitude of power

under Article 136 of the Constitution. That apart, the said authority supports the view that framers of the Constitution have not chosen to circumscribe the powers exercisable under this Article. We are conscious of the fact that the context was different, but it is obligatory on the part of this Court to see whether any bar is created under the original Constitution and if so, to what extent.

57. In this regard, Mr. Nariman has also referred to ***Associated Cement Companies Ltd. (supra)***, especially, the concurring opinion of Bachawat, J., who has articulated thus:-

> "The great purpose of Art. 136 is the recognition of the basic principle that one Court having supreme judicial power in the Republic will have appellate power over all Courts and adjudicating authorities vested with the judicial powers of the State throughout the territory of India barring those constituted by or under any law relating to the Armed Forces. In this background, the basic test of a tribunal within the meaning of Art. 136 is that it is an adjudicating authority (other than a Court) vested with the judicial powers of the State."

58. In ***Jose Da Costa*** (supra), it has been opined that Article 136 vests in this Court plenary jurisdiction in the matter of entertaining and hearing appeals by granting special leave against any kind of judgment or order made by a court or

tribunal in any case or matter and the power cannot be taken away expressly or impliedly by any ordinary legislation.

59. In ***Arunachalam v. P.S.R. Sadhanantham*** (supra), it has been ruled that Art. 136 of the Constitution invests the Supreme Court with a plentitude of plenary, appellate power over all Courts and tribunals in India. Thereafter, the Court has stated that:-

> "Appellate power vested in the Supreme Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and Appellate Tribunals under specific statutes. As we said earlier, it is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice (vide *Durga Shankar Mehta* v. *Thakur Raghuraj Singh*). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of the Supreme Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in the Supreme Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it."

60. In ***P.S.R. Sadhanantham v. Arunachalam*** (supra) this Court (speaking through Justice Krishna Iyer) held that :-

> "....Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself.

> This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Article 136. Is if merely a power in the court to be exercised in any manner it fancies? Is there no procedural limitation in the manner of exercise and the occasion for exercise? Is there no duty to act fairly while hearing a case under Article 136, either in the matter of grant of leave or, after such grant, in the final disposal of the appeal? We have hardly any doubt that here is a procedure necessarily implicit in the power vested in the summit court. It must be remembered that Article 136 confers jurisdiction on the highest court. The founding fathers unarguably intended in the very terms of Article 136 that it shall be exercised by the highest judges of the land with scrupulous adherence to judicial principles well established by precedents in our jurisprudence."

61. In ***Prashant Ramachandra Deshpande*** (supra), Sahai, J. speaking for the Court has observed that remedy under Article 136 is a constitutional right and it cannot be taken away by legislation much less by invoking the principle of election or estoppels, because the jurisdiction exercised by this Court under Article 136 is an extraordinary jurisdiction which empowers this Court to grant leave to appeal from any judgment, decree or determination in any cause or matter passed or made by any court or tribunal and the scope of this Article has been settled in numerous decisions. It is not

hedged with any restriction or any exception as is normally found in the provisions conferring jurisdiction.

62. Learned senior counsel has also commended us to ***Mahendra Saree Emporium (II)*** (supra) and ***U. Sree*** (supra) and to a recent Constitution Bench decision in ***Mathai v. George***[35], wherein the Court has opined that no effort should be made to restrict the powers of this Court under Article 136 because while exercising its power under Art. 136 of the Constitution of India, this Court can, after considering facts of the case to be decided, very well use its discretion.

63. In this context, we may profitably refer to ***Ganga Kumar Srivastava v. State of Bihar***[36]. After referring to the earlier authorities, the Court culled out certain principles which would invite exercise of power of this Court under Article 136 of the Constitution of India. They are as follows:-

> "(i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.

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[35] (2016) 7 SCC 700
[36] (2005) 6 SCC 211

> (ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly.
>
> (iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.
>
> (iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.
>
> (v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

We have referred to the aforesaid authorities solely for the purpose of accentuating the nature of jurisdiction exercised by this Court under Article 136.

64. Having stated about the extent of jurisdiction of this Court under Article 136 of the Constitution and upon taking note of the precedents pertaining to sphere of Article 262 read with Section 11 of the 1956 Act, we may state that what is excluded under the Constitution is the dispute or complaint.

The term 'dispute', as has been held in ***Gujarat State Cooperative Land Development Bank Ltd. v. P.R. Mankad and Ors.***[37], means a controversy having both positive and negative aspects. In ***Canara Bank and Ors. v. National Thermal Power Corporation and Anr.***[38], the term 'dispute' has been interpreted to mean that there is a postulation of an assertion of a claim by one party and denial by the other. The term 'dispute' may be given a broad meaning or a narrow meaning and the 1956 Act gives it a broad meaning, as has been held by this Court.

65. In this context, the term 'adjudication' becomes extremely significant. In Black' Law Dictionary (6th Edn.) at p. 42 "adjudication" is defined as:-

> "*Adjudication.*— The legal process of resolving a dispute. The formal giving or pronouncing a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved."

66. The purpose of referring to the aforesaid definition is to arrive at the conclusion that once a water dispute, as defined

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[37] (1979) 3 SCC 123
[38] (2001) 1 SCC 43

under Article 262(1) read with provisions of the 1956 Act is adjudicated by the tribunal, it loses the nature of dispute. A person aggrieved can always have his remedy invoking the jurisdiction under Article 136 of the Constitution of India. We have no a scintilla of doubt in our mind that the founding fathers did not want the award or the final order passed by the tribunal to remain immune from challenge. That is neither the express language of Article 262(1) nor it impliedly so states. Thus, the contention of the Union of India with regard to maintainability of the appeal by special leave under Article 136 of the Constitution of India on this score stands repelled.

67. The second limb of submission of Mr. Rohatgi as regards the maintainability pertains to the language employed under Section 6(2) of the 1956 Act, which reads as follows:-

> "6(2) The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court."

68. Relying on Section 6(2), which was introduced by way of Amendment Act 2002 (Act No. 14 of 2002) that came into force from 6.8.2002, it is submitted by Mr. Rohatgi that the

jurisdiction of this Court is ousted as it cannot sit over in appeal on its own decree. The said submission is seriously resisted by Mr. Nariman and Mr. Naphade, learned senior counsel contending that the said provision, if it is to be interpreted to exclude the jurisdiction of the Supreme Court of India, it has to be supported by a constitutional amendment adding at the end of Article 136(2) the words "or to any determination of any tribunal constituted under the law made by Parliament under Article 262(2)" and, in such a situation, in all possibility such an amendment to the Constitution may be ultra vires affecting the power of judicial review which is a part of basic feature of the Constitution. Learned senior counsel for the respondent has drawn a distinction between the conferment and the exclusion of the power of the Supreme Court of India by the original Constitution and any exclusion by the constitutional amendment. Be that as it may, the said aspect need not be adverted to, as we are only required to interpret Section 6(2) as it exists today on the statute book. The said provision has been inserted to provide teeth to the decision of the tribunal after its publication in the official

gazette by the Central Government and this has been done keeping in view the Sarkaria Commission's Report on Centre-State relations (1980). The relevant extract of the Sarkaria Commission's Report reads as follows:-

> "17.4.19 The Act was amended in 1980 and Section 6A was inserted. This section provides for framing a scheme for giving effect to a Tribunal's award. The scheme, inter alia provides for the establishment of the authority, its term of office and other condition of service, etc. but the mere creation of such an agency will not be able to ensure implementation of a Tribunal's award. Any agency set up under Section 6A cannot really function without the cooperation of the States concerned. Further, to make a Tribunal's award binding and effectively enforceable, it should have the same force and sanction behind it as n order or decree of the Supreme Court. We recommend that the Act should be suitably amended for this purpose.
>
> 17.6.05 – The Inter- State Water Disputes Act,1956 should be amended so that a Tribunal's Award has the same force and sanction behind it as an order or decree of the Supreme Court to make a Tribunal's award really binding."

69. The Report of the Commission as the language would suggest, was to make the final decision of the tribunal binding on both the States and once it is treated as a decree of this Court, then it has the binding effect. It was suggested to make the award effectively enforceable. The language employed in

Section 6(2) suggests that the decision of the tribunal shall have the same force as the order or decree of this Court. There is a distinction between having the same force as an order or decree of this Court and passing of a decree by this Court after due adjudication. The Parliament has intentionally used the words from which it can be construed that a legal fiction is meant to serve the purpose for which the fiction has been created and not intended to travel beyond it. The purpose is to have the binding effect of the tribunal's award and the effectiveness of enforceability. Thus, it has to be narrowly construed regard being had to the purpose it is meant to serve.

70. In this context, we may usefully refer to the Principles of Statutory Interpretation, 14th Edition by G.P. Singh. The learned author has expressed thus:-

> "In interpreting a provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created[39], and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction[40]. But in so construing the fiction it is not be extended beyond the purpose for

[39] AIR 1953 SC 333, AIR 1953 SC 244
[40] (1951) 2 All ER 587, AIR 1959 SC 352

> which is created[41], or beyond the language of the section by which it is created[42]. It cannot also be extended by importing another fiction[43]. The principles stated above are 'well-settled'.[44] A legal fiction may also be interpreted narrowly to make the statute workable.[45]

71. In ***Aneeta Hada v. Godfather Travels and Tours***[46], a three-Judge Bench has ruled thus:-

> "37. In *State of T.N.* v. *Arooran Sugars Ltd.*[47] the Constitution Bench, while dealing with the deeming provision in a statute, ruled that the role of a provision in a statute creating legal fiction is well settled. Reference was made to *Chief Inspector of Mines* v. *Karam Chand Thapar*[48], *J.K. Cotton Spg. and Wvg. Mills Ltd.* v. *Union of India*[49], *M. Venugopal* v. *LIC*[50] and *Harish Tandon* v. *ADM, Allahabad*[51] and eventually, it was held that when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between which persons such a statutory fiction is to be resorted to and thereafter, the courts have to give full effect to such a statutory fiction and it has to be carried to its logical conclusion.

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41 AIR 1955 SC 661, AIR 1963 SC 1448
42 AIR 966 SC 719, AIR 1997 SC 208
43 AIR 1966 SC 870
44 AIR 2004 SC 3666
45 AIR 2005 SC 34
46 (2012) 5 SCC 661
47 (1997) 1 SCC 326
48 AIR 1961 SC 838
49 1987 Supp. SCC 350
50 (1994) 2 SCC 323
51 (1995) 1 SCC 537

> 38. From the aforesaid pronouncements, the principle that can be culled out is that it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term "deemed" has to be read in its context and further, the fullest logical purpose and import are to be understood. It is because in modern legislation, the term "deemed" has been used for manifold purposes. The object of the legislature has to be kept in mind."

72. In ***Hari Ram*** (supra), the Court has held that in interpreting the provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created and after ascertaining the same, the court is to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction.

73. In this regard, reference to the authority in ***Nandkishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan and Dombivali and Ors.***[52] would be apposite. It has been held that a legal fiction has to be applied having regard to

[52] (2014) 11 SCC 417

the legislative intent and a restrictive meaning can be attributed to make the statute workable.

74. This Court in ***Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan***[53] held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.

75. In this context, fruitful advertence may be made to a passage from ***Chandra Mohan v. State of Uttar Pradesh and Ors.***[54] wherein Subba Rao, CJ speaking for the Bench has opined:-

> "… the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be."

76. When we apply the aforesaid principles of statutory interpretation to understand the legislative intendment of Section 6(2) it is clear as crystal that the Parliament did not intend to create any kind of embargo on the jurisdiction of this

[53] (1996) 2 SCC 449
[54] AIR 1966 SC 1987

Court. The said provision was inserted to give the binding effect to the award passed by the tribunal. The fiction has been created for that limited purpose. Section 11 of the 1956 Act, as stated earlier, bars the jurisdiction of the courts and needless to say, that is in consonance with the language employed in Article 262 of the Constitution. The Founding Fathers had not conferred the power on this Court to entertain an original suit or complaint and that is luminescent from the language employed in Article 131 of the Constitution and from the series of pronouncements of this Court. Be it clearly stated that Section 6 cannot be interpreted in an absolute mechanical manner and the words "same force as on order or decision" cannot be treated as a decree for the purpose for excluding the jurisdiction of this Court. To elaborate, it cannot be a decree as if this Court has adjudicated the matter and decree is passed. The Parliament has intended that the same shall be executed or abided as if it is a decree of this Court. It is to be borne in mind that a provision should not be interpreted to give a different colour which has a technical design rather than serving the object of the legislation. The

exposition of the principles of law relating to fiction, the intendment of the legislature and the ultimate purpose and effect of the provision compel us to repel the submissions raised on behalf of the Union of India that Section 6(2) bars the jurisdiction conferred on this Court under Article 136.

77. We would like to clarify one aspect. Learned senior counsel appearing for the State of Karnataka as well as the State of Tamil Nadu have commended us to various authorities which we have already referred to in the context of Article 136 of the Constitution, but the purpose behind the said delineation is to show the broad canvas of the aforesaid constitutional provision in the context of maintainability of the civil appeals. How the final order passed by the tribunal would be adjudged within the parameters of the said constitutional provision has to be debated when we finally address the controversy pertaining to the subject matter of the Civil Appeals.

78. In view of the aforesaid analysis, we express the opinion that the Civil Appeals are maintainable. Let the Appeals be listed at 3 p.m. on 15.12.2016 for further orders.

79. Interim order passed on 18.10.2016 to continue.

.....J.
[Dipak Misra]

.....J.
[Amitava Roy]

.....J.
[A.M. Khanwilkar]

New Delhi
December 09, 2016