

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

&

HONOURABLE Dr. JUSTICE SHAMEEM AKTHER

**+ WRIT PETITION NOS.30587, 30655 OF 2021; WP (PIL) NO.126
OF 2021; 5498, 5505, 5512, 5546 OF 2022;**

%29.3.2022

WP No. 5498 of 2022

**#Varala Sudhakar and 19 others S/o Narsaiah Aged 50 years
R/o H No 2-77 Uppara Malyala Gangadhara Mandal
Karimnagar District Telangana**

.....petitioners

Vs.

\$ The State of Telangana and others

**Rep by the Principal Secretary Department of Revenue Land
Acquisition T S Secretariat Hyderabad**

..Respondents

!Counsel for the petitioners

: Sri G Vidyasagar, learned
senior counsel for Sri Sai
Prasen Gundavaram

Counsel for the Respondents

: Additional Advocate General

<Gist :

>Head Note:

? Cases referred:

(2008) 7 SCC 788
(2021) 3 SCC 572
2021 SCC OnLine SC 7
2002 (2) SCC 507
2006 (3) SCC 343
2004 (9) SCC 362
2005(1) ALD 325
AIR 1987 SC 2235
AIR 1089 SC 1972
(2007) 13 SCC 186
(1997) 1 SCC 134
(2017) 3 SCC 362

IN THE HIGH COURT FOR THE STATE OF TELANGANA

**WRIT PETITION NOS.30587, 30655 OF 2021; WP (PIL) NO.126 OF
2021; 5498, 5505, 5512, 5546 OF 2022;**

WP No. 5498 of 2022

Between:

Varala Sudhakar and 19 others S/o Narsaiah Aged 50 years
R/o H No 2-77 Uppara Malyala Gangadhara Mandal
Karimnagar District Telangana

.....petitioners

Vs.

The State of Telangana and others
Rep by the Principal Secretary Department of Revenue Land
Acquisition T S Secretariat Hyderabad

JUDGMENT PRONOUNCED ON : 29.3.2022

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : Yes
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : Yes
to Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
see fair Copy of the Judgment ? :

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE Dr. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION NOS.30587, 30655 OF 2021; WP (PIL) NO.126 OF
2021; 5498, 5505, 5512, 5546 OF 2022;**

Date: 29.03.2022

WP No. 5498 of 2022

Between:

Varala Sudhakar and 19 others S/o Narsaiah Aged 50 years
R/o H No 2-77 Uppara Malyala Gangadhara Mandal
Karimnagar District Telangana

.....petitioners

Vs.

The State of Telangana and others
Rep by the Principal Secretary Department of Revenue Land
Acquisition T S Secretariat Hyderabad ... Respondents

This Court made the following:

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE Dr. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION NOS.30587, 30655 OF 2021; WP (PIL) NO.126 OF
2021; 5498, 5505, 5512, 5546 OF 2022;**

COMMON ORDER:

W.P.Nos.30587 and 30655 of 2021 are filed challenging the notification dated 27.09.2021 issued by the Land Acquisition Officer under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013). W.P.Nos.5498, 5512 and 5546 of 2022 are filed challenging the similar notification dated 07.11.2021. Petitioners in all these writ petitions are owners of land of various extents in Uppara Mallial Village, Gangadhara Mandal, Karimnagar District, Vilasagar village, Boinapalli mandal, Rajanna Sirsilla District and Kurikyala Village Gangadhara Mandal Karimnagar District respectively.

2. W.P.(PIL).No.126 of 2021 is filed praying to issue Writ of Mandamus by declaring the action of the Telangana State in securing loans, awarding contracts, acquiring lands and allowing the works to be taken up with public money for creation of additional one TMC per day drawing of water capacity from river Godavari as part of the

Kaleshwaram Lift Irrigation Project System without necessary statutory clearances including environmental clearances.

3. In W.P.No.30587 and 30655 of 2021, learned single Judge of this Court, by order dated 26.11.2021 stayed the notification dated 27.09.2021. Praying to vacate the interim stay, on behalf of respondent Nos.1, 3, 4 and 5, I.A.No.2 of 2021 is filed in W.P.No.30587 of 2021. In the meantime, W.P.Nos.5498, 5512 and 5546 of 2022 are filed.

4. We have heard learned senior counsel Sri. G.VidyaSagar, appearing for counsel for petitioners in W.P.Nos.30587 & 30655 of 2021, 5498, 5512 & 5546 of 2022 and learned counsel Sri K.S.Murthy, counsel for petitioner in W.P.(PIL).No.126 of 2021, learned Additional Advocate General for the State Government and learned Assistant Solicitor General Sri Namavarapu Rajeshwar Rao, for Central Government.

5. In the combined State of Andhra Pradesh, the then Government envisaged Lift Irrigation Project to lift water from river Godavari, to construct reservoirs, canals and pump houses at various locations to cater to the irrigation and drinking water needs of Telangana. After formation of the State of Telangana, the Government of Telangana re-designed the scope of the project now called as Kaleshwaram Lift Irrigation Project (KLIP). This project was conceived to create new

command area, stabilization of existing command area, supplying drinking water and water for industrial purposes. According to the State Government, the Technical Advisory Committee has approved to draw 195 TMC of water from the river Godavari at Medigadda, 20 TMC of water from Sripada Yellampally Project, 25 TMC of groundwater, making a total drawing capacity of 240 TMC. All statutory clearances were granted. Initially, the State Government proposed to draw only 2 TMC of water per day, to lift 180 TMC in 90 days of the year. In the year 2019, the State Government has decided to increase the drawing capacity of the water to 3 TMC per day. These writ petitions are filed challenging various decisions, actions taken pursuant to the decision to increase the drawing capacity of water from river Godavari to 3 TMC per day.

6. The challenge to the land acquisition notifications and various decisions of the State Government is mounted on the ground that the decision of the Government to draw additional 1 TMC was not preceded by Detailed Project Report (DPR), Environment Impact Assessment and the Godavari River Water Board approvals from the Union of India. It is their pleaded case that on the complaint by individuals and the Government of State of Andhra Pradesh, Union of India imposed clear restriction on undertaking any work relating to increase of 1 TMC including construction of Canals until approvals are obtained from Godavari River Management Board (GRMB) and to

this extent, notification was issued by Union of India on 15.07.2021. It is further asserted that the Principal Bench of the National Green Tribunal, New Delhi, in its order dated 20.10.2020 in Appeal No.20 of 2018 restrained the State Government from undertaking any activity with reference to expansion of the project to extract 3 TMC of water per day from river Godavari. In view of these orders, the question of extraction of additional 1 TMC, construction of additional pump houses, reservoirs, building canals and laying pipelines for that purpose does not arise.

7. According to the State Government, KLIP was approved and in terms thereof, the State can draw 240 TMC of water per year. The increase of water drawing capacity to 3 TMC per day is part of approved KLIP. There is no increase in the ayacut. Therefore, there is no need to a fresh DPR and separate and specific environmental clearance. It is intended to fill the reservoirs already constructed having a storage capacity of 147 TMC. Environmental clearance for the entire project was granted by the Ministry of Environment and Forests, Government of India on 22.12.2017. Further, Section 10A inserted in Land Acquisition Act as a State amendment and notification in terms thereof covers the KLIP. It is further asserted that even assuming that environmental clearance is required, environmental or forest clearance is always site specific and therefore, until site is identified for construction, the issue of making application

for permission for environmental clearance would not arise and, therefore, acquisition of land is prerequisite.

8. These aspects touch upon the merits of the decision of Telangana Government to increase per day water drawing capacity from river Godavari. However, before going into these aspects, it is necessary to consider the preliminary objection raised by the learned Additional Advocate General, on maintainability of writ petitions.

9.1. Learned Additional Advocate General raised two preliminary objections on maintainability of the writ petitions:

9.2. Firstly, according to learned Additional Advocate General, Section 2(c) of the Act 33 of 1956 defines what is meant to be '*water dispute*' and what is urged in these writ petitions is an inter-state *water dispute*, in view of Article 262 of the Constitution of India, Section 11 of the Interstate River Water Disputes Act, 1956 (Act 33 of 1956) and the judgment of the Hon'ble Supreme Court in **Atma Linga Reddy Vs Union of India**¹, the writ petitions under Article 226 of the Constitution of India are non maintainable.

9.3. He would further submit that on an issue concerning drawing of water from river Godavari, which is an inter-state river individual inhabitants of a State have no role and no cause to litigate.

¹ (2008) 7 SCC 788

9.4. He would further submit that Part IX of the A.P. Reorganization Act, 2014 (Act 6 of 2014) deals with Management and Development of Water Resources. Section 84 of the Act 6 of 2014 contemplated Apex Council, Section 85 envisages establishment of river water boards and it is for the Godavari River Management Board and the Apex Council to deal with all aspects of drawing of water from inter-state river and as envisaged by Section 84, in case of disputes, matter should be referred to the Tribunal as per Act 33 of 1956. Therefore, writ petitions on inter-state river water issues are not maintainable.

9.5. He would further contend that on 17.06.2021, Jal Shakti Ministry issued orders to TSGENCO, not to release water through Srisailem Lift Power House. However, on 28.06.2021, Government issued G.O.R.T.No.34, directing TSGENCO to generate Hydel Power upto 100% of installed capacity. Challenging G.O.Rt.No.34 dated 28.06.2021, W.P.No.15084 of 2021 is filed. The Division Bench of this Court held that in view of Article 262 of the Constitution of India, the writ petition is not maintainable. He has also relied on the decision of the Division Bench in W.P.No.5931 of 2015.

9.6. Secondly, when acquisition of land is for public purpose, the writ petition against Section 11(1) notification is not maintainable. The acquisition of land is to build canal network to draw 1 additional TMC of water per day, which is for public purpose. The drawing of water is within the sanctioned limit of 240 TMC of water under the

Kaleshwaram Lift Irrigation Project (KLIP) which has all sanctions already granted. Therefore, there is no need for a fresh DPR and environmental clearance. The project is also exempted under Section 10-A of Act 30 of 2013 vide G.O.Ms No. 35 dated 30.6.2017.

9.7. He would submit that even if environmental clearance is required unless the land is identified, impact assessment cannot be made. The Government should acquire land and keep it ready. He relied on **Project Implementation Unit Vs. P.V. Krishnamoorthy**².

9.8. He would further submit that even if there is an alleged ecological damage, it can be remedied as held by the Hon'ble Supreme Court in **Rajeev Suri Vs Delhi Development Authority and others**³, while dealing with the challenge for construction of Central Vista Project in New Delhi by the Union of India. Therefore, on that ground building irrigation canals cannot be stopped. He would submit that issues of environmental preservation and economic development have to be balanced.

9.9. He would submit that the State is entitled to draw 240 TMC of water in 90 days. Government intends to draw this water in 60 days by increasing to 3 TMC per day. The Government has not violated National Green Tribunal (NGT) Order. If some one has a grievance on

² (2021) 3 SCC 572

³ 2021 SCC OnLine SC 7

violating NGT Order, he should go before NGT but cannot file a writ petition.

10.1. Learned senior counsel Sri G.Vidya Sagar made extensive submissions on maintainability of writ petitions.

10.2. According to the learned senior counsel, Article 262 of the Constitution of India enables the Indian Parliament to make law dealing with irrigation projects on rivers, which cover more than one State. This Article does not create a bar to avail remedy under Article 226 of the Constitution of India. From the reading of Sections 2 and 11 of the Act, 33 of 1956, it is apparent that the Act has limited jurisdiction and only when the matter is referred to Tribunal on any irrigation project, bar of jurisdiction of High Court and the Supreme Court would apply, but not otherwise. Articles 3 and 4 of the Constitution of India deal with formation of new States and vests power in the Indian Parliament to deal with various aspects arising out of formation of new States. The Act 6 of 2014 deals with all aspects of issues arising out of the formation of State of Telangana. It is a special enactment and shall prevail notwithstanding any provision in any other enactment including act 33 of 1956. Part-IX of the Act deals with irrigation projects. Section 84 of the Act, 2014, creates Apex Council, which in turn required to monitor the functioning of the River Water Management Boards that are required to be established in accordance with Section 85 of the Act. Government of India has to

notify the River Water Boards for both Krishna and Godavari Rivers and specify the functioning of the Boards.

10.3. From the scheme of the Act, it is apparent that no redressal mechanism is provided to individual citizen on any grievance concerning irrigation activities. Therefore, if individual has any grievance on any decision of the Government regarding utilization of water from River Godavari, which impacts the right of the individual, the remedy available to him is only under Article 226 of the Constitution of India. He would submit that on account of decision of the Government to increase drawing capacity of water per day to 3 TMC from existing 2 TMC, the right to own and enjoy land of petitioners is adversely affected and, therefore they are entitled to challenge the Government decision.

10.4. According to the learned senior counsel, in the ordinary course, acquisition of land is governed by the provisions of the Land Acquisition Act and the mechanism created therein is to be availed by any person affected by the acquisition. But in the instant cases, the decision to acquire land itself is vitiating the statutory mandate and, therefore, petitioners are entitled to challenge the notification issued under Section 11 (1) of the Act by instituting the writ petitions under Article 226 of the Constitution of India.

10.5. According to the learned senior counsel, firstly Government of India restrained the State Government from undertaking any construction activity including building new canals before submitting the DPR and obtaining clearance. Admittedly, no DPR is submitted and no clearance is obtained from GRMB. Without submitting DPR and obtaining clearance, no construction activity can be taken up. Further, increasing the water capacity would also have a greater impact on environment and, therefore, environmental clearance is also required before the State undertakes laying of new canals. In the writ petition under Article 226 of the Constitution of India, this Court can go into the aspect of whether the decision of the Government to acquire land is vitiated on account of non-compliance of the statutory requirements to draw additional water from River Godavari.

10.6. He would further submit that the dispute raised by the petitioner is not inter-state *water dispute*. In the instant cases, the issue does not concern whether the State of Telangana is entitled to draw more than 2 TMC of water per day from River Godavari. The question raised is can the State Government decide to draw one additional TMC of water per day and undertake creation of additional infrastructure without permissions and environmental clearances. This aspect does not concern inter-state *water dispute*. He would therefore submit that the writ petitions are maintainable. In support of this contention, learned senior counsel placed reliance on the

decisions of Hon'ble Supreme Court reported in **State of Haryana vs. State of Punjab and another**⁴, in **Mullaperiyar Environmental Protection Forum vs. Union of India and others**⁵, in **N.D.Jayal and another vs. Union of India and others**⁶ and the decision of this Court reported in **Vedire Venkata Reddy and others vs. Union of India and others**⁷.

10.7. He would submit that the stand of the learned Additional Advocate General on DPR is contrary to correspondence entered into between the State Government and Central Government. He would submit that submission of learned Additional Advocate General goes against intendment of the State Government. By referring to the order of the National Green Tribunal in O.A.No.71 of 2020, he would submit that on identical issue, the Telangana Government opposed the decision of the A.P. Government to increase water drawing capacity in Pothireddipadu Irrigation Project without a DPR and without statutory clearances.

10.8. Referring to the decision relied upon by the Additional Advocate General in the case reported in **P.V.Krishnamoorthy** (supra), he would submit that building a National Highway is different from irrigation project.

⁴2002 (2) SCC 507

⁵2006 (3) SCC 343

⁶2004 (9) SCC 362

⁷2005(1) ALD 325

10.9. Learned senior counsel would submit that as can be seen from paragraphs-6 and 8 of the counter-affidavit filed by the Central Government in W.P.No.27153 of 2021, it is apparent that DPR is required, but no such report is submitted to Government of India. Therefore, it is not permissible to undertake construction activity increasing the irrigation infrastructure facilities without submitting DPR, obtaining permissions including environmental clearance.

11.1. According to the learned counsel Sri K.S.Murthy, letter of Government of India dated 22.12.2017 granting environmental clearance only mentions 180 TMC. Paragraph-6 of the third respondent counter-affidavit mentions drawing of water capacity to 240 TMC. He would therefore submit that as against the sanction accorded earlier, Government is now planning to increase the water drawing capacity to 240 TMC and, therefore, it amounts to enhancement of drawing of water and, therefore, the order of NGT has to be complied. According to the learned counsel, whenever there is enhancement, environmental clearance is mandatory. In the order of National Green Tribunal in M.A.No.31 of 2020, it emphasizes previous order passed by the Tribunal, which order mandated obtaining environmental clearance.

11.2. Learned counsel placed reliance on clause-(f) of Government of India notification dated 15.07.2021 to emphasize that the Government of India prohibited construction activity concerning drawing of water

from River Godavari and, therefore, the State Government cannot undertake construction of canals. He would submit that in no circumstance State Government can violate the orders of the Central Government.

11.3. He placed reliance on the decision of Hon'ble Supreme Court reported in **Jagtar Singh and others vs. State of Punjab and others:** [AIR 1972 SC 586 (Paragraph-5)]. He also referred to G.O.Rt.No.346 Irrigation and CAD (Projects-IV) Department, dated 29.08.2019, filed at page No.59, which talks about previous commitments.

11.4. Learned counsel also fairly submits that petitioners are not objecting to undertake the process of land acquisition and it may go on, but no award should be passed and no construction activity should be taken up and land should not be put to use for construction of canals until environmental clearance is obtained.

12. Learned Assistant Solicitor General read out the contents of paragraph-5 of the counter-affidavit in W.P.No.27153 of 2021 and submitted that unless appropriate clearances are obtained by the State Government, no construction activity can be taken up for drawing additional one TMC of water from River Godavari.

13.1. In reply, learned Additional Advocate General clarified that order of the National Green Tribunal in O.A.No.71 of 2020 does not apply to the facts of the instant cases. According to the learned

Additional Advocate General, State of Andhra Pradesh wanted to cover additional Ayacut and whenever additional Ayacutis sought to be covered in an irrigation project, approvals are needed and, therefore, the Government raised objection before the Green Tribunal. On the issue on hand, the Government is not creating any additional ayacut. It only wants to draw one additional TMC of water per day which is within the overall drawing capacity and is part of KLIP, that has secured all necessary permissions. The decision to draw additional one TMC of water per day is in the larger public interest as in a year if there is less rain fall, the overall period to draw water gets reduced and by drawing only 2 TMC per day, the Government may not be able to utilize water allocated to the State causing water shortage and may have cascading affect to end users. The State has constructed reservoirs which have a storing capacity of 147 TMC of water. He would therefore submit that new DPR and environmental clearance are not required. The expansion exercise undertaken is only to draw additional water within the permissible water allocated to the State.

13.2. Learned Additional Advocate General clarified that in all, State is authorized to draw 225 TMC of water from various sources in river Godavari belt. The Government is not crossing this limit. What is envisaged now is to create infrastructure to draw one additional TMC per day so that in a given year within a short period more water can be drawn.

14. In a nutshell, while petitioners assert that without a fresh DPR and environmental clearance Telangana Government cannot draw one additional TMC of water per day from River Godavari and, therefore, process to acquire land to build canals, take administrative decisions to build canals and other infrastructure is *ex facie* illegal, the Telangana Government asserts that the State is authorized to draw 225 TMC of water per year from River Godavari, the State has requisite approvals and environmental clearances for KLIP and drawing one additional TMC of water per day is part of the project and does not require fresh approvals/clearances.

15. In the facts of these cases and based on the pleadings and submissions made by learned counsel, following issues arise for consideration :

(1) Whether the Writ Petitions are maintainable ?

(2) Is it permissible for the Government to initiate land acquisition process without securing statutory permissions/clearances to draw one additional TMC of water per day from River Godavari ?

16. Article 226 of the Constitution of India is couched in wider terms. It not only vests power in the High Court to issue prerogative writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them, but also vests power to issue directions, orders to enforce right vested in a person, be it by Part-III of the Constitution of India or in any other manner. It plays the role of a sentry to guard the rights of people and prevent from being

abrogated/impinged/ hindered in any manner by persons in power or authority.

17. *“The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts.”* [Paragraph 59, **Air India Statutory Corpn. V. United Labour Union : (1997) 9 SCC 377**].In **Rohtas Industries Ltd. v. Staff Union : (1976) 2 SCC 82**], Justice Krishna Iyer said, ***“The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people’s sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights.”*** [Paragraph-9].

18. Though the Constitution makers have not specified the contours of its scope and extent, over a period of time law has evolved to broadly guide the writ Court to deal with a particular situation. By now, the parameters are settled and well laid down. Proverbial, ‘*Lakshmanarekha*’ is drawn and warned not to cross as consequences can be disastrous to the polity at large, if Court assumes unguided power.

19. From this touchstone on scope of Article 226 of the Constitution of India, the objection on maintainability of the writ petitions requires consideration.

20. The Constitution makers have given to India federal form of governance. Each State is independent to deal with its internal affairs within the broad contours of the Constitution of India. The States are formed broadly based on language spoken by people in a region, geographical location, historical background of a region, conversion of princely States, etc. For millions of Indians major source of sustenance has been agriculture. By very nature agricultural activity requires abundance of water and water is becoming scarce. Several parts of the country reel under drought conditions and people have to walk miles to secure drinking water. Constitution makers visualized scope for inter-state rivalry on use of water, more so from rivers flowing through more than one State. Inter-state *water disputes* cannot be seen as routine disputes, which can be adjudicated like any other litigation. It will have wider ramifications. Furthermore, Courts in India from grass root level to High Court have territorial jurisdictional limitations to adjudicate disputes placed before them. On an inter-state water dispute there can be litigation in more than one Court. A dispute concerning drawing of water from river Godavari, which passes through States of Maharashtra, Telangana and Andhra Pradesh, litigation can be instituted in any one or more of the Courts in these three States. This can lead to more complications not conducive to federal concept.

21. With the foresight and vision in abundance, the Constitution makers have made a unique provision in Article 262 of the Constitution of India. It speaks about adjudication of disputes on water concerning inter-state rivers. In the process of creating a unique mechanism, it employs non-obstante clause and empowers the Parliament to make law to provide for adjudication of a dispute or complaint with respect to use, distribution, control of the waters in any inter-state river and to exclude the jurisdiction of Supreme Court and any other Court in India to deal with such dispute or complaint. Thus, if there is a dispute or complaint on use, distribution or control of water concerning inter-state-river, it needs to be adjudicated by a special mechanism and not by regular Courts including the Supreme Court and the High Court.

22. In exercise of power vested in the Indian Parliament, Act 33 of 1956 is made creating mechanism to resolve disputes/to deal with complaints on water concerning inter-state rivers and excluding the jurisdiction of all Courts in India.

23. From a cumulative reading of Article 262⁸ of the Constitution of India; Section 2(c)⁹ and Sections 5¹⁰ and 11¹¹ of the Act 33 of 1956, it

⁸ **Article 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).

⁹ **Sec.2. Definitions:**

(a) and (b) xxx

is apparent that if there is a *water dispute* or complaint on use, distribution or control of water of inter-state river or interpretation of terms of any agreement, the jurisdiction of the Hon'ble Supreme Court and all other Courts stand excluded. Therefore, on such dispute/complaint, a writ petition under Article 226 of the Constitution of India is not maintainable before this Court.

24. This invariably requires consideration whether what is urged by petitioners would amount to *water dispute* or *complaint*. If what is urged in these writ petitions is a *water dispute* or *complaint*, the writ petitions are liable to be dismissed.

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

¹⁰ **Sec.5. Adjudication of water disputes.** (1) When a Tribunal has been constituted under section 4, the Central Government shall, subject to the prohibition contained in section 8, refer the water disputes and **any matter appearing to be connected with, or relevant to**, the water dispute to the Tribunal for adjudication. (2) The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it within a period of three years:

Provided that if the decision cannot be given for unavoidable reasons, within a period of three years, the Central Government may extend the period for a further period not exceeding two years.

(3) If, upon consideration of the decision of the Tribunal, the Central Government or any State Government is of opinion that anything therein contained requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, the Central Government or the State Government, as the case may be, within three months from the date of the decision, again refer the matter to the Tribunal for further consideration, and on such reference, the Tribunal may forward to the Central Government a further report within one year from the date of such reference giving such explanation or guidance as it deems fit and in such a case, the decision of the Tribunal shall be deemed to be modified accordingly:

Provided that the period of one year within which the Tribunal may forward its report to the Central Government may be extended by the Central Government, for such further period as it considers necessary.]

(4) If the members of the Tribunal differ in opinion on any point, the point shall be decided according to the opinion of the majority.

¹¹ **Section 11. Bar of jurisdiction of Supreme Court and other courts.** 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.

25. Before looking into statutory scheme and law on the subject, it is necessary to consider the pleadings.

26. To recapitulate in brief, the Telangana State asserts that it is authorized to draw 225 TMC of water from River Godavari. The State Government launched gigantic lift irrigation project, known as KLIP, to lift water from river Godavari and store it in reservoirs constructed at various places. It claims that the project has the requisite permissions/approvals. As part of this project initially plans were made to lift 2 TMC of water per day and accordingly, canals were built and other infrastructure was created. According to State Government, normally, water can be lifted in a maximum period of 90 days in a year during rainy season. Therefore, the present arrangement enables State to lift 180 TMC of water. However, on review of rainfall in catchment areas of River Godavari over a period of time and availability of water, the State Government assessed that if there is less rain fall in a year, the period available to lift water gets reduced depriving the State to utilize its full permissible capacity. According to the State Government, if water drawing capacity is increased, in a shorter period it can draw more water, within the permissible drawing capacity. It assesses that 60 days in a year to lift water is ideal to meet any contingency. It, therefore, planned to increase daily lifting of water capacity to 3 TMC. It asserts that the reservoirs already constructed have the capacity to store water. The State Government

asserts that to lift one additional TMC of water no fresh DPRs and/or environmental clearances are required.

27. This stand of Telangana Government is disputed by several persons in their individual capacity and the Andhra Pradesh Government. According to the petitioners, the State of Telangana can not draw one additional TMC of water per day without a DPR, approval by GRMB and also environmental clearance. As a corollary, the Telangana Government cannot build canal network intended for the purpose of drawing additional TMC. Thus, the impugned land acquisition notification is *ex facie* vitiated.

28. In paragraph-7 of the affidavit filed in support of the Writ Petition No.5498 of 2022, petitioners also assert that several interested persons, land owners and the State of Andhra Pradesh lodged complaints against the decision of Government of Telangana to draw one additional TMC of water per day. The petitioners placed heavy reliance on two letters written by the Minister for Jal Shakti, Union of India to contend that land acquisition is illegal unless permissions are accorded to draw one additional TMC of water per day. The two letters written by the Minister for Jal Shakti, Union of India, also points out to the dispute raised by the Government of Andhra Pradesh in their letter dated 14.05.2020.

29. In the two letters written by Hon'ble Minister for Jal Shakti, Union of India, dated 07.08.2020 and dated 11.12.2020 he informs the Government of Telangana that in the letter dated 14.05.2020 the Government of Andhra Pradesh raised objection on seven new projects taken up by the Government of Telangana in Godavari basin which includes Kaleshwaram Lift Irrigation Scheme (KLIS) and raising the drawing of water per day to 3 TMC. In his letter, dated 07.08.2020, the Hon'ble Minister stated, *"You are aware that the DPR of Kaleshwaram LIS was accepted by the Advisory Committee of Ministry in June 2018. However, GOTs has subsequently changed the scope and gone for enhancement of the lining of Godavari waters from 2 TMC per day to 3 TMC per day without submitting the DPR to GRMB/CWC for appraisal. Any change in scope or cost of the project need to be appraised again."*

30. Paragraph-5 of the letter of Hon'ble Minister for Jal Shakti, Union of India, dated 11.12.2020 reads as under:

"You have mentioned about the objections raised by AP about ongoing projects of Telangana on Godavari River. Your view is that the seven projects taken up by the Telangana on River godavari are not new projects and were started in the erstwhile AP State. The location of few of these projects was changed to avoid large scale submergence and also few of these projects got redesigned for better performance. You also mentioned that even Ministry of Jal Shakti, GoI has given hydrology clearance to Kaleswaram (2 TMC component) project and the 3rd TMC component of Kaleswaram project was added by you keeping in view the availability of water at that site.

In this regard, I would like to remind you that in the letter dated 07.08.2020 written by me and addressed to you, it was stated that the 2 TMC component of Kaleswaram project was accepted by the Advisory Committee of DoWR, RD&GR, Ministry of Jal Shakti, goI in June 2018, but subsequently the scope of this project has been changed by your state by adding the 3rd TMC component unit. I have also stated in that letter that any such change in the project scope requires that statutory clearance are to be taken from central government like hydrology, inter-state, investment and environment etc. After such change in scope, this project has to be appraised by

GRMB/CWC which is mandatory as per APRA 2014. it was also stated in that letter that you should not proceed with these seven projects objected to by AP until the DPRs of these projects are appraised by GRMB/CWC and sanctioned by the Apex Council. This was again discussed by us in the 2nd Apex Council meeting held on 06.10.2020 and you have agreed to submit the DPRs of these projects to GRMB for their appraisal. So once again it is being asked that you should not proceed with these seven projects (3rd TMC component of Kaleswaram LIS, Sitarama LIS, GLIS Phase-III, Tupakulagudem project, Telangana Drinking Water Supply Project Barrages on Lower Penganga River and Ramappa lake to Pakhal lake diversion) until the mandatory appraisal is done by GRMB.”

31. Heavy reliance is placed by the learned senior counsel for the petitioners on the decision of Division Bench of this Court in **Vedire Venkata Reddy** (supra) to contend what is urged in the writ petitions is not a water dispute concerning inter-state river and that the Writ Petitions are maintainable. In **Vedire Venkata Reddy**, petitioners belong to various sections of society, including retired Engineer-in-Chief of A.P.TRANSCO and the petitioners 3 to 6 and others stated to have formed an association called ‘Pulichintala Project Porata Sambhavana Committee’. It appears, the said association included affected farmers of Guntur and Nalgonda districts whose lands were likely to be submerged if the project was allowed to commence. It was contended that the project ought not to commence without obtaining environmental clearance. Objection was raised on the maintainability of the writ petition. It was urged that what was contended would amount to raising *water dispute* and in view of the provisions in Article 262 of the Constitution of India read with Act 33 of 1956, writ petition was not maintainable. This objection to maintainability of writ petition was rejected holding that the issue raised was not an inter-state *water dispute* and that what was objected by the petitioner

was construction of project at the proposed site without environmental clearance.

32. The scope and contours of water disputes was considered by Hon'ble Supreme Court in several decisions. It is suffice to note two land mark decisions in **Atma Linga Reddy** (supra) and **State of Karnataka v. State of T.N.**¹².

33. In **Atma Linga Reddy** (supra), petitioners therein were residents of Mahaboobnagar District. In a writ petition filed under Article 32 of the Constitution of India, they were complaining that constructing mini hydro power project at Rajolibanda Diversion Scheme (RDS) would impact smooth flow of water in RDS canal to the extent of full allocated water to State of Andhra Pradesh and prayed to restrain the State of Karnataka and the Contractor from going ahead with the said project. It was contended that said decision of the Karnataka Government was without approvals. The writ petition was opposed by the Karnataka Government on two grounds. Firstly, Article 262 and Section 11 of the Act 33 of 1956 bars jurisdiction of the Hon'ble Supreme Court and secondly, petitioners have no *locus standi* to agitate water disputes or matters connected therewith or related to such dispute. It was contended that only the concerned state can file a suit.

¹² (2017) 3 SCC 362

34.1. The Hon'ble Supreme Court analyzed in depth various provisions of the Constitution and the Act 33 of 1956. Having regard to submissions made herein, it is but necessary to note the opinion expressed by the Hon'ble Supreme Court. Relevant paragraphs read as under:

“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* [(1990) 3 SCC 440]). 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.

37. 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. 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). It was, therefore, submitted that the present petition is maintainable and should be decided on merits.

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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.

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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.

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45. In view of the above legal position, the submission of the petitioners that the bar envisaged by Section 11 of the Act would not cover cases of private individuals or petitioners approaching this Court as pro bono publico, and its application is limited to States has no force and we express our inability to agree with the learned counsel.

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.

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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.”

(Emphasis supplied)

35. In ***State of Karnataka*** (supra), Hon’ble Supreme Court held as

under :

“27. 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 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.

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53. 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 Cauvery Water Disputes Tribunal, In re [Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96 (2)] 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 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” means any dispute or difference between two or more State Governments with respect to—

- (i) the use, distribution or control of the waters of, or in, any inter-State river or river valley; or
- (ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement; or
- (iii) the levy of any water rate in contravention of the prohibition contained in Section 7.”

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55. 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 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).

56. 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 MrRohatgi 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 Cauvery Water Disputes Tribunal, In re [Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96 (2)] had held that this Court cannot take cognizance of an original dispute or complaint.*** The Constitution Bench analysing 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 T.N. v. State of Karnataka* [*State of T.N. v. State of Karnataka*, 1991 Supp (1) SCC 240] 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.

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69. 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 Coop. Land Development Bank Ltd. v. P.R. Mankad* [*Gujarat State Coop. Land Development Bank Ltd. v. P.R. Mankad*, (1979) 3 SCC 123 : 1979 SCC (L&S) 225] , means a controversy having both positive and negative aspects. In *Canara Bank v. NTPC* [*Canara Bank v. NTPC*, (2001) 1 SCC 43] , 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.***

(Emphasis supplied)

36. At this stage, it is necessary to consider two recent decisions of this Court, which have a bearing on these cases.

36.1. W.P.No.5931 of 2015 is filed praying to issue writ of mandamus declaring the proposed action of the State of Andhra Pradesh, the Chief Engineer, Interstate Water Resources Department, Government of Andhra Pradesh and the Engineer-in-Chief, Indira Sagar Polavaram Multipurpose Project, as per the administrative approval of the State of Andhra Pradesh vide G.O.Ms.No.1 Irrigation and CAD (Proj.I.A2) Department, dated 01.01.2015 for diversion of water from River Godavari to River Krishna through Polavaram Project Right Main Canal for domestic and industrial use as a part of water grid, amounts to arbitrary, illegal exercise of power and violate the provisions of the Andhra Pradesh Re-organization Act, 2014 (Act 6 of 2014). It is contended that said decision is in violation of the provisions of the Act 6 of 2014, it was without environmental clearance and clearance from the Forest Department and it would adversely affect the lower riparian rights of the Godavari Delta farmers including the petitioner.

36.2. Holding that what is urged in the writ petition and prayed is *inter se* water dispute in respect of River Krishna and River Godavari and the Tribunal has been constituted in the year 2014 and following the decision of the Hon'ble Supreme Court in **Atma Linga Reddy**

(supra), the Division Bench of this Court by order dated 10.12.2021 held that High Court has no jurisdiction to decide the issue.

36.3. W.P.No.15084 of 2021 is filed to issue writ of mandamus by declaring G.O.Rt.No.34 Energy Power-II Department dated 28.06.2021 as illegal, arbitrary, unjust and contrary to the provisions of A.P. Reorganization Act, 2014 and without jurisdiction. It is further prayed to direct the respondents 3 and 4 in the writ petition to adhere to KWDTI award and mutual agreement for the purpose of drawing water for power needs or irrigation needs. Holding that as what is urged is *inter se* water dispute, writ petition is not maintainable, it was disposed of by order dated 09.02.2022.

37. In view of the decision in **Atma Linga Reddy** (supra), and **State of Karnataka** (supra) and other decisions of Hon'ble Supreme Court and two recent decisions of this court, referred to above, the view expressed by the Division Bench of this Court in **Vedire Venkata Reddy** (supra) is no more valid. The decision of Hon'ble Supreme Court in **Atma Linga Reddy** is complete answer to the submissions made by learned senior counsel for petitioners.

38. On a careful reading of definition of *water dispute* in Section 2(c) read with Section 3 of the Act, adjudication of water disputes as envisaged under Section 5 and bar of jurisdiction created by Section 11, it is apparent that term '*water dispute*' is given wide

connotation and encompasses everything and anything concerning inter-state river whenever a dispute/complaint is raised concerning inter-state river water. Any issue arising out of *use, distribution or control* of water concerning inter-state river is water dispute and any matter *appearing to be connected with or relevant* to the *water dispute* is also a *water dispute* and requires adjudication by a special tribunal established under the Act. Any matter even if it appears to be connected to and/or relevant to *water dispute*, it has to be placed before a Tribunal duly constituted under the Act 33 of 1956. From the pleadings and submissions made, it is apparent that a dispute is raised on the decision of the Telangana Government to draw additional 1 TMC of water from River Godavari.

39. Next it is required to consider whether Act 6 of 2014 brings out any change on the scope of application of the law on inter-state *water disputes*.

40. We have carefully considered provisions of Act 6 of 2014 to appreciate the contention of learned senior counsel on continuous application of Act 33 of 1956 to disputes concerning drawing of water from Godavari River. Part-IX of the Act 6 of 2014 deals with management and development of water resources. Section 84 provides for constitution of Apex Council for Godavari and Krishna river water resources and to establish river Boards to the two rivers. Section 84 vests power in the Apex Council, (1) to supervise functions of the two

river boards; (2) to plan and approve construction of new projects; (3) for amicable resolution of any dispute arising out of sharing of river water; and (4) on failure to resolve a dispute by negotiations, for reference of dispute to Tribunal constituted under Act 33 of 1956. It is, thus, apparent that Apex Council should first try to conciliate/ iron out differences on any issue concerning Inter-State River-Water and if the dispute could not be resolved in such manner, it has to refer the dispute to the Tribunal. Thus, ultimately a dispute has to be resolved only by the Tribunal constituted under the Act 33 of 1956. It is also pertinent to note that one of the functions of the Board, as specified in section 85(8)(a)(i) and (d) is regulation of supply of water from the projects as per the awards passed by the Tribunal constituted under Act 33 of 1956 and to assess whether any proposal would go contrary to the award.

41. From the scheme of Part-IX of Act 6 of 2014 it is apparent that it does not envisage an independent mechanism to one created by Act 33 of 1956 to resolve inter-state river water dispute, but leaves it to the Tribunal constituted under Act 33 of 1956 to resolve the dispute. Further, compared to language employed in Section 11, where the wording read as '**may be referred**', implying as vesting discretion, Section 84(3)(iv)¹³ of the Act 6 of 2014 is in mandatory terms. Thus,

¹³**Section 84. Apex Council for Godavari and Krishna river water resources and their Management Boards.**

(1) and (2) Xxxx

(3) The functions of the Apex Council shall include: (i) & (ii) xxxx

when it was not possible to resolve a dispute by negotiations, it has to be referred to the Tribunal. Furthermore, river Godavari is not confined only to States of Andhra Pradesh and Telangana, but State of Maharashtra is also a riparian State. So is also river Krishna. Thus, it cannot be assumed that the Parliament intended to take away rivers Godavari and Krishna from the purview of Act 33 of 1956. On the contrary, the scheme of the Act makes it explicit the intendment of the Parliament. It mandates the Board to comply any award passed by the Tribunal. It requires the Apex Council to refer the dispute to the Tribunal. Further, Brijesh Tribunal constituted under Act 33 of 1956 continues to deal with water disputes concerning River Krishna. It is thus apparent that there is no conflict in the provisions of two Acts nor do they overlap on any aspect and both Acts deal with two different aspects of sharing of Inter-State river water. They are in complete harmony.

42. Once it is found that Act 6 of 2014 has not created separate mechanism for resolution of a dispute concerning inter-state river water and that there is no conflict in the scope and application of two Acts, and that the Act 33 of 1956 continues to apply, the opinion of Hon'ble Supreme Court in **Atma Linga Reddy** (supra) and other decisions that followed apply in all force to the issue in these writ petitions. In **Atma Linga Reddy** (supra), Hon'ble Supreme Court

(iii) resolution of any dispute amicably arising out of the sharing of river waters through negotiations and mutual agreement between the successor States;

(iv) reference of any disputes not covered under Krishna Water Disputes Tribunal, to a Tribunal to be constituted under the Inter-State River Water Disputes Act, 1956(33 of 1956)

dwelled deep on the scope of Act 33 of 1956. It has also considered the plea raised by the petitioners therein that the remedy under Act 33 of 1956 was not available to individuals and therefore writ remedy cannot be ousted. Dealing with this submission, the Supreme Court observed that the state is '*paren spatriae*' and therefore if there is any grievance on drawing of water, which will impact a habitant of the state, the state has to take up the issue and raise a dispute.

43. It is beyond pale of doubt that river Godavari is inter-state river covering States of Maharashtra, Telangana and Andhra Pradesh, that the State of Telangana is a riparian State and is entitled to draw water from river Godavari. The water flow in the river is at a low level and geographically the lands in Telangana are on higher altitude. Thus, only option to utilize water from the river Godavari is by lifting and storing in reservoirs. Plans to construct reservoirs and lift water were envisaged long ago, but was taken up on a brisk pace only after formation of separate State. The Telangana State Government intended to provide water for agricultural purposes, for drinking purposes and for industrial purposes. It has constructed irrigation canals, pump houses and reservoirs. From river Godavari how much of water can be utilized, how to utilize, when to utilize are inter-state matters involving three riparian States and Union of India. On these aspects individual habitants of respective States have no say.

44. Coming back to the facts of the case, drawing additional one TMC of water per day is intended to utilize the water availability in river Godavari in a shorter period and store the water in the reservoirs already constructed. Right to water is a fundamental right of a citizen and it is the duty and responsibility of a State to provide available water to every citizen. Therefore, the decision of the government to draw additional water is in the larger public interest and beneficial to each and every inhabitant of the state, directly or indirectly, including the petitioners.

45. It is a well-known fact that there will not be good rainfall every year and period of rainfall may also vary from year to year. According to State Government in the longer run, to draw water from river Godavari as allotted to it within a shorter period by creating better infrastructure is ideal and in the best interests of the inhabitants of the State. It intends to strengthen and firm up availability of water so that the Government can meet any contingency to ensure availability of water. It is a policy decision based on assessment of various factors that influence availability of water in a river. It is not disputed that the Telangana Government can draw 225 TMC of water from river Godavari. It is also not disputed that Government can draw water per day at a higher capacity. What is disputed is decision to draw one additional TMC of water per day without a new DPR and environmental clearance as not permissible. According to the State

Government, the KLIP has the requisite approvals and environmental clearance and lifting of one additional TMC of water per day is in accord with said approvals and clearances. Thus, what is contended is with reference to competence of State of Telangana to draw water from river Godavari, an inter-state river.

46. Petitioners in writ petition other than the PIL are land owners. They are not concerned with State Government's decision to draw one additional TMC of water from river Godavari. They only oppose acquiring land to build canals to draw one additional TMC of water by contending that there is no approval by GRMB and there is no environmental clearance. Similarly, in PIL also, petitioners oppose various development activities taken up by Government to draw one additional TMC of water per day on the very same grounds. The further reliefs sought in WP (PIL) are also based on the premise that proposed action of creating infrastructure to draw one additional TMC is without prior approvals/clearances.

47. Though the cause shown to invoke the jurisdiction of this Court is on steps taken up by the State Government to put in place infrastructure required to draw additional one TMC of water per day, it is apparent from the pleadings and the submissions and the complaints filed that the dispute raised is with respect to *use and distribution* of water from river Godavari, that is *connected to and relevant* to '*water dispute*' within the meaning of the Act 33 of 1956.

48. Guided by the law enunciated by the Hon'ble Supreme Court and having carefully considered provisions of Act 33 of 1956 and Act 6 of 2014, we are of the considered opinion that what is urged by the petitioners is a facet of inter-state water dispute, such dispute has to be resolved as per the mechanism created by the Act 6 of 2014 and the Act, 33 of 1956 and, therefore, the jurisdiction of the High Court is ousted. For that matter, no Court much less a Tribunal other than the Tribunal formed under Act 33 of 1956 and statutory authority other than GRMB can deal with *water dispute*. Any such decision or order contrary to the scheme of the Acts becomes a nullity.

49. Once this mist is cleared, what remains in the writ petition is the challenge to the notification under section 11 (1) of the Act 30 of 2013.

50. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act, 2013) is a comprehensive enactment dealing with all aspects of land acquisition from private persons for public purpose. After requisition department places indent on Land Acquisition Authority, as per Section 11 preliminary notification has to be issued along with the details of the land to be acquired calling for objections. Notification would enable aggrieved persons to raise objections on intendment to acquire private land for public purpose. Section 15 of the Act provides areas in which

such objections can be raised and on holding of personal hearing. Objections are required to be filed before the Collector within the time stipulated. On scrutiny of the objections, as per Section 15, the Collector is required to afford opportunity of hearing. Thereafter, on due consideration of the objections, Collector would file his report. Thereafter, on observing due procedure, award must be made. In these cases, the issue is at Section 11(1) notification only.

51. Building canal network to supply water for various purposes, irrigation, drinking, etc., is public purpose. Once the acquisition satisfies the requirement of public purpose, this Court cannot go into the validity of Section 11 (1) notification. It is not necessary that the notification should expressly state the public purpose. Once acquisition is stated to be for public purpose, a writ petition against notification under section 11(1) is not maintainable.

52. Though writ Court has wide amplitude of jurisdiction under Article 226 of the Constitution of India, it is discretionary and is subject to self-imposed limitations. It must be exercised with great caution and only in furtherance of public interest. Larger public interest must be kept in mind to decide whether intervention of Court is called for, more so at the initial stage of decision making process, in these cases at the stage of Section 11(1) notification.

53. Again it is sought to be urged that as the acquisition is for new project unless Government invokes exemption clause under Section 10-A of the Act 30 of 2013, the whole gamut of the Act has to be followed, whereas, straight away Section 11 (1) notification was issued. According to learned Additional Advocate General, the impugned acquisition is not for a new project but is to build canal network to lift additional one TMC of water per day as part of KLIP and exemption clause was already exercised vide G.O. Ms No. 35 dated 30.6.2017.

54. It is apparent from respective submissions that the dispute revolves on whether State of Telangana can draw one additional TMC of water per day from river Godavari claiming the same as part of KLIP or it requires approval from GRMB and environmental clearance and thus appearing to be connected to /relevant to 'water dispute'.

55. Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved [**RASHPAL MALHOTRA Vs SATYA RAJPUT MRS AND ANOTHER**¹⁴ and **COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT**¹⁵]. In **TELSON REAL ESTATE Vs STATE OF MAHARASTRA**¹⁶, Hon'ble Supreme Court held that without filing

¹⁴AIR 1987 SC 2235

¹⁵ AIR 1089 SC 1972

¹⁶(2007) 13 SCC 186

objections, petitioners are not entitled to question land acquisition proceedings.

56. At this stage, we are reminded of the observations made by the Supreme Court in **RAMNIKLAL N BHUTTA Vs. STATE OF MAHARASTRA**¹⁷. Supreme Court cautioned that while exercising writ jurisdiction under Article 226, the Court should keep in mind larger public interest with reference to infrastructural projects. The Supreme Court observed that discretionary jurisdiction under Article 226 should be exercised only in furtherance of interest of justice and not merely on making out of a legal point.

56.1. It is useful to extract observations of Supreme Court in paragraph-10. They read as under:

“10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as “Asian tigers”, e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. ***The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point.*** And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce.

¹⁷ (1997) 1 SCC 134

They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. ***The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 — indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.***

(emphasis supplied)

57. Further, at this stage if process of acquisition is stalled on the premise that the fresh permissions/clearances are not secured to draw one additional TMC of water from river Godavari, which is a ‘*water dispute*’, it would cause greater hardships to the larger public and therefore cannot be in public interest. Thus, no interference is called at this stage vis-à-vis Act 30 of 2013.

58. It was also urged that in the Gazette Notification dated 15.07.2021, Central Government directed both State Governments to stop work on unapproved projects; that the National Green Tribunal, Principal Bench in its order dated 20.10.2020 made in Appeal No.20 of 2018 also observed that directions of Central Government are binding on the State Government; that there was no social impact assessment; no plans were drawn up for rehabilitation and resettlement; no report on environmental clearance, etc.

59. We refrain from expressing opinion on all other submissions in view of our decision on the preliminary objection on maintainability of the Writ Petition.

60. In the result and for the aforesaid reasons, the Writ Petitions are dismissed. However, it is made clear that it is open to petitioners to avail remedy under Act 30 of 2013. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

Dr.JUSTICE SHAMEEM AKTHER

Date:29.03.2022
KKM/TVK

Note: L R copy to be marked--YES

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE Dr. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION NOS.30587, 30655 OF 2021; WP (PIL) NO.126 OF
2021; 5498, 5505, 5512, 5546 OF 2022;**

Date: 29.03.2022