Case Note: Case concerning the non-construction of the Sutlej-Yamuna-Link Canal by the State of Punjab in compliance of the terms of an agreement it had entered into. The court ordered the Union Government to undertake the completion of the canal through the Border Roads Organization.

2004(6)SCALE75, (2004)12SCC673

IN THE SUPREME COURT OF INDIA

Decided On: 04.06.2004

State of Haryana
v.
State of Punjab and Anr.

WITH

State of Punjab
v.
State of Haryana and Ors.

Hon'ble Judges:
Ruma Pal and P. Venkatarama Reddi, JJ.

JUDGMENT

Ruma Pal, J.

1. Consequent of the creation of the State of Haryana from the erstwhile State of Punjab, the question of apportionment of the river waters made available to the erstwhile State of Punjab between Haryana and Punjab arose. A notification was issued by the Union of India on 24th March, 1976 under Section 78 of Punjab Reorganisation Act, 1966, inter alia dividing the river waters between the two States. The Sutlej-Yamuna Link Canal Project covering about 214 KMs. was to be constructed through the States of Punjab and Haryana. Out of the 214 KMs, 122 KMs were to run through the territory of Punjab and 92 KMs through Haryana. The cost of completion of the canal was to be met by the Central Government. Haryana's portion of the canal was completed by June 1980. The State of Punjab had not completed its share of the canal although it had been paid the amount necessary for the purpose as also for the recurring expenditure towards maintenance of the canal.

2. A suit was filed by the State of Haryana in 1979 being Suit No. 1 of 1979 in this Court under Article 131 of the Constitution seeking completion of the construction of the canal. The State of Punjab also filed a suit being Suit No. 2 of 1979 inter alia challenging Section 78 of the Punjab Reorganisation Act and the notification dated 24th March 1976 by which the river waters were directed to be shared between Haryana and Punjab. During the pendency of the suits, an agreement was entered into between the States of Haryana, Punjab and Rajasthan in the presence of the Prime Minister of India on 13th December 1981. The agreement, in so far as it is relevant, provided that the Sutlej-Yamuna Canal Project would be implemented in a time bound manner. The canal and appurtenant works in the Punjab territory were to be completed within a maximum period of two years from the date of the signing of the agreement. On the basis of and after recording this agreement, the suits were allowed to be withdrawn by this Court on 12th February 1982.

3. The date for completion of the canal by Punjab in terms of the agreement dated 13th December 1981 expired. The Punjab portion of the canal remained incomplete. The agreement was sought to be repudiated by the State. A settlement was then arrived at on 5th November 1985 known as the 'Punjab Settlement' which dealt with the several disputes between the State of Haryana and Punjab. For the present, we need only note clause 9 of the settlement. It reads:

"9. Sharing of River Waters

9.1 The farmers of Punjab, Haryana and Rajasthan will continue to get water not less than what they are using from the Ravi-Beas system as on 1.7.1985 waters used for consumptive purposes will also remain unaffected. Quantum of usage claimed shall be verified by the Tribunal referred to in para 9.2. below.

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

9.3. The construction of SYL Canal shall continue. The canal shall be completed by 15.8.1986."

4. In approval of the settlement and in terms of the first two clauses of clause 9 of the Settlement, Section 14 was added to the Inter-State Water Disputes Act, 1956 and issues relating to the usage, share and allocation of the Ravi-Beas waters were referred to the adjudication of the Waters Tribunal by the Union of India under Notification dated 2nd April 1986. The Tribunal submitted its report on 30th January 1987 inter alia allocating the Ravi-Beas Waters between Punjab and Haryana. An application was made by Punjab before the Waters Tribunal for review of its decision. That application is pending.

5. However Clause 9.3 of the Settlement which was kept distinct from the water disputes under Clauses 9.1 and 9.2 continued to operate. The State of Punjab completed about 90% of the construction of the canal, but about 10% of the construction remained incomplete. The State of Haryana then filed a second suit being Suit No. 6 of 1996 for:

(a) a decree declaring that the order dated 24.3.1976, the agreement of 31.12.1981 and the settlement of 24.7.1985 are final and binding inter alia on the State of Punjab casting an obligation on Defendant No. 1 to immediately restart and complete the portion of the Sutlej- Yamuna Link Canal Project as also make it usable in all respects, not only under the aforesaid order of 1976, agreement of 1981 and settlement of 1985 but also pursuant to a contract established by conduct from 1976 till date;

(b) a decree of mandatory injunction compelling Defendant 1 (failing which Defendant 2 by or through any agency) to discharge its/their obligations under the said notification of 1976, the agreement of 1981 and the settlement of 1985 and in any case under contract established by conduct, by immediately restarting and completing that portion of the Sutlej- Yamuna Link Canal Project in the State of Punjab and otherwise making it suitable for use within a time bound manner as may be stipulated by this Hon'ble Court to enable the State of Haryana to receive its share of Ravi and Beas waters".

6. A written statement was filed by the State of Punjab questioning the jurisdiction of this Court under Article 262 of the Constitution of India. It was also contended that the suit was barred under Order XXIII Rule 1 of the Code of Civil Procedure and under Order XXXII Rule 2 of the Supreme Court Rules 1966. According to the State of Punjab the agreement dated 31st December 1981 was superseded by the settlement dated 24th July 1985 which did not bind the State. It was averred that the SYL canal was unnecessary because the State of Haryana was to get additional water supply from other rivers and that the State of Haryana had no right to the water from the river Ravi.

7. The Union of India in its written statement, apart from affirming the facts as noted by us earlier, also stated that it was essential that the Punjab portion of the SYL canal be completed at the earliest.

8. After considering the material on record, on 15th January, 2002 this Court decreed the suit in favour of the State of Haryana and issued a mandatory injunction directing the State of Punjab to complete the construction of the canal and make it functional within one year from the date of the judgment. If within that period the canal was not completed by the State of Punjab, the Union Government was directed to get it done through its own agency as expeditiously as possible.

9. The State of Punjab did not comply with this Court's decree and the canal remains incomplete. On 8th January 2002, it filed an application for review of the judgment and decree of this Court which we dismissed on 5th March 2002.

10. On 22nd March 2002, a writ petition under Article 32 was filed by Bharatiya Kisan Union (W.P. No. 94 of 2004) claiming to be a registered association of Indian citizens

and seeking to question the decree and purporting to raise issues relating to the availability of water of the Ravi-Beas for allocation to the State of Haryana. An interlocutory application was also filed for stay of the decree dated 15th January 2002. The writ petition was dismissed by this Court on 10th February 2004.

11. On 18th December 2002, an application was filed by Haryana for implementation of the judgment and decree dated 15th January 2002. This application was registered and numbered as I.A. No. 1 of 2002 in Suit No. 6 of 1996.

12. On 13th January 2003, the State of Punjab filed a suit being Suit No. 1 of 2003 for the following reliefs:

(a) discharge/dissolve the obligation to construct SYL Canal imposed by the mandatory injunction decreed by this Hon'ble Court in its judgment/decree dated 15.01.2002 in OS No.6/1996 for the reasons set out in the plaint;

(b) to declare that the judgment/decree dated 15.01.2002 in OS No. 6/1996 is not binding or enforceable since the issues raised in that Suit could only have been decided by a Constitution Bench in terms of Article 145(3) of Constitution of India.

(c) To declare that Section 14 of the Act, 1956 is ultra-vires the Constitution of India;

(d) to declare that Section 14 of the Act, 1956 is no longer enforceable for the reasons set out in the plaint;

(e) to declare the Punjab Settlement (Rajiv- Longowal Accord) is not enforceable under the changed circumstances as set out in the Plaint:

in the alternative

in case it is held by this Hon'ble Court that the Punjab Settlement dated 24.07.1985 is an enforceable Agreement then direct enforceability and compliance of other 10 issues and to keep in abeyance obligation to construct SYL canal till other conditions set out in the settlement are implemented and/or the Water Disputes arising from the reallocation of Ravi-Beas waters are resolved under the Act, 1956.

(f) Declare that Section 78(1) of the Act, 1966 is ultra vires of the Constitution of India, and that all acts, deeds and things done pursuant thereto or in consequence thereof including all Notifications, Agreements, etc. are null and void including the notification dated 24.93.1976 and the Agreement dated 31.12.1981 as non-east and void ab initio.

13. The State of Haryana then filed an application under Order XXIII Rule 6 read with Order XLVII Rule 6 of the Supreme Court Rules, 1966 for rejection of the plaint alternatively for summary dismissal of the suit. The application, which has been numbered as I.A. No. 1 of 2003 has been opposed by Punjab inter alia contending that Order XXIII Rule 6(a) of the Supreme Court Rules is unconstitutional.

14. Haryana's application for enforcement of the decree (I.A. 1 in O.S. No. 6 of 1996) was sought to be amended in I.A. No. 3. The State of Punjab sought to file a counter affidavit to I.A. No. 1 in O.S. No. 1 of 1996 which was numbered as I.A. No. 2. On 13th August 2003, the State of Haryana filed a second application for a direction on the Union of India to carry out its obligations under the decree since the period of one year fixed by the decree had expired This has been numbered as I.A. No. 4 in OS 1 of 1996. In view of this last application of Haryana, I.A. Nos. 1,2 and 3 in O.S. No. 1 of 1996 were dismissed as infructuous on 17th December 2003.

15. At this stage, the State of Punjab filed a Writ Petition No.30/2004 for a declaration that Rule 6(a) of Order XXIII of the Supreme Court Rules, 1966 is ultra-vires the Constitution, alternatively for a declaration that Rule 6(a) of Order XXIII cannot be invoked in suits filed under Article 131 of the Constitution of India. This writ petition was not entertained in view of the fact that the same issues had been raised by the State of Punjab in answer to the application of the State of Haryana under Order XXIII Rule 6 of the Supreme Court Rules.

16. Therefore, out of this welter of litigation what survives for disposal is:

1) Haryana's application for enforcement of the decree dated 15th January 2002 (I.A. No. 4 in O.S.6/1996).

2) Punjab's suit inter-alia challenging the decree dated 15th January 2002 (O.S. 1/2003) and

3) Haryana's application for rejection of the plaint in Punjab's suit (I.A. 1 in OS 1/2003).

17. Necessarily the last proceeding is required to be disposed of at the outset because on the outcome of this application will depend the fate of the second proceeding which may in turn have an impact on the first.

I.A. No. 1 in O.S. 1 of 2003

18. Order XXIII Rule 6 of the Supreme Court Rules, 1966 under which I.A. 1 of 2003 has been filed provides:

"The plaint shall be rejected : -

(a) where it does not disclose a cause of action

(b) where the suit appears from the statement in the plaint to be barred by any law."

19. According to Haryana, a suit to set aside a decree of this Court, as Suit No. 1 of 2003 purports to do, is not maintainable under Article 131 of the Constitution. It is also submitted that the suit seeks to raise water disputes which are not capable of being entertained by this Court by virtue of Article 262 of the Constitution and that the prayers

(c) to (f) were barred by the doctrine of *res judicata*. Additionally, it has been urged that the State of Punjab could not competently challenge the vires of Section 78 of the Punjab Reorganisation Act, 1966, apart from the fact that under Order XXXII Rule 2 of the Rules the issue having been raised in OS 2 of 1979 could not after its withdrawal, be raised again. Punjab's challenge to Section 14 of the Inter-State Water Disputes Act, 1956 is also stated to be barred by estoppel because Punjab had submitted to the jurisdiction of the Tribunal, suffered an Award and made an application under Section 5(3) of the Act before the Tribunal which was still pending. It has been submitted that the plaint did not disclose any cause of action and had been filed in abuse of process of this Court and that this Court should not countenance such frivolous and vexatious litigation and should dismiss the suit under Order XLVII Rule 6 of the Rules.

20. In answer, the State of Punjab has submitted that it had a legal right to resist execution of the decree by reason of changed circumstances which right could only be enforced under Article 131 by way of a suit. It is said that the constitutional remedy available to the States or Union under Article 131 was extraordinary in character and the requirement of a cause of action could not be imported into Article 131. It is submitted that Order XXIII Rule 6 (a) of the Supreme Court Rules which allowed the rejection of the plaint on the ground of non-disclosure of a cause of action was ultra-vires Article 131. Reliance has been placed on the decisions of this Court in State of Karnataka V. Union of India 1977 (4) SCC 609, p. 690, 709 as well the decision in State of Karnataka V. State of A.P. in support of this submission. The ground that Rule 6(a) suffers from "over exclusive classification" and was otherwise violative of Article 14 was however not pressed. It is further submitted that the judgment of this Court dated 15th January 2002 decided a water dispute and that the decision of this Court in dismissing the review application filed by the State of Punjab was wrong. As far as the question of *res judicata* is concerned, it is submitted that that is an issue to be decided in the suit and not by way of an application under Order XXIII Rule 6 of the Rules. Punjab has also submitted that Haryana's application for rejection of the plaint should be heard by a Bench of three Judges. It may be mentioned that by an Order dated 1st January 2004, Haryana's application was directed by the learned Chief Justice to be listed before a Bench of which one of us (Ruma Pal, J.) is a member. By a subsequent order dated 14th January 2004, the question whether the application for rejection of the plaint should be heard by a Bench of three judges was left to the same Bench to decide.

21. There is no legal provision by which the issues raised by Haryana in its application is required to be heard by a Bench of three judges. On the other hand the suit filed by Punjab seeks modification of a decree. That decree was passed by a Bench of two judges. The normal rule is that an application for modification of the decree or order is to be made before the Bench which passed the decree or order. Merely because the litigating parties are States, would not alter this position. In any event we are not of the view that any such issue has been raised which requires determination by a larger Bench. This submission of the State of Punjab, therefore, is rejected.

22. It is also our opinion that Punjab's challenge to Order XXIII Rule 6(a), even if successful, would not result in dismissal of Haryana's application because the grounds

made out for rejection under Order XXIII Rule 6 pertain not only to clause (a) but also to clause (b) thereof. Haryana has also invoked this Court's powers under Order XLVII Rule 6 which provides that:

"Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

23. Besides the challenge to clause (a) of Rule 6 of Order XXIII is unsustainable. Article 131 of the Constitution which has clothed this Court with exclusive original jurisdiction to decide 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 States on the other; or (c) between two or more States, has laid down as a condition for the exercise of such jurisdiction, that the dispute must involve any question (whether of any law or fact) on which the existence or extent of a legal right depends. It is evident that the phrase "cause of action" as occurring in Order XXIII Rule 6(a) does not appear in Article 131. The phrase, which occurs in Section 20 of the Code of Civil Procedure and is commonly used in connection with 'ordinary' suits, has, in that context,

"acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously, the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". Rajasthan High Court Advocates' Association v. Union of India, 2001 (2) SCC 294

24. Doubtless, a suit under Article 131 is not an 'ordinary' suit, and the phrase "cause of action" is conspicuous by its absence in the Article. But the argument that by the use of the phrase in Order XXIII Rule 6(a), the burden and limitations created by judicial interpretation of the phrase in connection with 'ordinary' suits are necessarily introduced, shackling an otherwise exclusive jurisdiction, is unacceptable. The phrase, in our opinion, as occurring in Order XXIII Rule 6(a), will have to be read and construed in the context of Article 131 unimpaired by the meaning judicially given to it in other contexts. Literally, the phrase means nothing more than the 'ground to sue'. Construed in this sense can it be said that there is no requirement of disclosing a ground to sue in a suit under Article 131?

25. Article 131 has been the subject matter of interpretation by this Court in several decisions of which Punjab has sought to rely on two. The first is the decision in State of Rajasthan V. Union of India which pertained to six suits filed by the States of Rajasthan, Madhya Pradesh, Punjab, Bihar, Himachal Pradesh and Orissa challenging a letter written by the Union Home Minister to the Chief Ministers of those States on the ground that the letter constituted a threat of action under Article 356 of the Constitution. The Union of

India raised a preliminary objection that on the allegations made in the plaint, no suit would lie under Article 131 of the Constitution. All six suits were dismissed by a majority of six of the seven Judges constituting the Bench. Among the six, four (Beg CJ, Goswami, Untwalia, and Fazl Ali JJ) upheld the preliminary objection of the Union of India. Two (Chandrachud and Bhagwati JJ) held that the suit was maintainable but decided against the plaintiff on merits. We are bound by the majority view. The reasons for holding that the suit was not maintainable given by Beg, C.J. were:

"Having considered the cases set out in the plaints and the petitions before us, from every conceivable angle, I am unable to find a cause of action for the grant of any injunction or a writ or order in the nature of a Mandamus against any of the Defendants Opposite parties".

26. The Learned Chief Justice went on to say:

"In my opinion, perhaps the technically more correct order, in the situation before us would have been, on the findings reached by me, one rejecting the plaints under Order XXIII Rule 6 of the Rules of this Court, and rejecting the writ petitions in limine. After all, we had not proceeded beyond the stage of hearing certain preliminary objections put forward by Mr. Soli Sorabji, Additional Solicitor General, to the maintainability of the suits and petitions before us. Although, we heard very full arguments on these preliminary objections, we did not even frame any issues which is done, under the provisions of Part III of the Rules of this Court, applicable to the exercise of the Original Jurisdiction of this Court, before we generally formally dismiss a suit. However, as the form in which we have already passed our orders, dismissing the suit and petitions, which was approved by us on April 29, 1977, has substantially the same effect as the rejection of the plaints for failure to disclose a triable cause of action".

27. The majority view dismissed the suit under clause (a) of Rule 6 of Order XXIII. The phrase "cause of action" was considered with reference to Article 131 as meaning a dispute involving a question of fact or law on which the existence or extent of a legal right depends.

28. The second decision relied upon by the State of Punjab in this context is the State of Karnataka V. Union of India. The decision followed within a few months of the decision in State of Rajasthan v. Union of India. The subject matter of controversy was a notification issued by the Central Government constituting a Commission of Inquiry under the Commission of Inquiry Act, 1952 to inquire into charges of corruption, nepotism, favourtism and misuse of Government power against the Chief Minister and other Ministers of the State of Karnataka. The Union of India raised the preliminary objection that the suit was not maintainable under Article 131 because the inquiry was against the Chief Minister and other individuals and not against the State. Although the suit was dismissed on merits by a majority opinion of the Judges, there was again a division within the majority on the question whether the preliminary objection of the Union of India should be upheld. Beg, CJ, Chandrachud and Bhagwati JJ held the suit was maintainable. Untwalia, Shinghal and Jaswant Singh JJ held it was not. There was a

division of opinion on the question as to whether there was a dispute within the meaning of Article 131. But all the Judges considered the question of maintainability of the suit filed by the State of Karnataka under Order XXIII Rule 6(a) by reading "cause of action" in the context of Article 131 as meaning 'a dispute involving any question on which the existence or extent of a legal right depends" or as the pre-condition subject to which the suit could properly be filed under that Article. In other words, the phrase 'cause of action' in the context of Article 131 was read as nothing more than 'the ground or basis to sue'. Chandrachud, J. makes this clear when he expounded the scope of Article 131 and said:

"The jurisdiction conferred on the Supreme Court by Article 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the Code of Civil Procedure for determining whether a suit is maintainable. Article 131 undoubtedly confers 'original jurisdiction' on the Supreme Court and the commonest form of a legal proceeding which is tried by a Court in the exercise of its original jurisdiction is a suit. But a constitutional provision, which confers exclusive jurisdiction on this Court to entertain disputes of a certain nature in the exercise of its original jurisdiction, cannot be equated with a provision conferring a right on a Civil Court to entertain a common suit so as to apply to an original proceeding under Article 131 the canons of a suit which is ordinarily triable under Section 15 of the Code of Civil Procedure by a Court of the lowest grade competent to try it. Advisedly, the Constitution does not describe the proceeding which may be brought under Article 131 as a 'suit' and significantly, Article 131 uses words and phrases not commonly employed for determining the jurisdiction of a Court of first instance to entertain and try a suit. It does not speak of a 'cause of action', an expression of known and definite legal import in the world of witness actions. Instead, it employs the word 'dispute', which is no part of the elliptical jargon of law. But above all, Article 131 which in a manner of speaking is a self contained code on matters falling within its purview, provides expressly for the condition subject to which an action can lie under it. That condition is expressed by the clause: "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". By the very terms of the article, therefore, the sole condition which is required to be satisfied for invoking the original jurisdiction of this Court is that the dispute between the parties referred to in clauses (a) to (e) must involve a question on which the existence or extent of a legal right depends".

29. The 'cause of action' under Order XXIII Rule 6(a) is this 'sole condition' which is required to be satisfied before the jurisdiction of this Court can be invoked under Article 131. If the plaint does not ex facie show the fulfillment of that condition, it would not be maintainable. This follows from the language of Article 131 itself. Therefore merely because the phrase "cause of action" has been used in Order XXIII Rule 6(a) does not mean that principles enunciated in the context of Section 20 of the Code of Civil Procedure are imported. Order XXIII Rule 6(a) only gives effect to limitations implicit in Article 131 itself. It follows that it does not violate Article 131 or any other provision of the Constitution.

30. The application under Order XXIII Rule 6 of the Rules is by way of demurrer. The question whether the plaint should be rejected must therefore be decided on the basis of the allegations contained in the plaint See D. Ramachandran v. R.V. Janakiraman,.

31. Paragraphs 2 and 7 of the plaint record the substance and content of a complaint filed by the plaintiff on 11th January, 2003 under Section 3 of the 1956 Act relating to reallocation of the Ravi-Beas waters. Both paragraphs conclude with the identical statement:-

"The Plaintiff has every chance of success in the re-allocation to reduce the share of Haryana and therefore, the question of SYL construction may not arise for consideration at all".

32. In paragraph 3, the plaintiff has said that the obligation to construct the Canal Basin had been imposed on the plaintiff on the basis of the Punjab settlement but neither the State of Haryana nor the Union of India had performed any of the other obligations imposed upon them under the settlement. Paragraph 4 which has as many as 18 sub-paragraphs sets out the historical background to the facts claimed to be relevant for the purposes of the present suit. Similarly, paragraph 5 records the proceedings in O.S. 6/96 culminating in the decree. Paragraph 6 says that the directions in the decree dated 15.1.2002 were liable to be discharged by reason of changed circumstances, the changed circumstance being "the allocation of water made hithertobefore is liable to be reviewed". Up to this stage, there is no other "change of circumstance" pleaded apart from the filing of a complaint under the Inter-State Water Disputes Act, 1956 and the chance of success.

33. In paragraph 8, the plaintiff has given the grounds for seeking discharge of the injunction granted on 15.1.2002. These pertain to the availability of water for apportionment between the Punjab and Haryana. It is stated that there is no water available for transfer through the SYL Canal. The second ground is a decision of this Court in writ petition No.512/2002 on 31.10.2002 by which it is claimed, this court had directed completion of the net working of the rivers. Among the projects identified by the Union of India was the Sharda-Yamuna Link, as a result of which, according to the plaintiff, Haryana would get more water and there was no question of burdening the "deficit Ravi-Beas Basin". The third ground is that an issue had been raised in the complaint filed by the plaintiff under Section 3 of the Inter-State Water Disputes Act, 1956, as to the rights of Haryana and Rajasthan to the rivers waters as non riparian States. The next ground is that Haryana had declined to abide by the other terms of the Punjab settlement. The last ground is that water allocations were subject to review. This is followed by arguments in support of the last submission with reference to diverse authorities.

34. In paragraphs 9,10, and 17 the plaintiff has challenged the decree dated 15th January, 2002 on the ground that it was violative of Articles 145(3) and 262 of the Constitution and Paragraph 18 questions the correctness of the order dismissing the plaintiffs Review Petition. Paragraph 19 contains an assertion that the construction of the SYL Canal was a water dispute. Paragraphs 11,12,13 and 14 set out the grounds for challenge to Section

78(1) of the Punjab Reorganisation Act, 1966. Paragraph 15 gives grounds for claiming the invalidity of Section 14 of the Inter-State Water Disputes Act, 1956. Paragraph 16 refers to correspondence exchanged with the Chief Ministers of the two States relating to the "changed circumstances" being the "remaining aspect" of the Punjab Settlement. Paragraph 20 contains arguments as to why this Court has jurisdiction to entertain the suit. Paragraph 21 relates to the dates on which the alleged cause of action arose and paragraph 22 relates to the question of limitation.

35. An analysis of the averments in the plaint shows that the entire thrust of the suit filed by the State of Punjab is aimed at the decree dated 15th January 2002 in O.S. No. 6 of 1996. One portion of the plaint relates to the discharge of the injunction granted by the decree by reason of "changed circumstances". The second portion challenges the decree as being un- constitutional.

36. The first question to be answered is: do these disputes involve any question (whether legal or factual) on which the existence or extent of a legal right of the plaintiff depends? If it does then the next question is, whether the raising of such disputes is barred by any law? If any of these questions is answered in the affirmative then the plaint must be rejected as a whole. On the other hand, if any part of the dispute crosses both hurdles, the suit must survive because there cannot be a partial rejection of the plaint. (See D. Ramachandran v. R.V. Janakiraman).

37. The primary consideration in answering the first question is the legal right claimed by the plaintiff. Unless the plaintiff can establish that there is such a right in law, there would be no question of this Court deciding any dispute regarding the extent or existence of such right under Article 131. As was said by Bhagwati, J (as His Lordship then was) in State of Rajasthan v. Union of India (supra):

"Now, plainly there are two limitations in regard to the dispute which can be brought before the Supreme Court under Article 131. One is in regard to parties and the other is in regard to the subject matter ..... The (other) limitation as to subject matter flows from the words "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". These words clearly indicate that the dispute must be one affecting the existence or extent of a legal right and not a dispute on the political plane not involving a legal aspect. It was put by Chandrachud, J., very aptly in his judgment in the *State of Rajasthan v. Union of India* (supra) when he said: "Mere wrangles between Governments have no place under the scheme of that article....". It is only when a legal, as distinguished from a mere political, issue arises touching upon the existence or extent of a legal right that the article is attracted. Hence the suit in the present case would obviously not be maintainable unless it complies with both these limitations."

38. The plaintiff in the present case claims that the legal right in question is the right to have an injunction modified by reason of changed circumstances. Several decisions both Indian and of the United States have been cited in support of this proposition. Before we consider these authorities it must be kept in mind that as far as this country is concerned

the general law relating to injunctions is contained in Sections 36 to Section 42 of the Specific Relief Act, 1963. Although these provisions may not limit the powers of this Court under Article 131 nevertheless they provide valuable guidelines as to the nature of this form of equitable relief. An injunction may be permanent (perpetual) or temporary Specific Relief Act, 1963 Section 36. A permanent injunction is final and conclusive of the facts in the context of which the injunction is granted. A temporary injunction by contrast is granted on a prima facie view of the facts and, as the word 'temporary' itself indicates, is an interim order pending a final adjudication of the rights of the parties. This distinction is not to be confused with the distinction between a prohibitory or preventive injunction on the one hand and a mandatory injunction on the other. In the first case a party is prevented from doing a particular thing or continuing with a particular action (ibid) Section 38. A mandatory injunction on the other hand commands an act to be done and is provided for under Section 39 of the Specific Relief Act, 1963 which reads:

"**Mandatory injunctions-** When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts".

39. This command may direct the restoration of status-quo ante or may direct the performance of a positive act altering the existing state of things Kerr on Injunctions 6th Edn. p.40. A mandatory injunction like a preventive injunction may be temporary or final.

40. All the decisions cited by Punjab in its plaint pertain to cases where the decree sought to be modified was a perpetual or continuing preventive injunction.

41. Thus, in Albert H. Ladner V. Clarence R. Siegel 68 ALR 1172 at the instance of adjoining landowners, a decree had been passed preventing the defendant, Siegel, from using the building proposed to be constructed by him for garage purposes. The injunction was granted on the basis that the area was exclusively residential and that the proposed business would give rise to gases and odour affecting the neighbourhood. Subsequent to the decree, Siegel applied for modification on the ground that he did not wish to operate the garage but merely wished to use the premises to park the cars of his tenants. The lower Court modified the earlier decree. The adjacent landowners' appealed. The U.S. Supreme Court rejected the appeal and said:

"There are many equitable proceedings that illustrate the general rule, such as specific performance, bills to reform instruments, and others. A final decree in such equitable proceeding is unchangeable, except possibly through gross mistake to be corrected by a bill of review, and not then if any intervening right has appeared since entering the decree. In all such proceedings the decree calls for definite action, and the law presumes such action to follow the order.

"But though a decree may be final, as it relates to an appeal and all matters included or embodied in such a step, yet, where the proceedings are of a continuing nature, it is not

final. These are exceptions to the general rule, and to determine them the nature and character of the equitable action must be considered; that is, whether the decree is final for the purpose of execution, or contemplates other and further steps in the administration of justice".

"An injunction is the form of equitable proceeding which protects civil rights from irreparable injury, either by commanding acts to be done, or preventing their commission, there being no adequate remedy at law. Granting an injunction rests in the sound discretion of the court, that discretion to be exercised under well-established principles, and there are no statutory limitations on the power of the court in relation thereto. While the decree in such action is an adjudication of the facts and the law applicable thereto, it is none the less executory and continuing as to the purpose or object to be attained; in this it differs from other equitable actions. It operates until vacated, modified, or dissolved. An injunction contemplates either a series of continuous acts or a refraining from action. A preventive injunction constantly prevents one party from doing that which would cause irreparable damage to his neighbor's property rights. The final decree continues the life of such proceedings, not only for the purpose of execution, but for such other relief as a chancellor may in good conscience grant under the law.

The modification of a decree in a preventive injunction is inherent in the court which granted it, and may be made, (a) if, in its discretion judicially exercised, it believes the ends of justice would be served by a modification, and (b) where the law, common or statutory, has changed, been modified or extended, and (c) where there is a change in the controlling facts on which the injunction rested"

(Emphasis supplied)

42. The next decision cited is United States of America V. Swift & Company 286 US 105, 76 L.ed.999 where the Government had filed proceedings against five meat packers to dissolve a monopoly on, inter-alia, the ground that the defendants had not only suppressed competition but were spreading their monopoly into other fields of trade. A consent decree was passed preventing the defendants from maintaining a monopoly and entering into or continuing in combination in restraint of trade and commerce. There were further clauses which prevented the defendants from carrying out the specified type of activity severally and jointly. The decree closed with a provision whereby jurisdiction of the court was retained for the purpose of taking such other action or such other relief "as may become necessary or appropriate for the carrying out and enforcement" thereof, "and for the purpose of entertaining at any time hereafter any application which the parties may make" with reference thereto. An application was made before the lower Court by an intervenor for vacating the decree on the ground of lack of jurisdiction. The operation of the decree was suspended by an interim order. On an appeal preferred by the Government and by the wholesale grocers, the U.S. Supreme Court allowed the appeals. In the course of the judgment it was said:

"Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted, power there still

would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need". [114]

43. A distinction was made between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative. The Court, however, made it clear that in proceedings for modification of a decree, the decree itself cannot be impeached and that the Court is "not at liberty to reverse under the guise of re-adjusting".

44. Santa Rita Oil Company V. State Board of Equallzation 126 ALR 757 was a case in which a decree of injunction had been granted restraining the computation, assessment, levying and collection of certain taxes on oil and gas products under a lease of trust patent Indian lands on the ground that the plaintiff was an instrumentality of the Federal Government and was, therefore immune from taxation by the State. The decision was based upon earlier decisions of the US Supreme Court. In other words, the injunction granted was a continuing one on the basis of the law as it then stood. The US Supreme Court subsequently took a contrary view and over-ruled the earlier decisions. The question was whether with the change in the legal basis of the earlier decree, the earlier decree would continue to operate. In that context it was held:

"A final or permanent injunction is a continuing process over which the equity court necessarily retains jurisdiction in order to do equity. And if the court of equity later finds that the law has changed or that equity no longer justifies the continuance of the injunction, it may and should free the defendant's hands from the fetters by which until then its activities have been prevented, thus leaving it free to perform its lawful duties." (Emphasis supplied)

45. Similarly, the decision in Coca Cola Company V. Standard Bottling Company 138 F.2d 788 was in connection with the power of Court to modify a decree which sought to prevent the defendant from carrying on business in a certain manner.

46. In System Federation No. 91, Railway Employees Dept. V. O.V. Wright, 364 US 642,5 L.ed.2d 349,81 S Ct.368, a decree was passed at the instance of non-union rail employees against the railroad and railroad labour union from discriminating against them by reason of the plaintiffs' refusal to join or retain membership in any labour organisation. Here again, a decree was passed against the defendants perpetually preventing a course of action in the light of a statutory prohibition. There was a subsequent change in the statute. On the basis of this change, the union made an application for modification of the decree. The application was allowed and it was said:

"The source of the power to modify is of course, the fact that an injunction often requires continuing supervision by the issuing court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained that equitable relief. Firmness and stability must no doubt be attributed to continuing injunctive relief based

on adjudicated facts and law, and neither the plaintiff nor the court should be subjected to the unnecessary burden of re-establishing what has once been decided. Nevertheless the court cannot be required to disregard significant changes in law or facts if it is "satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong" United States v. Swift & Co. supra (286 US at 114, 115) A balance must thus be struck between the policies of resjudicata and the right of the court to apply modified measures to changed circumstances".

47. Coming to the Indian cases cited by the respondent, the first is a decision of the Lahore High Court in Khazan Singh V. Ralla Ram AIR 1937 Lahore 839. In that case, a decree had been passed protecting by way of injunction an easement in respect of a window and a "parnala". An easement by definition implies continuity. The house of the plaintiff was re-built and the window was re-located. In view of this changed circumstance, it was held that the easement did not continue in respect of the window but continued in respect of the "parnala".

48. Yashpal Singh V. VIII Addl. District Judge and Ors. was a case arising out of two conflicting orders of injunction. The respondent No. 3 had in that case obtained a decree injuncting the Forest Department and the State of U.P. from interfering with his rights to cut trees on a plot of land which he claimed to belong to him. The decree therefore continuously prevented the defendants from interfering with the respondent No.3's right. A third party filed a civil suit against the respondent No. 3 and obtained an interim injunction restraining the respondent No. 3 from cutting trees from the plot of land which she claimed belonged to her. The respondent No. 3 allegedly disobeyed the order of interim injunction. The plaintiff in the second suit obtained the help of the local police to restrain the respondent No. 3 from removing the trees. The respondent No. 3 filed an application for execution of the decree obtained by him in his suit and in the execution proceedings an order of attachment was passed in respect of the property of the local police officer under the provisions of Order XXIII Rule 32 of the Code of Civil Procedure. This Court set aside the order of the Executing Court on the police officer's appeal on two grounds, first because the police officer was no longer present in the District to obstruct or continue obstructing the legal process, and second, because the police officer could not be said to be a party against whom the decree for injunction had been passed merely because he was an employee of the State of U.P.

49 The next decision cited by the plaintiff is Surinder Kumar V. Ishwar Dayal also pertained to a right under a decree perpetually injuncting the defendant from constructing a window on a common wall. On the finding that a new wall was constructed, it was held that the injunction did not continue to operate.

50. The final decision cited by the plaintiff is Municipal Board, Kishangarh V. Chand Mal. In this case a lessee had filed a suit to restrain the Municipal Board from interfering with the construction on leasehold land. Subsequent to the suit, the lease was terminated and the land was included within the municipality. This Court was of the view that in such circumstances, the original decree permanently injuncting the Board from interfering with the construction to be made by the lessee could be considered.

51. The principles that emerge from these decisions are that

(a) There is a distinction between a final peremptory injunction and a final decree which requires a continuous course of action.

(b) A decree granting a preventive injunction continuously operates to prevent a course of action and

(c) Such a decree may be modified prospectively if the circumstances, whether of fact or law on which the decree is based, are substantially altered and

(d) Such a decree cannot be impeached or reopened.

52. It is only if the decree is one which grants a continuous injunction and if conditions (b), (c), and (d) are fulfilled that proceedings for modification of the decree can be maintained.

53. In the present case the decree granted a final mandatory injunction. Punjab's contention is that the injunction granted by this Court was temporary merely because in the course of the judgment the Court said

"We have examined the materials from the standpoint of existence of a prima facie case, balance of convenience and irreparable loss and injury and we are satisfied that the plaintiff has been able to establish each one of the aforesaid criteria and as such is entitled to the injunction sought for. This issue is accordingly answered in favour of the plaintiff and against the defendants".

54. A decree cannot reach a prima facie conclusion. The use of the phrase 'prima facie' was clearly an accident of language and does not detract from the conclusiveness of the finding and the finality of the mandate. It directed the construction of a canal as a final adjudication of rights. This is apparent from the following passage :-

"...we unhesitatingly hold that the plaintiff- State of Haryana has made out a case of issuance of an order of injunction in the mandatory from against the State of Punjab to complete the portion of SYL Canal, which remains incomplete and in the event the State of Punjab fails to complete the same, then the Union Government-Defendant 2 must see to its completion, so that the money that has already been spent and the money which may further be spent could at least be utilized by the countrymen."

55. The operative portion of the judgment resolves any doubt as to the finality of the injunction by holding:-

"We, therefore, by way of a mandatory injunction, direct the defendant-State of Punjab to continue the digging of Sutlej- Yamuna Link Canal, portion of which has not been completed as yet and make the canal functional within one year from today. We also direct the Government of India-Defendant 2 to discharge its constitutional obligation in

implementation of the aforesaid direction in relation to the digging of canal and if within a period of one year SYL Canal is not completed by the defendant-State of Punjab, then the Union Government should get it done through its own agencies as expeditiously as possible, so that the huge amount of money that has already been spent and that would yet be spent, will not be wasted and the plaintiff-State of Haryana would be able to draw the full quantity of water that has already been allotted to its share."

56. The mandate in the decree was to carry out the obligations under agreement dated 31st December, 1981. It did not envisage a "continuing process over which the equity court necessarily retains jurisdiction in order to do equity". Principle (b) relating to modification of decrees enunciated earlier is therefore absent.

57. In any event there has been no change in the circumstances on the basis of which the decree was passed. Although there is a discussion on the various issues while rejecting the submissions made by Punjab, ultimately the reasons for issuing the injunction were two. The first was the agreement dated 31st December 1981 and the order of this Court permitting the withdrawal of the two cross suits filed by Haryana and Punjab (OS 1 of 1979 and OS 2 of 1979). This is apparent from the following passage:

"The State Governments having entered into agreements among themselves on the intervention of the Prime Minister of the country, resulting in withdrawal of the pending suits in the Court, cannot be permitted to take a stand contrary to the agreements arrived at between themselves. We are also of the considered opinion that it was the solemn duty of the Central Government to see that the terms of the agreement are complied with in toto".

58. The second was "(T)he (a)dmitted fact that for construction of the Punjab portion of SYL Canal, more that Rs. 560 crores have already been spent, as is apparent from Ext. P-13 and the entire money has been paid by the Government of India.....[M]ore than Rs.700 crores of public revenue cannot be allowed to be washed down the drain, when the entire portion of the canal within the territory of Haryana has already been completed and major portion of the said canal within the territory of Punjab also has been dug, leaving only minor patches within the said territory of Punjab to be completed".

59. The decree was not based on the quantum of water that may be made available to Haryana. Therefore the fact that Punjab's complaint is pending under Section 3 of the Inter-State Water Disputes Act, 1956 or that Haryana may, in the future, be entitled to more water is immaterial. For the same reason the principle (if any) of the right to ask for a review of water allocations would not apply.

60. Nor was the decree based on the Punjab Settlement. It was noted that the parties had acted on the agreement and that despite the fact that Punjab sought to reopen the agreement dated 31st December, 1981 in so far as it related to the quantum of water to be shared between the two States under Paragraph 9.1 and 9.2 of the Punjab Settlement, the construction of the SYL canal under paragraph 9.3 canal remained undisputed. The Court

accepted Punjab's submission that the Punjab Settlement was not binding on the State but said:

" having regard to the fact that in terms of paragraphs 9.1 and 9.2, a Tribunal was constituted and even the provisions of the Inter-State Water Disputes Act were amended, thereby granting parliamentary recognition to the so-called agreement, the terms of the said agreement cannot be thrown out as a piece of paper only".

61. It is evident that the Punjab Settlement was referred to as a piece of evidence that the parties had kept the construction of the canal distinct from the disputes relating to the sharing of river waters between the two States. If the other clauses in the Punjab settlement are allegedly not being complied with by Haryana that is not a change of circumstance or ground for modification of the decree passed on 15th January, 2002. The challenge to Section 14 of the Inter State Water Disputes Act, 1956 is also inapposite to the question of modification of the decree. The section related to and was in enforcement of paragraphs 9.1 and 9.2 of the Punjab Settlement and relates to the resolution of the water disputes between the States by the Tribunal. Paragraph 9.3 which related to the canal and referred to by the Court does not form part of Section 14. It has not been averred that either of the two grounds which founded the decree have in any sense of the word "changed". Principle (c) is therefore unfulfilled.

62. And finally Principle (d): the suit for modification of the decree dated 15th January, 2002 will not lie because the decree itself has been sought to be impeached. "The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making Per Cardozo, J, United States v. Swift & Co. (supra)".

63. In other words since the plaint in the present suit does not even ex facie fulfil all four conditions subject to which a decree may be modified, there is no legal right to apply for modification of the decree dated 15th January, 2002 within the meaning of Article 131. We can therefore only conclude that there is no "cause of action" within the meaning of Article 131 as far as the prayers relating to the discharge of the injunction granted by the decree dated 12th January, 2002 is concerned.

64. We then take up the direct challenge to the decree itself as being unconstitutional. Two grounds have been pleaded in the plaint in this connection:

(1) That it was a decision of two Judges whereas Article 145(3) of the Constitution requires a minimum of five Judges "for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution....".

(2) The second ground is that the decree sought to resolve a water dispute in contravention of Article 262 of the Constitution.

65. Both the submissions are inter related. Article 145(3) was relied on because it was said that the scope of Article 131 and 262 had to be interpreted. We had said in the

judgment dated 15th January, 2002, that in the Constitution Bench decision in State of Karnataka Vs. State of A.P. this Court had considered the provisions of Article 262(2) of the Constitution and Section 11 and Section 2(c) of the Inter- State Water Disputes Act and its impact on a suit filed under Article 131 of the Constitution. By that decision two cross suits were disposed of (O.S.No. 1/1997 by the State of Karnataka Vs. State of A.P. and O.S. No.2/1997 by the State of A.P. Vs. State of Karnataka). Two separate judgments were delivered. The State of A.P. had prayed for 14 reliefs but, the Court observed, the reliefs essentially related to the construction of the Almatti Dam on the river Krishna by the State of Karnataka to a height of 524.056 metres. Several issues were framed (at p.627) . Issue No.2 related to the jurisdiction of this Court to entertain and try the suit under the provisions of Article 262 of the Constitution and Sections 11 and 2(c) of the Inter-State Water Disputes Act, 1956. The issue was conceded by the State of Maharashtra which had raised the issue. Over and above that, the Court was independently of the view (p.640) that this Court had the jurisdiction to entertain and hear the suit and answered issue 2 in the affirmative.

66. Punjab's review petition was dismissed by us on the ground that the "so-called vital question with regard to the interpretation of Article 131 and Article 262 has been answered in the Constitution Bench decision and we are bound by the same". In the impugned judgment, we merely applied the interpretation of the Constitution Bench of the provisions of Articles 131 and 262 to the facts of the case. There was no further interpretation of Article 131 and 262 to be done in the case before us which required the decision of a bench of five Judges under Article 145(3).

67. The objection as to the jurisdiction of this Court on the basis of Article 262 was specifically negatived in the judgment dated 15th January 2002 when it was held:

".....the construction of SYL Canal has absolutely no connection with the sharing of water between the States and as such is not a "water dispute" within the meaning of Section 2(c) and consequently the question of referring such dispute to a Tribunal does not arise. In this view of the matter, howsoever wide meaning the expression "water dispute" in Section 2(c) of the Inter-State Water Disputes Act be given, the construction of the canal which is the subject-matter of dispute in the present suit cannot be held to be a "water dispute" within the meaning of Section 2(c) of the Act and as such, such a suit is not barred under Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act".

68. Can the State of Punjab raise these issues again? Or is it barred by the principles of *res judicata* assuming that the principles of *res judicata* are 'law' within the meaning of Order 26 Rule 6(b)?

69. The doctrine of res judicata and Order XXXII Rule 2 are not technical rules of procedure and are fundamental to the administration of justice in all Courts that there must be an end of litigation. Thus, when this Court was called upon in Daryao v. State of U.P. to hold that res judicata could not apply in connection with proceedings before this Court under Article 32 because of the extraordinary nature of the jurisdiction, it was said:

"But is the rule of *res judicata* merely a technical rule or is it based on high public policy? If the rule of *res judicata* itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of *res judicata* as indicated in s. 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of *res judicata* they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Art. 32.....

The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis ibid at p.584".

70. This opinion was followed in the matter of Cauvery Water Disputes Tribunal 1993 Suppl.(1) SCC 96 (II) and applied to suits under Article 131. The factual background of that case was a dispute over the usage of the waters of the river Cauvery between the States of Tamil Nadu and Karnataka. The Union Government constituted the Cauvery Water Disputes Tribunal and referred the disputes between the two States to the Tribunal. The State of Tamil Nadu filed an application for interim relief. This was rejected by the Tribunal on the ground that it did not have the jurisdiction to grant any interim relief because that dispute had not been referred to it by the Central Government. Being aggrieved, the State of Tamil Nadu approached this Court under Article 136. The Special Leave Petitions were converted into Civil Appeals and disposed of by Order dated 26th April, 1991 by holding that the order of Reference showed that the Central Government had in fact referred the issue relating to interim relief to the Tribunal. The Tribunal then granted interim relief on Tamil Nadu's application. Karnataka subsequently issued an Ordinance relating to the utilization of water of the Cauvery and gave it overriding effect over any interim order of any Court or Tribunal. The Ordinance was replaced by an Act. In the meanwhile a suit was filed under Article 131 by the State of Karnataka against the State of Tamil Nadu contending that the Tribunal's order granting interim relief was without jurisdiction and, therefore, null and void etc. In the context of these developments, the President referred three questions to this Court for its opinion under Article 143 of the Constitution. Of the three questions, question No.3 raised the issue whether a Water Disputes Tribunal constituted under the Inter- state Water Disputes Act, 1956 was competent to grant any interim relief to the parties in the dispute. This Court approached the question from two angles namely: (1) when no reference for grant of interim relief is made to the Tribunal and (2) when such reference is made to it.

71. The Court held that by its earlier decision of 26th April, 1991 it had been specifically held that the Central Government had made a reference to the Tribunal for consideration of the claim for interim relief prayed for by the State of Tamil Nadu. Implicit in the said

decision was the finding that the Central Government could refer the matter of granting interim relief to the Tribunal for adjudication. Although the Court had in such earlier decision kept open the question whether the Tribunal would have the power to grant interim relief when no reference was made, it was held that the earlier decision had in terms concluded the second aspect of the question. A submission was then made on behalf of the State of Karnataka that the earlier directions in the Court's order dated 26th April, 1991 should be declared as being without jurisdiction and void. This Court's decision in A.R. Antulay, Vs. R.S. Nayak[2] , was relied on to contend that this Court could re hear the issue earlier concluded. The decision was distinguished by this Court and it was held that the facts in A.R. Antulay are "peculiar and the decision has to be confined to those special facts". It was then held:

"It cannot be said that this Court had not noticed the relevant provisions of the Inter-State Water Disputes Act. The Court after perusing the relevant provisions of the Act which were undoubtedly brought to its notice, has come to the conclusion that the Tribunal had jurisdiction to grant interim relief when the question of granting interim relief formed part of the Reference. There is further no violation of any of the principles of natural justice or of any provision of the Constitution. The decision also does not transgress the limits of the jurisdiction of this Court. We are, therefore, of the view that the decision being inter partes operates as res judicata on the said point and it cannot be reopened."

72. Since the doctrine of res judicata is an "essential part of the rule of Law" it follows that if the issues raised in the suit are barred by res judicata ex facie then this Court is required to reject the plaint in terms of Order XXIII Rule 6(b). There is no substance in the submission of Punjab that even when there is no dispute of fact the issue of res judicata should be left for consideration at the trial of the suit. The decision cited viz. Surayya v. Balagangadhar, AIR 1948 PC 3 is an authority for the proposition that the issue of res judicata must be specifically pleaded and is inapposite to the questions raised in this case. Here the earlier proceedings have been referred to in the plaint and are matters of record. As we have said both issues pertaining to the Court's jurisdiction under Article 145(3) and 262 have been considered and decided by this Court. The issues have been concluded inter partes and cannot be raised again in proceedings inter partes.

73. The same objection relates to the challenge to Section 78 of the Punjab Reorganization Act, 1966. In paragraph 18 of the written statement filed by the State of Punjab in O.S. No. 6/96 there is an express challenge to Section 78 of the Punjab Re-organisation Act for want of legislative competence.

74. But there is an additional ground apart from res judicata for holding that the issue as to the constitutional validity of Section 78 cannot be raised. The State of Punjab had earlier filed a suit, being O.S. No.2 of 1979 in this Court challenging the validity of section 78 of the Punjab Reorganisation Act, 1976. In paragraphs 3 to 11 of the plaint, the constitutional validity of Section 78 of the Punjab Re-organisation Act, 1966 had been specifically challenged. The following prayer among other prayers was made:

"(a) Declaration that the provisions of the Punjab Reorganisation Act, 1966 in so far as they purport to authorise the Central Government to make determination with respect to the waters of the river Beas Project and allocation or distribution of such waters is ultra vires the competence of Parliament and violative of Article 246(3) of the Constitution.

75. As far as OS No.2/79 is concerned it was unconditionally withdrawn in view of the agreement dated 13th December,1981 as has been noted earlier.

76. Rules 1 and 2 of Order XXXII of the Supreme Court Rules which relate to the withdrawal and adjustment of suits provide:

1. "Rules 1, 2 and 3 of Order XXXII in the First Schedule to the code with respect to the withdrawal and adjustment of suits shall apply in suits instituted before the Court.

2. No new suit shall be brought in respect of the same subject-matter until the terms or conditions, if any, imposed by the order permitting the withdrawal of a previous suit or giving leave to bring a new suit have been complied with."

77. Rule 2 therefore allows a plaintiff to file a fresh suit in respect of the same subject matter as the earlier withdrawn suit only if

(i) the order of withdrawal imposed conditions and those conditions have been complied with; or

(ii) the order of withdrawal granted leave to the plaintiff to bring such fresh suit.

78. In the order allowing OS 2 of 1979 to be withdrawn no such conditions are present. Consequently a fresh suit in respect of the same subject matter viz., the validity of section 78 of the 1966 Act does not lie. We leave open the question as to whether it is open to the State of Punjab to question the vires of the statute by which it was created.

79. Similarly the challenge to Section 14 of the 1956 Act must be rejected at the threshold. The section reads:

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

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

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

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

80. In paragraph 51 of Punjab's Written Statement in OS 6 of 1996, it was admitted that the issues referred to in paragraphs 9.1 and 9.2 of the Punjab settlement were referred to the Ravi- Beas Tribunal by Government notification dated 2nd April 1986 and the affirmation of the continued availability of water from the Ravi-Beas system as on 1.7.85 referred to in the notification was relied upon. The notification dated 2nd April 1986 was issued under Section 14 of the Inter-States Water Disputes Act. As far as the report of the Tribunal is concerned, paragraph 8 of the written statement says that it could not be relied upon because it had not become final and that Punjab did not accept the correctness of "most of its findings". There was no dispute raised as to the constitutionality of Section 14 at any stage. Even in the course of arguments, when Section 14 was specifically referred to in elaborate written notes on the scope, purport and effect of Section 14, it was submitted that the effect of Section 14 is four-fold:

(A) To overcome procedural hurdles that no dispute had been raised and to by pass the mandatory requirement of negotiations.

(B) To deem matters referred under Section 14 to be a 'water dispute' and place this beyond challenge.

(C) To constitute this special section 14 Tribunal under this Act and not any other provision or statute and make the other provisions applicable.

(D) To oust the jurisdiction of all Courts including the Supreme Court by making Section 11 applicable to this dispute.

(E) To leave all other disputes relating to the Punjab settlement to be decided under the amended Act of 1956.

81. This Court in the judgement dated 15th January 2002 considered the arguments of the parties relating to Section 14 and negatived Punjabs' submission as to the construction of section 14. Punjab could have challenged the constitutional validity of Section 14 in its written statement. It did not then. It cannot do so now being barred by the doctrine of *res judicata*.

82. In this suit Punjab has claimed that the section is ultra vires because:-

" i) the raison-d'etre for the introduction of Section 14 in the Act, 1956 was the assumption of the validity of Punjab Settlement i.e. Memorandum of Settlement dated 24.07.1985, which is incorrect as the said Settlement is not a valid or binding Agreement;

ii) The enactment of Section 14 is beyond the competence of Parliament since on the face of it, it is against the constitutional Scheme as set out in the Constitution under Article 262 read with entry 56 of 7th Schedule, List I.

iii) The special enactment has the effect of making a general legislation specific to Ravi-Beas Waters. This is discriminatory to the inhabitants of Punjab living in the Ravi-Beas Valley and is therefore, constitutionally invalid.

iv) There can be no legislative enactment by Parliament in respect of an invalid Agreement.....

v) In any event and without prejudice to the foregoing, no Agreement can be executed in part to the exclusion of other obligations imposed thereunder, as each obligation is an inter-connected and dependant bargain;

vi) Because in any event and without prejudice to the foregoing, the Punjab Settlement has become incapable of being performed under the changed circumstances as also for the reasons that the State of Haryana has resiled therefrom and is unwilling to abide by the letter and spirit of the said Settlement. From these reasons it also follows that Section 14 which is nothing but a statutory adjudication has no efficacy in law.

vii) In any event and without prejudice to the foregoing the purposes for which Section 14 was incorporated in the act, 1956 have become redundant in the light of the facts and circumstances set out above and as the said provision is no longer capable of meeting the objectives for which it was purportedly enacted:

83. The challenge to Section 14 of the 1956 Act has been made "without prejudice to Punjab's pending application under Section 5(3) of the Act". Assuming such a reservation is legally possible, the ground for submitting Section 14 of the 1956 Act is "unsustainable" is legally impermissible. It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word "unsustainable") of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in sub-paragraphs (i), (iv), (v), (vi) and (vii) to declare section 14 invalid. Furthermore merely saying that a particular provision is legislatively incompetent {ground (ii)} or discriminatory {ground (iii)} will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine.

84. The grounds given in support of Punjab's challenge to Article 14 are ex-facie no grounds in law and no "cause of action" has been disclosed to challenge the constitutional validity of Section 14 of the Inter-State Water Disputes Act, 1956. Not only does the

plaint filed by Punjab in OS 1 of 2003 not disclose any cause of action, but it is also evident from the statements in the plaint that the suit is barred by law. The plaint is accordingly rejected leaving open the other issues raised by Haryana in support of its application.

85. Additionally and in the ultimate analysis, it is manifest that the suit has been filed only with a view to subvert the decision of this Court with all the disingenuousness of a private litigant to resist its execution. We have, in the circumstances, no compunction whatsoever in dismissing the suit under Order XLVII Rule 6 of the Rules.

86. I.A. No.1 of 2003 filed by the State of Haryana in O.S 1 of 2003 is accordingly allowed. The plaint is rejected and Suit 1 of 2003 (State of Punjab v. State of Haryana) is dismissed with costs.

I.A. No. 4 in O.S. 6 of 1996

87. Haryana has asked for enforcement of the decree dated 15th January, 2002 under Article 142 of the Constitution read with clause 2(b) of the Supreme Court (Decrees and Orders) Enforcement Order 1954 (hereinafter referred to as the 1954 Order) praying that the Court may:-

(a) Issue directions to the Union of India (Defendant No.2) to carry out its obligations under the decree and for the purpose:-

(i) nominate Border Roads Organisation (BRO) as the construction agency charged with the task of completing and making functional the SYL canal as expeditiously as possible, and in any case within a period of one year from the date of this Hon'ble Court's order on this application;

(ii) Nominate the Central Water Commission (CWC) as the agency to provide technical guidance and supervision to the construction agency;

(iii) Appoint a High Powered Committee consisting of the Secretaries referred to in paragraph 16-H (iii) to monitor the functioning of the above agencies and to submit progress reports to this Hon'ble Court on a monthly basis.

(b) In the event the Union fails to carry out the above directions within a period of four weeks, issue order nominating and appointing the agency for construction, the agency for providing technical guidance and the High Powered Committee and direct all of them to carry out their respective tasks as specified in prayer (a) above.

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

88. The basis of the application is the failure of the State of Punjab to either continue or complete the incomplete portion of the SYL canal in the Punjab territory within the period specified in the Decree and the subsequent failure of the Union of India to take any steps to complete the canal through its own agencies.

89. The State of Punjab has filed a counter affidavit in which it has asked for deferring the application for execution on the ground that OS 1 of 2003 has been filed, that a prayer in the suit had been made for discharge from the mandatory injunction and that a letter of complaint had been filed under Section 3 of the Inter-State Water Disputes Act, 1956. Punjab has also submitted that the application for execution was not maintainable, because Haryana had not applied for orders in terms of Clause 2(b) of the 1954 Order, that draft issues had been filed by Haryana and Punjab in Suit 1 of 2003 pursuant to an order passed by this Court dated 24.11.2003 in that suit, that water disputes were to be resolved on the basis of Punjab's complaint under Section 3 of the 1956 Act, that the Decree sought to be executed was liable to be modified under the changed circumstances, and that the Decree was a nullity. On the merits it is denied that nothing was done by the State of Punjab to continue or complete the portion of the canal within its territory and that the Border Roads Organisation (BRO) did not have the requisite experience for constructing SYL canal and finally that the Haryana's prayer for appointment of a High Powered Committee showed that the Decree dated 15th January, 2002 is not executable in the ordinary course.

90. The Union of India has also filed a counter affidavit in which it has stated that it has already taken steps to implement and comply with the Decree within the "constitutional limitations". It has referred to several meetings held and also the correspondence exchanged between the parties. It has however, submitted that the BRO was committed to carrying out work in border areas and in Jammu and Kashmir in particular till the year 2016 and that it would not be possible to deploy BRO for the purpose of construction of the canal. It has said that it has asked for the engineering details from the State of Punjab, who had executed the works and in whom the control of the works are vested at present. It has also submitted that the possession of the SYL canal works needs to be handed over by the State of Punjab to the agencies as may be selected by the Union of India and that Budget estimates would have to be made for completion of the canal. According to the Union an action plan has been prepared in which provision has been made for setting up a High Powered Committee, but, it is submitted, there was no necessity for the High Powered Committee to report back to this Court. As far as nomination of the Central Water Commission is concerned, it says that this might cripple the chances of other more suitable agencies. It has finally been submitted that the State of Punjab should be directed to extend its fullest cooperation and protection for the completion of the work by the Union of India. The Union's affidavit although filed in answer to I.As No. 1 and 3 in O.S. No. 6 of 1996 was, at its instance, directed to be treated as its answer to I.A. No. 4 (vide this Court's order dated 17th December 2003).

91. Punjab was required to complete the canal by 15th January, 2003 by the decree. Instead of accepting the decree in good grace, every possible step has been taken to thwart the decree. The minutes of the meetings and the correspondence exchanged

between the parties during this period shows that the State of Punjab did not comply with this Court's directives on the ground that:

(1) Punjab would await the final report of the Ravi-Beas Water Tribunal;

(2) the farmers of the State had filed a review petition in this Court in which the Government was a party. The matter was subjudice and Punjab was not in a position to start the digging of the canal.

(3) the Government of Punjab intended to file another revision petition before this Court.

(4) that the construction of SYL canal was likely to produce strong adverse reaction among the people of Punjab and may also provide an emotive issue to secessionists/ militant elements and the construction of SYL canal would lead to drying up of 9 lakh hectares land in the Punjab; and

(5) Suit No. 1 of 2003 had been filed.

92. Incidentally, the fourth ground is almost a verbatim reproduction of Punjab's stand in the proceedings filed by it earlier. There was no stay granted by this Court at any stage of any of the various proceedings filed assailing the decree. Even when the final assault was made by the filing of Suit No. 1 of 2003 we did not grant any stay and it is basic law that the mere filing of proceedings does not operate as a stay. The correspondence and the record of minutes show that the Chief Minister as well as the Government officials named in the correspondence have arrogated themselves the power of sitting as a super-judicial body over this Court.

93. The Constitution provides for an ordered polity within this country to promote integrity of the country. When disputes arise between States there are usually political underpinnings. The resolution of such a dispute in favour of one party will invariably have a political impact. Article 131 of the Constitution has therefore given this Court the exclusive jurisdiction to decide such a dispute strictly on legal considerations and in keeping with the provisions of the Constitution. To resist the execution of the decree on the ground that it would have a political fall out would result in subversion of the Constitution, an endorsement of anarchy and the disintegration of the country. Apart from rendering the provisions of Article 131 a dead letter such a stand is contrary to Article 144 which requires all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. It is not in the circumstances expected, that Governments whether at the Centre or in the States, will not comply with the decree of this Court. By refusing to comply with the decree of this Court under Article 131 not only is the offending party guilty of contempt but the very foundation of the Constitution which the people governing the State have sworn to uphold when assuming office and to which this country owes its continued existence, is shaken. It is, we repeat, the Constitutional duty of those who wield power in the States to create the appropriate political climate to ensure a respect for the constitutional processes and not set such processes at naught only to gain political mileage. As was observed by the Constitution Bench in Cauvery Water

Disputes Tribunal when an Ordinance was passed by a State seeking to nullify the order of this Court:

"Such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other States, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. If the power of a State to issue such an Ordinance is upheld it will lead to the breakdown of the constitutional mechanism and affect the unity and integrity of the nation".

94. These observations appositely reflect what can be said with regard to the conduct of the State of Punjab. In any event there is now no question of deferring Haryana's application for execution because the suit itself, namely, O.S. No. 1 of 2003 has been dismissed. The vague plea relating to the possible rise of militancy by the construction of the canal is not an acceptable defence at all. The fact that a letter of complaint has been filed under Section 3 of the 1956 Act is immaterial as that pertains to a water dispute within the meaning of Section 2(c) of the 1956 Act and we have already held that the construction of SYL canal is not a water dispute within the meaning of the 1956 Act read with Article 262 of the Constitution. We have already held that the decree cannot be said to be a nullity. In any event this is not a question which can be raised while opposing an application for execution. What remains of Punjab's opposition is its submission that the application of Haryana is not maintainable under the 1954 order.

95. The 1954 Order has been issued by the President in exercise of powers under Article 142(1) of the Constitution. Punjab's objection to the maintainability of Haryana's application for execution because of alleged non-compliance with paragraph 2(d) of the 1954 Order is unsustainable. We quote paragraph 2 before giving our reasons in support of this conclusion:

"Notwithstanding anything contained in any other law in force at the commencement of this Order, any decree passed or order made by the Supreme Court whether before or after such commencement, including any order as to the costs of, and incidental to, any proceedings in that Court shall be enforceable:-

(a) where such decree or order was passed or made in exercise of its appellate jurisdiction - in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred; and

(b) in any other case, - in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of such Court, Tribunal or authority as the Supreme Court may specify in its decree or order or in a subsequent order made by it on the application of any party to the proceeding.

96. The decree passed by this Court under Article 131 being an original proceeding would not be covered by clause 2(a). Clause 2(b) empowers this Court to specify the law according to which the decree may be enforced. The phrase used is "in accordance with" and not "under". "In accordance with" in the context implies similarity or harmony but not identity. The mode of enforcement which may be specified under clause 2(b) may therefore be similar to the methods of execution legally provided in respect of decrees or orders of any Court, Tribunal or Authority. The specification of the mode may be done in the decree itself or by a subsequent order made on an application of any party to the proceeding. The decree in this case had not specified the mode of execution. Haryana's application is expressed to be under clause 2(b) of the 1954 Order. Doubtless Haryana has suggested the passing of directions to ensure implementation of the decree which may not be acceptable to us, but it has in prayer (c) prayed for "such other or further order or orders or such directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice". That prayer is sufficient to meet even the entirely technical objection of Punjab and it cannot be said that Haryana's application is not maintainable. As to the mode of execution section 51 of the Code of Civil Procedure provides:

"**51. Power of Court to enforce execution.** - Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree -

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require."

97. The residuary power under Section 51(e) allows a Court to pass orders for enforcing a decree in a manner which would give effect to it. The period specified in the decree for completion of the canal by Punjab is long since over. The Union of India has said that it had worked out a contingent action plan during this period. The contingency, in the form of expiry of the one year period in January 2003 has occurred. We have not been told whether the contingency plan has been put into operation. Although it appears that the Cabinet Committee on Project Appraisals had approved the proposal for completion of the SYL canal by the BRO and at a meeting convened as early as on 20th February 1991, the then Prime Minister directed that the BRO take over the work for completion of the SYL Canal in the minimum time possible, the BRO is not now available for the purpose. After the decree the Central Water Commission Officials have inspected the canal on 9th October, 2002. The report has assessed a minimum period of about two years for removing silt deposits, clearing of trees and bushes, completing the damaged and balance

works and making the canal functional and has estimated an amount of about Rs.250 crore for this purpose excluding the liabilities of Punjab. In the circumstances we direct the Union of India to carry out its proposed action plan within the following time frame:

1) The Union of India is to mobilize a Central agency to take control of the canal works from Punjab within a month from today.

2) Punjab must hand over the works to the Central Agency within 2 (Two) weeks thereafter.

3) An empowered committee should be set up to coordinate and facilitate the early implementation of the decree within 4 (four) weeks from today. Representatives of the States of Haryana and Punjab should be included in such Committee;

4) The construction of the remaining portion of the canal including the survey, preparation of detailed estimates and other preparatory works such as repair, desilting, clearance of vegetation etc. are to be executed and completed by the Central Agency within such time as the High Powered Committee will determine.

5) The Central and the Punjab Governments should provide adequate security for the staff of the Central Agency.

98. We conclude this chapter with a reminder to the State of Punjab that "Great states have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end" Commonwealth of Virginia v. State of West Virginia 55 L.ed.353.

99. Application 4 of 2003 in OS 6 of 1996 is thus allowed on the aforesaid terms without any order as to costs.