

REPORTABLE

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

ORIGINAL SUIT NO. 1 OF 2006

State of Andhra Pradesh Plaintiff

Vs.

State of Maharashtra & Ors. Defendants

WITH

WRIT PETITION [C] NO. 134 OF 2006

WRIT PETITION [C] NO. 210 OF 2007

WRIT PETITION [C] NO. 207 OF 2007

AND

CONTEMPT PETITION [C] NO. 142 OF 2009

IN

ORIGINAL SUIT NO. 1 OF 2006

JUDGMENT

R.M. LODHA, J.

Original Suit No. 1 of 2006

Two riparian states – Andhra Pradesh and Maharashtra – of the inter-state Godavari river are principal parties in the suit filed under Article 131 of the Constitution of India read with Order XXIII Rules 1,2 and 3 of the Supreme Court Rules, 1966. The suit has been filed by Andhra Pradesh (Plaintiff) complaining violations by Maharashtra (1st Defendant) of the

agreements dated 06.10.1975 and 19.12.1975 which were endorsed in the report dated 27.11.1979 containing decision and final order (hereafter to be referred as “award”) and further report dated 07.07.1980 (hereafter to be referred as “further award) given by the Godavari Water Disputes Tribunal (for short, ‘Tribunal’). The violations alleged by Andhra Pradesh against Maharashtra are in respect of construction of Babhali barrage into their reservoir/water spread area of Pochampad project. The other four riparian states of the inter-state Godavari river – Karnataka, Madhya Pradesh, Chhattisgarh and Orissa have been impleaded as 3rd, 4th, 5th and 6th defendant respectively. Union of India is 2nd defendant in the suit.

2. The Godavari river is the largest river in Peninsular India and the second largest in the Indian Union. It originates in the Sahayadri hill ranges at an altitude of 3500 ft. near Triambakeshwar in Nasik District of Maharashtra and flows for a total length of about 1465 Km. (910 miles) through Maharashtra and Andhra Pradesh before joining the Bay of Bengal. The river has its basin area spread into other States like Karnataka, Orissa, Chhattisgarh and Madhya Pradesh. In the high rainfall zone in Sahayadris, the river is joined by Darna and Kadwa tributaries on its right and left banks respectively. Downstream at a distance of 217 Km. (135 miles), the combined waters of Pravara and Mula tributaries join the river. About 45 Km. (28 miles) downstream of Pravara

confluence, Maharashtra constructed the Paithan Dam (Jaikwadi Project) to utilize the flows available up to that site. Further downstream, the river while in Maharashtra, receives waters of Sindphana, Purna and Dudhna tributaries. At the border between Maharashtra and Andhra Pradesh, Godavari receives the combined waters of Manjra (Manjira), Manar and Lendi rivers. After it enters Andhra Pradesh, at a distance of 764 Km. (475 miles) from its origin, Pochampad dam has been constructed by Andhra Pradesh.

3. The river basin is divided into 12 sub-basins. The subject matter of the present suit falls in G-1 and G-5 sub-basins, details of which are as follows:

G-1 Upper Godavari:—This sub-basin includes the reach of the river Godavari from its source to its confluence with the Manjra. The sub-basin excludes the catchment areas of the Pravara, the Purna and the Manjra but includes that of all other tributaries which fall into the Godavari in this reach.

G-2 Pravara:— This sub-basin includes the entire catchment of the Pravara from the source to its confluence with the Godavari including the catchment areas of the Mula and other tributaries of the Pravara.

G-3 Purna:—This sub-basin includes the entire catchment of the Purna and of all its tributaries.

G-4 Manjra:— This sub-basin includes the entire catchment of the Manjra from its source to its confluence with the Godavari including the catchment areas of the Tirna, the Karanja, the Haldi, the Lendi, the Manar and other tributaries.

G-5 Middle Godavari:— This sub-basin comprises the river Godavari from its confluence with the Manjra to its

confluence with the Pranhita. The sub-basin includes the direct catchment of the Godavari in this reach as well as of its tributaries, except the Maner and the Pranhita.

4. Rainfall during monsoon months (i.e. June to September) is the major contribution to the Godavari river flows. Monsoon contributes about 90% of river flow. Non-monsoon season contributes only about 10% of the flows which are not well defined and well spread as that of South West monsoon.

5. On 10.04.1969, the 2nd defendant constituted the Tribunal under the Inter-State Water Disputes Act, 1956 (for short, "1956 Act"). On the same day, disputes among the riparian states regarding the inter-state Godavari river and the river valley thereof were referred to the Tribunal for adjudication. The Tribunal investigated the matters referred to it and made its award on 27.11.1979 setting out the facts as found by it and giving its decision on the matters referred to it. The Tribunal gave further award under Section 5(3) of the 1956 Act on 07.07.1980. The bilateral and other inter-state agreements entered into by the riparian states during the period 1975 to 1980 for the distribution of water of Godavari river form the main features of the award.

6. The case of Andhra Pradesh in the plaint is that construction of irrigation project to its full potential at Pochampad, which is located close to the inter-state border of Andhra Pradesh and Maharashtra, involved submergence of area within Maharashtra. On 06.10.1975, in the course of

pendency of disputes before the Tribunal, an agreement (which was endorsed by the Tribunal) was entered into between Andhra Pradesh and Maharashtra whereby Maharashtra agreed that Andhra Pradesh can go ahead with Pochampad dam project. Acting on the agreement, Andhra Pradesh constructed Pochampad dam on Godavari river at a distance of 764 km. (from its origin) near Pochampad village in its Nizamabad district. The dam is located by 5 km. upstream of Soan Bridge on Hyderabad – Nagpur Highway. The Pochampad dam is 140 feet high masonry dam, forming a reservoir with Full Reservoir Level (FRL) + 1091 feet and Maximum Water Level (MWL)+1093 feet. The storage capacity of the reservoir at FRL is 112 TMC and it has a water-spread area of about 175 square miles at MWL extending into the territory of Maharashtra. At FRL, the reservoir water spreads upstream up to 639th km. of the Godavari river from its origin. A total length of 125 km of the Godavari river bed gets submerged when the reservoir is at FRL+1091 feet. Out of the submerged river bed length of 125 km, the river bed to a length of 55 km is located in the territory of Maharashtra. A length of 16 km of Manjira river bed before its confluence with river Godavari also gets submerged within its banks.

7. Andhra Pradesh has stated that an expenditure of about Rs.2,700 crores has been incurred on Pochampad dam project. The total irrigation potential under the Pochampad project is about 16 lac acres and a total quantity of 196 TMC is proposed to be utilized under the project to cater to the needs of the backward districts of Telangana. Andhra Pradesh

is said to have reimbursed Rs. 551.11 lacs to Maharashtra for construction of five bridges at Siraskhod, Babhali, Chirli-Digras, Balegaon, Belur across the Godavari river and two bridges across the Manjira river at Machnur (Nagani) and Yesgi and the roads to provide proper transportation facilities connecting villages on either sides of the Godavari and Manjira rivers.

8. The wrongs against which redress is sought are, first, Maharashtra's illegal and unauthorised act of construction of Babhali barrage within the reservoir bridge of Pochampad dam contrary to the award and without any right and entitlement; and, second, Maharashtra's intention to utilize the water of Pochampad by invasion of reservoir water spread area by construction of Babhali barrage which would deprive Andhra Pradesh in general and its inhabitants in particular in the districts of Adilabad, Nizamabad, Karimnagar, Warangal, Nalgonda, Khammam and Medak of having water for irrigation and drinking purposes and allow its farmers to utilize water for irrigation by lifting from Babhali pondage.

9. Andhra Pradesh complains that construction of Babhali barrage will interfere with natural and continuous flow of water by stopping the freshes into Pochampad reservoir resulting in Pochampad project getting water only when the Babhali barrage gets filled up and surpluses. According to Andhra Pradesh, Babhali barrage is being built by Maharashtra with storage capacity of 2.74 TMC. The necessity to file suit arose since all the efforts made by Andhra Pradesh in stopping construction of Babhali barrage by Maharashtra failed and despite

pendency of a writ petition before this Court in the nature of Public Interest Litigation, Maharashtra continued with construction of Babhali barrage.

10. Maharashtra has traversed the claim of Andhra Pradesh. Although diverse preliminary objections have been raised by Maharashtra in its written statement (which also came to be amended) but these preliminary objections were not pressed in the course of arguments and, therefore, we do not think it necessary to refer to the preliminary objections. Maharashtra has replied that by agreement dated 06.10.1975 between the two states, which was filed before the Tribunal based on which award came to be passed, it was agreed that Maharashtra can utilize waters not exceeding 60 TMC for new projects including any additional use over and above the sanctioned or cleared utilization on 06.10.1975 from the waters in the area of the Godavari basin below Paithan dam site on the Godavari, and below Siddheswar dam site on the Purna, and below Nizamsagar dam site on the Manjira and up to Pochampad dam site on Godavari. Maharashtra says that this is an enbloc utilization permitted to it anywhere in the Godavari basin between Paithan dam site, Siddheswar dam site, Nizamsagar dam site and Pochampad dam site on the main Godavari river. There is no restriction on any projects of Maharashtra or where they are to be located. The only restriction is that Maharashtra cannot utilize more than 60 TMC. There is also no mention or restraint on location of storages in this stretch of the basin, number of storages and the sizes of such storages

which Maharashtra can construct to enable it to utilize its share of 60 TMC for new projects to be sanctioned or cleared after 06.10.1975.

11. Maharashtra asserts that it has not forfeited its right to take its share of Godavari waters from any portion of its own territory as it deems fit. The rights over its own land including the submerged portion of its territory by Pochampad storage continue to vest with it and not Andhra Pradesh. No lands have been acquired in Maharashtra for Pochampad storage by Andhra Pradesh. Construction of projects for using its share of water is its prerogative; the only cap is that the utilization should not exceed 60 TMC.

12. Maharashtra has denied that the aggregate water utilisation by it is 63.018 TMC. It has asserted that aggregate planned utilization of projects sanctioned after 06.10.1975 shall be less than 60 TMC.

13. It is the case of Maharashtra that there is necessity to have storage reservoirs in the entire Godavari basin to harness the river water not only in Telangana region but also in Marathwada area of Maharashtra. According to Maharashtra, Andhra Pradesh can conveniently harness the admitted available flows by constructing storages and barrages below Sriramsagar to meet not only the reasonable needs of Telangana region in the Godavari basin but also in the adjoining Krishna basin.

14. Maharashtra has set out the features of Babhali barrage and its need. Maharashtra says that Babhali barrage is located on the main

Godavari river in Nanded district; 7.0 Kms. upstream of Maharashtra – Andhra Pradesh border. The Pochampad dam on the Godavari river is 81 Kms. downstream of Babhali barrage. Pochampad storage stretches to a distance of 32 Kms. within Maharashtra territory and its submergence is contained within river banks in its territory under static conditions. According to Maharashtra, there is acute water need and no other alternate resource is available in the vast area and population of Nanded district on both the banks of Godavari over a stretch of 97 Kms. Lift irrigation schemes had been constructed by it during 1972 to 1975 for lifting water from the main Godavari river for drinking water and some Rabi irrigation. There was no objection by Andhra Pradesh to such schemes even though the water was extracted from the submergence of the Pochampad project in Maharashtra. After some time, difficulties were experienced in getting the needed water supplies in the assured manner from these lift irrigation schemes. There was acute agitation and pressure from the local people of 58 villages to provide them with a regulating scheme to get assured supply of water for irrigation and drinking water according to their needs. To enable this requirement, it was decided in 1995 to create a small pondage at Babhali to assure and regulate the needed supplies. As Pochampad dam is 81 Kms. downstream of Babhali barrage, the level of stored water at Pochampad recedes completely away from 32 Kms. in Maharashtra territory by about December. The gates of Babhali barrage are, therefore, proposed to be kept open during monsoon

period up to latter half of October as if there is no barrage and lowered thereafter to create necessary small pondage in fair-weather to meet the needs in Maharashtra out of the permitted share of 60 TMC. The barrage crest level at Babhali is at river bed level and there will be no obstructions to Godavari river flows up to Pochampad dam during monsoon period. The small pondage at Babhali having a capacity of 2.74 TMC for the use during fair-weather is a negligible fraction of Pochampad storage of 112 TMC out of which only 0.6 TMC is a common storage. By the middle of December, Pochampad storage recedes totally away from Maharashtra territory and, therefore, the pondage at Babhali during operation does not interfere with the Pochampad storage of the Andhra Pradesh. Babhali storage is a vital component for Maharashtra to use part of its share of 60 TMC where it is most needed.

15. Andhra Pradesh filed rejoinder and denied diverse facts and aspects stated by Maharashtra in its written statement.

16. On the pleadings of the parties, the issues were framed by this Court on 16.03.2007 which read as follows:

- 1) Whether the suit is not maintainable in view of the bar under Article 262 of the Constitution of India read with Section 11 of the ISWD Act 1956?
- 2) Whether the *Lis* in the present suit is a 'water dispute' involving merely the interpretation of the agreement dated 6.10.1975?
- 3) Whether the agreement dated 6.10.1975 has merged into the award and become an integral part of the Award?
- 4) Whether there was no adjudication of disputes between the two states by the GWDT in respect of the

subject of the agreement dated 6.10.1975, though the said agreement was considered by the Tribunal and was made part of the award?

5) Whether the action of State of Maharashtra in undertaking and proceeding with the construction of Babhali Barrage on River Godavari within the water spread area of Pochampad reservoir and to utilize water from the said reservoir is contrary to the GWDT award?

6) Whether the Godavari Disputes Tribunal award enables the State of Maharashtra to construct Babhali Barrage within the water spread area of Pochampad project or utilize water upto the Pochampad dam site?

7) Is the State of Maharashtra entitled to put up its own project in the project put up by the plaintiff and draw water at all from River Godavari through that project?

8) Would the Babhali Barrage project proposed by Maharashtra enable the said State to draw and utilize 65 TMC of water from the storage of Pochampad project?

9) In any event, whether in view of several disputed questions of fact and of a technical nature involved in the suit, the dispute should be referred to a Tribunal constituted under the Inter State River Water Disputes Act, 1956?

10) To what relief are the parties entitled?

17. Neither Andhra Pradesh nor Maharashtra desired to lead oral evidence though series of documents were filed by them. On 05.08.2008, the Court recorded that counsel on either side had agreed that there would not be any oral evidence in the suit. As both sides had filed series of documents, the Court on that day observed that the parties may file a list of documents on which they seek to place reliance and these documents may be marked in the presence of Registrar (Judicial).

18. Plaintiff initially produced as many as 59 documents. Some of these documents are: geographical and hydrological feature of Godavari river, inter-state agreement between Andhra Pradesh and Maharashtra dated 06.10.1975, inter-state agreement dated 19.12.1975 among the

Godavari riparian states, copy of Godavari Water Disputes Tribunal Award, list of projects existing/cleared and contemplated projects showing demand of 91.80 TMC by Maharashtra below Paithan, below Siddheswar and below Nizamsagar put forth before Tribunal, clearance of the Pochampad Project (Sri Ramasagar Project) Stage-I by CWC, clearance of the Pochampad Project (Sri Ramasagar Project) Stage-II by CWC, summary record of discussions of the inter-state meeting between the two States held on 11.07.2005 at CWC, minutes of the inter-state meeting between the two States held on 05.10.2005 at CWC, summary record of discussions of inter-state meeting between the Chief Ministers of the two States convened by Minister, Water Resources, Government of India on 04.04.2006, statement showing the details of yearly/monthly reservoir levels of Pochampad Project for the years 1995-96 to 2006-07, note regarding Babhali and 10 other Barrages on Godavari river submitted by Maharashtra during the inter-state meeting held on 11.07.2005 at CWC, map showing the Godavari basin, annual normal isohtetal map of Godavari basin furnished by the Director, IMD, Pune dated 23.08.2007 addressed to Chief Engineer, IS & WR, Government of Andhra Pradesh and the Statement showing details of monthly inflows 1983-84 to 2004-05.

19. On the other hand, Maharashtra initially tendered 23 documents, inter-alia, these documents are : copy of the statements showing planned use of projects, sub-valley wise before 06.10.1975, copy of schematic diagram, copy of minutes of meeting dated 21.09.2006

convened by CWC including letter dated 16.6.2006 from Chief Minister of Maharashtra to Minister of Water Resources, Government of India, detailed project report of Babhali Barrage, actual utilization of the projects in (42+60) TMC area for past 12 years by Maharashtra produced before CWC on 05.10.2005, materials showing existence of lift irrigation schemes prior to 06.10.1975, schematic diagram showing additional storage of Pochampad dam on account of permission granted by Maharashtra to submergence in its territory [Ex. D-22] and map showing area demarcating the controlling points as per Clause I of agreement dated 06.10.1975 allowing Maharashtra to use 60 TMC of water.

20. Both parties filed few documents thereafter. In the affidavits filed by Andhra Pradesh and Maharashtra in respect of the admission and denial of documents some documents tendered by either side have been admitted and some denied.

21. Learned senior counsel for the parties agreed that issue nos. 5,6,7 and 8 are crucial issues and the fate of suit is dependant upon decision on these issues. It is appropriate that the four issues are taken up together for consideration as these issues are inter-connected.

Issue nos. 5, 6, 7 and 8

22. The vital question for consideration is Maharashtra's entitlement to construct any project within the water spread area of Pochampad project. The question must be answered in light of the award and further award given by the Tribunal which in turn depends on

interpretation of the bilateral agreement entered into between Andhra Pradesh and Maharashtra on 06.10.1975.

23. Mr. K. Parasaran, learned senior counsel for Andhra Pradesh extensively referred to diverse Clauses of the agreement dated 06.10.1975, particularly, Clauses I, II(i),II(ii) and V. He also referred to the award and submitted that the award is a package and provides for all the reliefs to which the parties were entitled. Maharashtra is not entitled to put up Babhali barrage as the award exhausts all reliefs. He submitted that Andhra Pradesh had conceded in favour of Maharashtra a right to utilize entire yield to an extent of 241.5 TMC in the high rainfall zone up to Paithan and Siddheswar dam sites without any restraint taking into consideration that Maharashtra had agreed to submersion of its land for Pochampad project. To meet the demand and requirement in the defined region between Paithan and Pochampad projects, Maharashtra had agreed to a cap on its utilization to 60 TMC in addition to existing and sanctioned/cleared projects. The submergence in Maharashtra by Pochampad project was agreed to by Maharashtra subject to certain conditions like Andhra Pradesh bearing cost of acquisition, rehabilitation of displaced families, cost of roads and bridges but no rights were created in favour of Maharashtra as a condition of submergence to waters within Pochampad dam site. If Maharashtra had any right to water in Pochampad storage within its territory it would have been so recorded in the agreement but the silence in this regard leaves no manner of doubt that Maharashtra

has no right to water in Pochampad storage. It is the submission of learned senior counsel for Andhra Pradesh that the apportionment incorporated in the award is in view of the peculiar basin feature in Andhra Pradesh with only one site at Pochampad being suitable for construction of irrigation project and capable of conveying water through canals by gravity flow to meet the entire drinking and irrigation requirements of Telangana region of the State. Due to low rainfall, the Telangana region of the State of Andhra Pradesh, through which a major part of the river flows, is frequently affected by droughts and famines because of which the said region requires assured water supply for drinking purposes and the two crops – Khariff and Rabi.

24. Learned senior counsel Mr. K. Parasaran vehemently contended that the agreement dated 06.10.1975, which merged into the award, demonstrates the dichotomy between flowing waters and waters within the reservoir. The allocation of waters in Godavari basin has been made on a dichotomy of sources of waters. The expressions in the award “Godavari basin”, “dam site”, “below dam site” and “up to dam site” have to be construed having regard to the dichotomy between flowing waters and waters within the water spread area, concepts in water law and how the parties understood. He submitted that the award has to be interpreted as a judgment and not like a statute and the above expressions have to be construed in the context of rights of states in the inter-state river water. The expressions “Godavari river basin” and “Godavari drainage basin” used in

the award mean the entire area drained by the Godavari river and its tributaries.

25. Learned senior counsel for Andhra Pradesh argued that the phrase “waters up to” would necessarily mean that there is a starting point and terminating point up to which it can go. One cannot conceive “upto” without commencing from a location and proceeding “upto”. It is thus submitted that phrase “dam site” would necessarily mean entire water held on the site starting from the concrete dam structure up to the area of the water stored. He would submit that Clauses I and II(i) of the agreement deal with waters in the area of Godavari basin allotted to Maharashtra. Clause II(ii) deals with water allocated to Andhra Pradesh. 60 TMC water is allowed to Maharashtra from the Godavari basin. Godavari basin is a river basin which means and includes the entire area drained by the mainstream and its tributaries – and balance waters in the Godavari basin up to Pochampad dam site is left for Andhra Pradesh. For the purposes of meaning of the expression, “river basin”, Mr. K. Parasaran, learned senior counsel referred to Words and Phrases; Permanent Edition [Volume-V]; pages 292 and 293. He submitted that in the award, the yield of the river has not been determined and apportioned. After considering the rights in the various projects of the respective states, the rest of the water in Godavari basin is allocated to Maharashtra up to 60 TMC and Andhra Pradesh all the balance water up to Pochampad site.

26. Mr. K. Parasaran argued that the interpretation of the words “up to dam site” set up by Maharashtra that it means concrete structure was contrary to concepts in water law and underlying principle for allocation of waters in Godavari basin whose allocation has been made on dichotomy of sources of waters. According to him, “up to Pochampad dam site” means the Godavari basin water available from the catchment up to where the water spread of Pochampad project extends as the storage in Pochampad belongs to Andhra Pradesh. In this regard, he relied upon a decision of this Court in *Orient Papers & Industries Ltd. and another v. Tahsildar-cum-Irrigation Officer and others*¹.

27. Learned senior counsel submitted that the phrases, “below Paithan dam site and Siddheswar dam site” in Clause II(ii) and “below Pochampad dam site” in Clause V of the agreement would exclude the stored waters of such dams to give effect to the restriction imposed on utilization by the states in such Clauses. The phrases “all waters up to Paithan dam site” in Clause I and “balance waters up to Pochampad dam site” in Clause II(ii)” in the context they are used clearly contrast the flowing water and stored waters respectively in each of the dams. Seen thus, it leaves no manner of doubt that Maharashtra will be entitled to waters mentioned in Clause II(i) and Andhra Pradesh the balance of waters which includes the storage of Pochampad up to FRL of 1091 feet.

¹ 1998 (7) SCC 303

28. Learned senior counsel for Andhra Pradesh submitted that there cannot be lake/pondage of a project of one state within the lake/pondage of the project of another state; there cannot be a dam within a dam. Similarly, there cannot be a barrage within a dam because barrage also obstructs the flow of water and creates storage when the gates are lowered. He referred to the inter-state meeting between Andhra Pradesh and Maharashtra held on 21.07.1978 with regard to construction of bridges and roads. He submitted that there was a difference of opinion with regard to the river bed level of the then proposed Balegaon project upstream of Babhali and it was decided to constitute a joint team for inspection but Maharashtra did not pursue the matter further which would show that Andhra Pradesh and Maharashtra understood the terms of the award to mean that there cannot be project within the water prism of Pochampad project and acted upon as such.

29. On the other hand, Mr. T.R. Andhyarujina, learned senior counsel for Maharashtra argued that the agreement dated 06.10.1975 between Andhra Pradesh and Maharashtra is an agreement for the equitable distribution of waters of Godavari river; in absence whereof the Tribunal would have determined the equitable shares of each state on Godavari river and its tributaries. As Andhra Pradesh had planned a major river project of the Pochampad dam with storage of 112 TMC with FRL of 1091 feet by which the territory of Maharashtra was going to be submerged, it could not be done by Andhra Pradesh without the consent of

Maharashtra. By Agreement of 06.10.1975, Maharashtra agreed to allow Andhra Pradesh to have the FRL of Pochampad dam to 1091 feet and consequent submergence in the river bed in the territory of Maharashtra. In return and in consideration of this concession by Maharashtra, Andhra Pradesh agreed that Maharashtra would have a right to utilize 60 TMC of water on Godavari river leaving the balance to be utilized by Andhra Pradesh. Under Clause II(i), the agreement provided that Maharashtra can utilize the waters of Godavari river not exceeding the limit of 60 TMC up to Pochampad dam site for new projects including additional use over and above present sanctioned or cleared utilization. Clause II(i) of the agreement places no restriction on Maharashtra to utilize any waters from the waters of Pochampad reservoir which would come into Maharashtra. If the intention of Andhra Pradesh was that Maharashtra should not utilize the waters of Pochampad reservoir in its territory, such limitation would have been provided expressly. Learned senior counsel for Maharashtra in this regard also relied upon Clause VII of the Tribunal's award and submitted that this Clause recognised the general right of a state to utilize waters within its territories and consistent with this Clause no restrictions were placed on Maharashtra save and except the cap on utilization of 60 TMC for new projects etc. There cannot be any implied limitation on the use of waters by Maharashtra and any limitation on the use of water by Maharashtra within its territory has to be made expressly.

30. In response to the contention raised by Andhra Pradesh that there is limitation on the use of the water by Maharashtra in Clause II(i) by reason of the words “up to Pochampad dam site”, learned senior counsel for Maharashtra submitted that the expression “dam site” must be given the same meaning in all places of the award in which it is found, namely, in Clause II(i), II(ii) and V. According to him, “up to the dam site” means “up to the concrete structure of the dam”. Any other meaning would result into absurdity and make other clauses unworkable. He submitted that Andhra Pradesh itself has understood the location of Pochampad dam site at particular latitude and longitude and not the reservoir.

31. The agreement dated 06.10.1975 was preceded by full discussions between the Chief Ministers of two states. We reproduce the agreement as it is which reads as follows:

“I. Maharashtra can use for their beneficial use all waters up to Paithan dam site on the Godavari and up to Siddheswar dam site on the Purna.

II. (i) From the waters in the area of the Godavari basin below Paithan dam site on the Godavari and below Siddheswar dam site on the Purna and below Nizamsagar dam site on the Manjira and up to Pochampad dam site on the Godavari, Maharashtra can utilize waters not exceeding 60 TMC for new Projects including any additional use over and above the present sanctioned or cleared utilization, as the case may be.

(ii) Andhra Pradesh can go ahead with building its Pochampad Project with F.R.L.+1091’ and M.W.L. +1093’ and is free to utilize all the balance waters up to Pochampad dam site in any manner it chooses for its beneficial use. Maharashtra will take necessary action to acquire any land or structures that may be submerged under Pochampad Project and Andhra Pradesh agrees to bear the cost of acquisition, the cost of rehabilitation of the displaced

families and the cost of construction of some bridges and roads that may become necessary. Maharashtra also agrees to the submergence of the river and stream beds.

III. (i) In the Manjira sub-basin above Nizamsagar dam site, Maharashtra can utilize waters not exceeding 22 TMC for new projects including any additional use over and above the present sanctioned or cleared utilization as the case may be.

(ii) Andhra Pradesh can withdraw 4 TMC for drinking water supply to Hyderabad city from their proposed Singur Project on the Manjira.

(iii) Andhra Pradesh can construct Singur Project with a storage capacity of 30 TMC. Andhra Pradesh can also use 58 TMC under Nizamsagar Project.

(IV) Maharashtra concurs with the agreement arrived at between the States of Andhra Pradesh and Karnataka in regard to the use proposed by Karnataka in the Manjira sub-basin upstream of Nizamsagar dam site.

V. Maharashtra and Andhra Pradesh will be free to use additional quantity of 300 TMC of water each below Pochampad dam site for new Projects.

VI. Maharashtra and Andhra Pradesh agree in principle to the taking up of the Inchampalli Project with F.R.L. as commonly agreed to by the interested States, viz., Maharashtra, Andhra Pradesh and Madhya Pradesh.

VII. Maharashtra and Andhra Pradesh agree to take up the following Joint Projects at the appropriate time with agreed utilizations:

- a). Lendi Project
- b). Lower Penganga Project.
- c). Pranahita Project

and to set up joint committees for this purpose.

VIII. The States of Maharashtra and Andhra Pradesh agree that this agreement will be furnished to the Government of India and also be filed before the Godavari Water Disputes Tribunal at the appropriate time.”

32. The above agreement was followed by another agreement dated 19.12.1975 which was entered into between all the five riparian states, including Andhra Pradesh and Maharashtra. Both these agreements

were entered into during the pendency of water disputes before the Tribunal. For proper understanding of the controversy, it is necessary to notice the historical background of the water disputes which were referred to the Tribunal for adjudication. In 1951, a memorandum of agreement allocating the flows of river basin among the erstwhile states of Bombay, Hyderabad, Madras and Madhya Pradesh was drawn up. In the course of time, the state of Bombay became State of Maharashtra and State of Hyderabad became state of Andhra Pradesh. Godavari basin underwent extensive territorial changes by 1956. The states of Maharashtra, Mysore, Madhya Pradesh and Andhra Pradesh became the riparian states. The state of Orissa continued to be a riparian state as before. Though state of Orissa was one of the riparian states but it was not part of 1951 agreement. By 1960, the five riparian states, namely, the states of Maharashtra, Mysore, Madhya Pradesh, Andhra Pradesh and Orissa proposed important schemes for the development of water resources and there were disputes between them relating to the utilization of the waters of Godavari river system. On 01.05.1961, the Central Government appointed Krishna-Godavari Commission ("Commission"). The Commission found that without further data it was not possible to determine the dependable flow accurately. The Commission, inter alia, observed that the supplies available in the upper part of Godavari basin (G-1 to G-5 sub-basins) were inadequate to meet the demands of the projects put forward by the state governments. However, the supplies available in the lower part of the

Godavari basin (G-7 to G-12 sub-basins) were in excess of the demands and, accordingly, the Commission suggested the diversion of surplus waters of the river Godavari into the Krishna river. In January 1962, the Mysore government applied to the central government for reference of the water dispute to a tribunal. In March 1963, the Union Minister for Irrigation and Power echoed the sentiments of some of the riparian states doubting the validity of the 1951 agreement in Lok Sabha. Action was taken on the recommendations of the Commission but no agreed formula was arrived at despite the fact that central government tried to settle the dispute by negotiations. Several inter-state conferences were held but no solution could fructify. Fresh applications for reference of the disputes were made by Maharashtra, Mysore, Orissa and Madhya Pradesh in 1968. Eventually on 10.04.1969, the central government constituted the Tribunal and referred to the Tribunal for adjudication the water dispute regarding the inter-State Godavari river and river valley thereof. On 18.07.1970, the central government at the request of Maharashtra referred to the Tribunal the dispute concerning the submergence of its territories by the Pochampad, Inchampalli, Swarna and Suddavagu projects of Andhra Pradesh.

33. Before the Tribunal, Maharashtra prayed, inter alia, for a declaration that the 1951 agreement was *void ab initio* and/or had ceased to be operative and allocation of the equitable shares of the states in the dependable flow of the Godavari basin. Andhra Pradesh prayed for

declaration that 1951 agreement was valid and binding upon the party states and for suitable directions for implementation of the agreement. In case the 1951 agreement was held to be not binding, Andhra Pradesh prayed for, inter alia, a direction that a full Godavari (Pochampad) Project, as envisaged by the erstwhile Hyderabad government, be allowed to be proceeded with without any restraint and an injunction restraining Maharashtra from utilizing Godavari waters at Jayakwadi or any other place above Pochampad in a manner detrimental to the full scope of the aforesaid project and injunction restraining Maharashtra and Mysore from undertaking any new schemes in Manjra above Nizamsagar.

34. As noted above, during the pendency of disputes before the Tribunal, the riparian states entered into bilateral and multi-lateral agreements which were endorsed by the Tribunal in its award and based its decision on these agreements. The relevant agreements for the present purpose are the agreements dated 06.10.1975 and 19.12.1975.

35. The Tribunal in Chapter IV of the award has noted that the entire area drained by the river and its tributaries is called river basin. The expressions "Godavari basin", "Godavari river basin" and "Godavari drainage basin" in the award have been explained to mean the entire area drained by the Godavari river and its tributaries. The Tribunal noted the diverse agreements entered into between riparian states including the agreement between Maharashtra and Andhra Pradesh dated 06.10.1975 and the agreement dated 19.12.1975 between Karnataka, Maharashtra,

Madhya Pradesh, Orissa and Andhra Pradesh, received them in evidence and held that by these agreements the states have adjusted their claims regarding utilization of waters of Godavari river and its tributaries and agreed to the sanction and clearance of the projects for the utilization of the waters of the Godavari river and its tributaries. With reference to the agreement dated 19.12.1975 to which all the five states were parties and the agreement dated 06.10.1975, the Tribunal observed that the entire waters of sub-basin G-2 and the waters of sub-basin G-1 up to Paithan dam site and the waters of sub-basin G-3 up to Siddheswar dam site were allotted to Maharashtra and Maharashtra was further allowed the use of the waters of the Godavari basin not exceeding 60 TMC below Paithan dam site on the Godavari river and below Siddheswar dam site on the Purna river and below Nizamsagar dam site on the Manjra river and up to Pochampad dam site on the Godavari river. Having regard to the peculiarities of the Godavari river and river basin, the Tribunal found no objection in allotting to one or more state or states water up to defined points or project sites or within certain sub-basins or reaches of the river. The Tribunal noted that every agreement need not apportion or allocate all waters of river and river basin.

36. It appears that on 16.07.1979 at the fag end of the proceedings before the Tribunal, counsel for Maharashtra contended that until a comprehensive agreement was signed by all the parties there was no complete allocation of the entire waters of the Godavari river and

objected to the Tribunal's proceeding to give its decision. However, counsel for Maharashtra admitted before the Tribunal that the agreements to which Maharashtra is a party would be binding on it. Accordingly, the Tribunal observed that there is no dispute that Maharashtra is bound by agreements to which it is a party, namely, the agreement dated 19.12.1975 and bilateral agreement dated 06.10.1975 between Maharashtra and Andhra Pradesh.

37. The Tribunal made it abundantly clear in the award that it was dividing the waters of the river Godavari on the basis of the agreements already entered into between the party states, the agreements filed by the parties have apportioned waters of Godavari river between them.

38. While giving decision on issue no. IV(b), inter alia, relating to submergence of the territories of Maharashtra by Pochampad project, the Tribunal held that the agreements between the States have settled all questions and disputes. With regard to issue no. IV(c), whether it is lawful for the Andhra Pradesh to execute project likely to submerge the territories of other states without their prior consent, the Tribunal said that generally any project of Andhra Pradesh involving submergence of the territory of other states was not permissible without the prior consent of the affected states. As regards issue no. VI, "to what relief are the parties entitled?" the Tribunal held that the agreements filed by the parties and its final order provide for all the reliefs to which the parties are entitled.

39. Clause V of the final order (in the award) passed by the Tribunal reads as follows:

“The following agreements so far as they relate to the Godavari river and Godavari river basin be observed and carried out:—

A. Agreement dated the 19th December, 1975 between the States of Karnataka, Maharashtra, Madhya Pradesh, Orissa and Andhra Pradesh annexed hereto and marked Annexure “A” agreeing to the clearance of projects for the utilization of waters of the Godavari river and its tributaries in accordance with:—

- (a) xxx xxx xxx
- (b) Agreement between the States of Maharashtra and Andhra Pradesh on the 6th Oct. 1975—Annexure II.
- (c) xxx xxx xxx
- (d) xxx xxx xxx”

40. Clause VII of the final order (in the award) provides that the right or power or authority of any state to regulate within its boundaries the use of water, or to enjoy the benefit of waters within that state in a manner not inconsistent with the order of the Tribunal shall not be impaired.

41. Thus, from the award, it is clear that the Tribunal put its seal of approval and endorsed the agreement dated 06.10.1975 between Maharashtra and Andhra Pradesh and the agreement dated 19.12.1975 between Karnataka, Maharashtra, Madhya Pradesh, Orissa and Andhra Pradesh and ordered that the allocation of waters in the Godavari river and Godavari river basin between Maharashtra and Andhra Pradesh and the

clearance of projects for utilization of waters of the Godavari and its tributaries shall be observed and carried out as per the agreements.

42. After the award was passed by the Tribunal on 27.11.1979 under Section 5(2) of the 1956 Act the reference was filed by the central government on 25.02.1980 seeking explanation and guidance on few aspects. One of them was that the particulars of existing/sanctioned or cleared schemes have not been given nor the utilizations through them have been quantified anywhere in the final order in light of the agreements between the parties which referred to utilizations through existing/sanctioned or cleared schemes. The central government requested the Tribunal to consider the desirability of incorporating necessary details in its final order. Andhra Pradesh and Karnataka supported the reference by the central government but Maharashtra, Madhya Pradesh and Orissa opposed it. The Tribunal clarified in the further award dated 07.07.1980 under Section 5(3) of the 1956 Act by observing that its decision was based on the agreements of the parties annexed to the final order (award) dated 27.11.1979. The Tribunal observed that none of the parties pleaded before it that these agreements should be so modified as to include particulars of the existing/sanctioned or cleared schemes of the utilizations thereunder. The Tribunal accordingly held that it was not necessary to include these particulars for the decision.

43. The other aspect on which the central government sought clarification was, "with a view to ensuring that the states, mainly, the upper

states, do not exceed the stipulated allocations it may be necessary to obtain data regarding storages and utilization from one another each year. Also it would be desirable to provide for inspection of sites in a basin state by the other basin states. The Tribunal may kindly consider the desirability of providing some enabling clause in their final order to this effect so that there is no difficulty at a later stage for any state to obtain the data from the other state when the latter shows reluctance to do so”.

44. Maharashtra opposed any clarification on the above point while Andhra Pradesh supported it. The Tribunal observed that as supply of such data by one state to another was not incorporated in the agreements, it cannot be done now at this stage. The Tribunal expected that there would be mutual co-operation between the states and each state will supply such data to the other state as and when required.

45. The award dated 27.11.1979 and the further award dated 07.07.1980 leave no manner of doubt that the Tribunal has determined the distribution of water in the Godavari river on the basis of the agreements of the parties. While doing so, the Tribunal was alive to the position that in deciding water disputes in inter-state river, the rule of equitable distribution of the benefits of the river applies so that each state gets a fair share of the water of the common river but there is no rigid formula for the equitable distribution of waters of a river because each river system has its peculiarities. Although the Tribunal did not determine yield of the Godavari river in the award, but the same became unnecessary as the states agreed

that the Tribunal should base its decision on the agreements of the parties. In the absence of any determination of the yield of the Godavari river in the award, it cannot be said that the Tribunal has not apportioned the Godavari river water between the riparian states. Can it be said that the two states, Andhra Pradesh and Maharashtra, were not alive to the peculiar features of Godavari river? We do not think so. Andhra Pradesh and Maharashtra must have had regard to the peculiar features of Godavari basin – the main Godavari runs in Maharashtra, forms a common boundary between Maharashtra and Andhra Pradesh, runs in Andhra Pradesh again forms a common boundary between Andhra Pradesh and Maharashtra and thereafter forms a common boundary between Andhra Pradesh and Madhya Pradesh and finally runs in Andhra Pradesh – when they entered into the agreement dated 06.10.1975. Maharashtra has been given right to use for their beneficial use all waters up to Paithan dam site on the Godavari, up to Siddheswar dam site on the Purna. This is clear from Clause I of the agreement dated 06.10.1975.

46. Clause II of the agreement is in two parts. Clause II(i) provides that from the waters in the area of the Godavari basin below Paithan dam site on the Godavari and below Siddheswar dam site on the Purna and below Nizamsagar dam site on the Manjra and up to Pochampad dam site on the Godavari, Maharashtra can utilize waters not exceeding 60 TMC for new projects, including any additional use over and above the present sanctioned or cleared utilization, as the case may be.

47. Clause II(ii) enables Andhra Pradesh to build Pochampad project with FRL+1091 feet and MWL+1093 feet. Andhra Pradesh under this Clause has been given liberty to utilize all the balance waters up to Pochampad dam site in any manner it chooses for its beneficial use. The debate has mainly centered around these two Clauses, namely, Clause II(i) and Clause II(ii). The interpretation to these Clauses by the two states differs. Andhra Pradesh says that utilization of waters not exceeding 60 TMC for new projects by Maharashtra under Clause II (i) is from water flowing through the river from the catchment area while Maharashtra says that this Clause entitles it to utilize waters of the river Godavari up to Pochampad site which may be the water flowing through the river from the catchment area or the water from within the water storage or pondage of the dam. Such utilization is not confined to the water flowing through the river from the catchment area. We have to ascertain the meaning of the expressions “from the waters in the area of the Godavari basin” and “up to Pochampad dam site”. We have to also see whether the agreement dated 06.10.1975 has distributed the waters in Godavari basin between the two party states on a dichotomy of sources of waters namely, water spread area of dam/storage and the flowing waters.

48. The words “from the waters in the area of Godavari basin” in Clause II(i) have two significant expressions, one, ‘Godavari basin’ and the other, ‘in the area of’. The expression “Godavari basin” along with the

other two expressions “Godavari river basin” and “Godavari drainage basin” in the award have been explained to mean the entire area drained by the Godavari river and its tributaries. The Tribunal rightly explained so because the general meaning of river basin means entire area drained by the river and its tributaries. The question is, whether the parties to the agreement dated 06.10.1975 by use of the words “from the waters in the area of the Godavari basin” intended to mean the waters flowing in the Godavari river from the catchment area below the three dam sites mentioned in Clause II(i) and up to Pochampad dam site on the Godavari or used these words to include all waters – flowing from the catchment area as well as the water spread area of the Pochampad dam which fell in the territory of Maharashtra. If what Andhra Pradesh contends that 60 TMC water is allowed to Maharashtra only from the flowing waters in Godavari basin is right then the agreement would have used the words “from the waters of Godavari basin” and not “from the waters in the area of Godavari basin”. By use of the words “from the waters in the area of Godavari basin” in contradistinction to “from the waters of Godavari basin”, the parties have intended to mean waters in the geographical area of Godavari basin and not confined to flowing waters of Godavari basin.

49. We are in agreement with Mr. T.R. Andhyarujina that if the intention of Andhra Pradesh was that Maharashtra should not utilize the waters of Pochampad reservoir in its territory, such limitation would have been provided expressly. When an agreement is entered into between two

or more states, they have assistance of competent legal and technical minds available with them. The states do not have lack of drafting ability. Such agreement is drafted by trained minds. An agreement such as inter-state water sharing agreement would not leave its interpretation to chance. In our view, in the absence of any express limitation, except quantity, on the use of water by Maharashtra within its territory in Clause II(i), the interpretation put by Andhra Pradesh to this Clause cannot be accepted.

50. Moreover, apportionment of the Godavari river was agreed to by the two states in a typical situation in as much as building of Pochampad project by Andhra Pradesh with FRL+1091 feet and MWL+1093 feet involved submergence of certain areas in the State of Maharashtra. But for Maharashtra's consent to submergence of its area, Andhra Pradesh could not have built Pochampad dam with capacity of 112 TMC; rather its capacity would have been limited to 40 TMC. Seen thus, in the absence of any express clause, it cannot be said that Maharashtra was given right to utilize waters not exceeding 60 TMC for new projects from the flowing waters of the Godavari basin alone. We are not persuaded to accept the submission of Mr. K. Parasaran that the apportionment of waters is founded on dichotomy of two sources of waters. On careful reading of Clause II(ii) we find that this Clause gives right to Andhra Pradesh to utilize all the balance waters up to Pochampad dam site in any manner it chooses for its beneficial use. The use of the expression, "all the balance waters up to Pochampad dam site" signifies that parties agreed

that on utilization of waters not exceeding 60 TMC for new projects by Maharashtra from the waters in the geographical area of the Godavari basin, all the balance waters up to Pochampad dam site is left for utilization by Andhra Pradesh for its beneficial use.

51. The contention of Mr. K. Parasaran, learned senior counsel for Andhra Pradesh that up to Pochampad dam site in Clause II(i) and Clause II (ii) means up to the spread area of Pochampad dam and not the concrete structure of the dam does not appeal to us. The common meaning of the word “dam” is the structure across the stream, including the abutment on the sides. The dam is an obstruction to the natural flow of the water of a river or a barrier to prevent the flowing water. A dam is built across a water course to confine and keep back flowing water. In Words and Phrases; Permanent Edition 11, “dam” is explained with reference to decision in *Morton v. Oregon Short Line Ry. Co.*² as follows:

“A “dam” is a structure composed of wood, earth, or other material, erected in and usually extending across the entire channel at right angles to the thread of the stream, and intended to retard the flow of water by the barrier, or to retain it within the obstruction.”

51.1. The same book with reference to *Colwell v. May's Landing Water Power Co.*³, explains the word “dam” as follows:

“The word “dam” is used in two different senses. It properly means a structure raised to obstruct the flow of water in a river, but by well-settled usage it is often applied to designate the pond of water created by its obstruction. The

² 87 P. 151, 153, 48 Or. 444

³ 19 N.J. Eq. (4 C.E.Green) 245, 248

word is used in this conventional sense in some statutes, and it is evidently used in this sense in a statute giving power to raise the “dam and water-works” to a height mentioned.”

51.2. In the Indian Standard Glossary of Terms Relating To River Valley Projects, Part 8, Dams and Dam Sections [First Revision], paragraph 2.27 explains “dam” as follows :

“A barrier constructed across a river or natural watercourse for the purpose of: (a) impounding water or creating reservoir; (b) diverting water there from into a conduit or channel for power generation and or irrigation purpose; (c) creating a head which can be used for generation of power; (d) improving river navigability; (e) retention of debris; (f) flood control; (g) domestic, municipal and industries; (h) preservation of wild life and pisciculture, (j) recreation, etc.”

51.3. Glossary of Irrigation and Hydro-Electric Terms and Standard Notations used in India, Third Edition, published by Central Board of Irrigation and Power, explains “dam” as under :

“Dam : A structure erected to impound water in a reservoir or to create hydraulic head.”

51.4. “Reservoir” is defined in the said publication as follows :

“Reservoir : A pond, lake, or basin, either natural or artificial, for the storage, regulation and control of water”.

51.5. “Introduction to dams”, Publication No. 220 by Central Board of Irrigation and Power under the Chapter “Dam Sites – Large Dams” with reference to book by J. Cotillon explains the position with regard to dam sites as under:

“A dam is a structure meant to retain water. Only hydraulic dams are dealt with in this paper; when it is question of other dams, it will be specified “Tailing dam”, “industrial waste dam”.

1. Generally, this retention takes place in a natural depression. But it can also take place in an artificial enclosure created, for instance, by embankments set-up along the banks of a river.

Moreover, the enclosure can be fully artificial: this is the case of a basin filled by pumping, created on a plateau and closed by a ring embankment; in this case, we speak about an “embankment” rather than about a “dam”.

2. Generally, the dam is set-up on a river.

But it can be constructed in a dead valley where only a trickle of water flows; the reservoir is then filled by pumping and/or by gravity diversions.

It can also close a pass on the perimeter of a reservoir, it is then called “secondary dam” as opposed to “main dam” which closes the natural depression (living valley or dead valley).

3. The dam retains generally the upstream water, its purpose may be also to retain the downstream water for a few hours. That is, an exceptional tidal wave (anti-storm dam).”

51.6. In the same book under the Chapter “Role of Dams-Purpose and Symbols”, in paragraph 2.1.2 it is stated as under:

“2.1.2 Creation of a Reservoir

The objective consists in altering the natural or disturbed condition of the river by acting upon the filling or the draining of the reservoir in order to fulfil the following objectives:

- to cut down the floods
- to raise low waters
- to guarantee a discharge higher than that of the low waters for all the cases described in 11 and 12.
- to reduce the disturbances in the regime of the river upstream: a reservoir is necessary in the immediate downstream of a leading hydroelectric plant in order to restore the continuity and the regularity of the discharge; such a dam or reservoir is then called “dam” or “compensating reservoir”.

52. It is sound principle of interpretation that if an expression has been used in an agreement at more than one place, such expression must bear the same meaning at all places unless expressed otherwise. When the agreement dated 06.10.1975 is read carefully, it would be seen that in Clause V, it is provided that Maharashtra and Andhra Pradesh will be free to use additional quantity of 300 TMC of water each below Pochampad dam site for new projects. If the meaning of Pochampad dam site is given meaning as spread area of Pochampad dam, Clause V does not make sense and leads to absurdity. Clause V becomes workable only when Pochampad dam site is understood to mean concrete structure of the dam. We have no doubt that the dam site in the agreement has the same meaning in all clauses and it means the concrete structure of the dam. In our view, therefore, Clause II(i) that provides that Maharashtra can utilize waters not exceeding 60 TMC for new projects from the waters in the area of the Godavari basin below three dam sites noted therein and up to Pochampad dam site on the Godavari gives right to Maharashtra to utilize waters of the Godavari river up to Pochampad site which may be water flowing through the river from the catchment area or the water spread area. Such utilization is not confined to the water flowing through the river from the catchment area. The thrust of the parties in Clause II(i) and the essence of this clause is to put a cap on the right of Maharashtra to utilize waters of Godavari river below the three dams mentioned therein up to Pochampad dam site to the extent of 60 TMC for new projects and in no case

exceeding that limit. There is no demarcation made that the utilization of waters not exceeding 60 TMC for new projects by Maharashtra shall be from the flowing water. While reaching the agreement, the two states must have sought to equalize the burden and benefits. We do not think that we can read such demarcation impliedly in Clause II(i) as contended by Andhra Pradesh.

53. As a matter of fact, Andhra Pradesh understood the location of Pochampad dam site at particular latitude and longitude and not the reservoir. This also indicates that by Pochampad dam site what is meant in the agreement dated 06.10.1975 is the structure and not the spread area.

54. In *Orient Papers & Industries Ltd.*¹, this Court was concerned with provisions of Orissa Irrigation Act, 1959, particularly, Sections 4(d) and 28 thereof. While dealing with the argument that the irrigation work as defined under Section 4(d) would not cover the area in which the reservoir lies, but only a reservoir, tank, anicuts, dams, weirs, canals, barrages, channels, pipes, wells, tubewells and artesian wells constructed, maintained or controlled by the state or a local authority, this Court referred to Section 4(d) and observed as follows :

“14. Irrigation work is defined under Section 4(d) of the Act as to include all land occupied by the Government for the purpose of reservoir, tanks, etc., and other structures occupied by or on behalf of the State Government on such land. A reservoir cannot be understood merely to be a means to hold water in a stream. It is only by controlling the flowing stream in an area that water can be stored in a

reservoir. Viewed thus, irrigation work would include land used for such purpose. In this case the finding recorded by the authorities is in accord with this view. "Reservoir" may not necessarily mean only the constructed part of the land but includes the area where the water is held by a dam constructed by the Government; then if from such a point falling within that area water is drawn it must be held that the appellant is liable to pay the water rate. Therefore, there is no substance in the contention urged on behalf of the appellant that the point at which the water is drawn by the appellant does not lie within the reservoir area or water is not drawn from a government source or a water work. Under Section 28 of the Act, the Irrigation Officer is empowered to fix the compulsory basic water rate for supply of water from a government source as distinguished from a private source."

54.1. In *Orient Papers & Industries Ltd.*¹, this Court did hold that reservoir may not necessarily mean only the constructed part of the land but includes the area where the water is held by a dam. This is generally what is understood by reservoir but, as noted above, we are concerned with the interpretation of the words "up to dam site" occurring in the agreement between the two states which was entered into when the dispute was already pending before the Tribunal and Andhra Pradesh was intending to construct Pochampad dam with 112 TMC that would submerge certain areas of Maharashtra. Therefore, these words have to be understood in the context of the agreement and terms thereof. In the overall context it is very difficult to hold that dam site is given meaning in the agreement as spread area of dam. Thus, in fact situation of the present case, *Orient Papers & Industries Ltd.*¹ has no application.

55. Generally, there cannot be a dam within a dam. This is also true that generally there cannot be lake/pondage of a project of one state within the lake/pondage of the project of another state. But we are concerned with specific water sharing agreement between the two states which has been endorsed by the Tribunal. The parties have not brought any oral expert engineering and hydrographic testimony. In the circumstances, we have to see extent of rights and obligations created by virtue of the agreement between the two states and the award given by the Tribunal. Like any other agreement, the terms of inter-state agreement ordinarily must be found out from the actual words employed therein. We have already analysed the agreement dated 06.10.1975 above and we find merit in the submission made on behalf of Maharashtra that in Clause II(i), there is no limitation imposed upon Maharashtra to utilize the waters of the Godavari river from the water flowing through the river from the catchment area only in its territory. What Maharashtra has to ensure is that it does not utilize waters of Godavari river in its territory exceeding 60 TMC for new projects and it does not interfere with natural and continuous flow of water into Pochampad reservoir.

56. Clause VII and Clause III(C) of the final order (award) passed by the Tribunal also support the view which we have taken. Clause VII provides that right or power or authority of any state to regulate within its boundaries the use of water, or to enjoy the benefit of waters within that state in a manner not inconsistent with the order of the Tribunal shall not be

impaired. Clause III(C) says that the water stored in any reservoir across any stream of the Godavari river system shall not by itself be reckoned as depletion of the water of the stream except to the extent of the losses of water from evaporation and other natural causes from such reservoir.

57. Alternatively, even if we accept the stand of Andhra Pradesh that utilization of waters to the extent of 60 TMC for new projects by Maharashtra from below the three dam sites mentioned in Clause II(i) up to Pochampad dam site can be only from water flowing through the river from the catchment area and not from the pondage/water spread area of Pochampad dam, the question that arises for consideration is, whether Andhra Pradesh is entitled to injunction against Maharashtra from setting up Babhali barrage in the suit filed under Article 131 of the Constitution.

58. The US Supreme Court in *State of Washington v. State of Oregon*⁴ has expounded two principles, one, a contest between the states is to be settled in the large and ample way that alone becomes the dignity of litigants concerned and two, burden of proof falls heavily on complainant in a suit for injunction when states are involved. The above principles are sound principles in law and, in our view, there is no reason for not applying them to a suit of this nature. We are of the considered view that in a suit for injunction filed by one state against the other state, the burden on the complaining state is much greater than that generally required to be borne by one seeking an injunction in a suit between private parties. The

⁴ 297 US 517

complaining state has to establish that threatened invasion of rights is substantial and of a serious magnitude. In the matter between states, injunction would not follow because there is infraction of some rights of the complaining state but a case of high equity must be made out that moves the conscience of the Court in granting injunction. We shall consider whether burden of that degree has been discharged by Andhra Pradesh on the charge of wrong doing by Maharashtra in construction of Babhali barrage and a case of substantial injury of a serious magnitude and high equity made out.

59. According to Andhra Pradesh, Pochampad project has three sources of contribution of its storage (i) from the Maharashtra territory of Godavari basin below Paithan dam, (ii) contribution from Manjra tributary and (iii) from the catchment within the state of Andhra Pradesh. It is the case of Andhra Pradesh that invasion of water spread area by construction of Babhali barrage would significantly deprive inhabitants of the Adilabad, Nizamabad, Karimnagar, Warangal, Nalgonda, Khammam and Medak districts of having water for irrigation and drinking purposes. Moreover, the construction of Babhali barrage prejudicially affects Andhra Pradesh (a) having regard to the FRL of Pochampad dam and the height of Babhali barrage as water would confine its level, there will be reverse flow up to 65 TMC (b) Maharashtra will be drawing water from Babhali barrage with the aid of pump sets installed along 58 km length and it will be enabled to draw more than 2.74 TMC, thereby exceeding its entitlement of 60 TMC; (c)

Maharashtra will utilize the non-monsoon flows to the fullest extent even if the 75% dependability, as pleaded by Maharashtra, is only 2.73 TMC, still Maharashtra is in a position to appropriate more than 2.74 TMC in 74% of the year and (d) Maharashtra will utilize the waters from Pochampad storage during the remaining 25% of the deficit years where non-monsoon yield is less than 2.74 TMC. Andhra Pradesh complains that as per the list of major, medium and minor projects sanctioned in Maharashtra after 06.10.1975 the gross utilization by Maharashtra of all the projects will be 63.018 TMC. Andhra Pradesh in this connection relies upon the additional affidavit filed by the Maharashtra.

60. Andhra Pradesh further complains that in a given year in the absence of adequate contribution from the Maharashtra territory of Godavari basin, Pochampad dam may have contribution from the other two sources, namely, contribution from Manjra territory and from the catchment within the state of Andhra Pradesh which would result in the storage of Pochampad into the territory of Maharashtra. Any construction within submergence area in Maharashtra and appropriation of water from it would result in Maharashtra drawing from a source over which it has no right.

61. On the other hand, Maharashtra says that it was using water within its territory which is now part of Pochampad storage prior to 1975 by lift irrigation schemes. Babhali barrage construction is partly to establish the requirements of these lift irrigation schemes. It is stated that there were 13 lift irrigation schemes which were existing, sanctioned and cleared on

the Godavari river up to the present Babhali barrage and they were utilizing about 2.6 TMC. Out of these 13 lift irrigation schemes; 6 were within the submergence of Pochampad. These schemes were operated successfully for seven to ten years from its commencement but they were not fully operated later due to non-availability of sufficient water in the river. After the agreement dated 06.10.1975, Maharashtra had planned for the Babhali barrage on the Godavari river within its territory in 1995. Babhali barrage was planned for a life saving irrigation of 7995 hectares and drinking water for 58 villages and three towns. Maharashtra denies that water spread area of the Pochampad dam is 55 km within the territory of Maharashtra. Maharashtra asserts that the water spread area is not beyond 32 km within Maharashtra territory. Babhali barrage project requires 2.74 TMC of water out of the allocation of 60 TMC for new projects under the agreement. The maximum quantity of water which Maharashtra can lift during the period from 28th October till the end of June next year is only 2.74 TMC of which only 0.6 TMC is from the common submergence of Pochampad reservoir and Babhali barrage. Maharashtra has denied the allegation of Andhra Pradesh that it will be drawing water from the Babhali barrage with the aid of pump sets installed along 58 km length and it will be enabled to draw more than 2.74 TMC and thereby exceeding its entitlement of 60 TMC.

62. Maharashtra has suggested without prejudice to its rights and contentions that it is willing to reimburse 0.6 TMC of water to Andhra Pradesh by releasing the same on 1st March every year. Maharashtra has

submitted that the operation of Babhali barrage can be supervised by a committee consisting of representatives of Central Water Commission and of states of Andhra Pradesh and Maharashtra. This committee will supervise that the gates are lowered on the 28th October each year and will remain in operation till the end of June next year and that on the 1st of March the gates will be lifted to allow the flow of water of 0.6 TMC to Andhra Pradesh. Thus, even 0.6 TMC will not be made use of by Maharashtra.

63. As regards lift irrigation schemes, Maharashtra has averred in paragraph 12(ii) of the amended written statement filed on 30.01.2008 as under:

“Below Vishnupuri Barrage on the main Godavari river and the State border with Andhra Pradesh there is a vast area and population of Nanded District in Maharashtra on the both the banks of Godavari over a stretch of 97 KMs. which is in dire need of irrigation and drinking water supply to 58 villages. In view of this acute water need and no other alternate resources available, lift irrigation schemes had been constructed by Maharashtra during 1972 to 1975 for lifting water from the main Godavari river for drinking water and some Rabi irrigation. No objection was raised to such scheme by Andhra Pradesh even though the water was extracted from the submergence of the Pochampad project in Maharashtra.”

63.1. Then in para 13, the following averment is made:

“These Lift Irrigation schemes after construction were operating in initial years with reasonable satisfaction. The lifting of water at these sites were planned for the fair weather season Rabi and hot-weather irrigation and drinking water supply for the entire year. Subsequently, difficulties were experienced in getting the needed river supplies in an assured manner from these fluctuating daily river flows.

There was acute agitation and pressure from the local people of 58 villages to provide them with a regulating scheme to get assured supply of water for irrigation and drinking water according to their needs. To enable this requirement, it was decided in 1995 to create a small pondage at Babhali to assure and regulate the needed supplies.”

63.2. In paragraph 14, it is averred as under:

“.....The gates of Babhali Barrage are therefore proposed to be kept open during monsoon period upto latter half of October, as if there is no barrage and lowered thereafter to create necessary small pondage in fair-weather to meet the dire needs in Maharashtra out of the permitted share of 60 TMC. The Barrage crest level at Babhali is at river bed level and therefore, there will be no obstructions to Godavari river flows upto Andhra Pradesh’s Pochampad dam during monsoon period. The small pondage at Babhali (2.74 TMC) proposed to be created during fair-weather is only a negligible fraction of Pochampad storage of 112 TMC out of which only 0.6 TMC is a common storage. By the middle of December, Pochampad storage recedes totally away from Maharashtra’s territory and therefore the pondage at Babhali during operation does not interfere or encroach with the Pochampad storage of Andhra Pradesh.....”

63.3. In paragraph 17 (xiiiA)(iii), (iv),(v)(a),(b),(c) and (d), Maharashtra has stated as follows:

“17(xiiiA)(iii) After middle of October, the gates at Babhali Barrage would be lowered to create a small pondage of 2.74 TMC by storing the post monsoon or dry weather Godavari river flows to enable individual farmer’s pumps to lift the water for the basic water supply needs of people including drinking water on the river banks and to stabilize and to ensure some Rabi and Hot weather irrigation part of which is already in existence by various lifts along this stretch of the Godavari river.

(iv) The overlapping storage of Pochampad and Babhali when constructed is only to the extent of 0.6 TMC out of 112 TMC live storage of Pochampad at FRL+1091 feet(330.56 m.). This 0.6 TMC overlapping small storage at the upstream end of Pochampad Reservoir

is in any case going to be silted up very soon making overlapping storage negligible.

- (v) The contention that between Babhali Barrage crest level and the river bed level at State border, there is 65 TMC of Pochampad storage which can be pumped up by Maharashtra by reserve flow is baseless and without any substance, because
- (a) Maharashtra Government is not installing any pumps or constructing any canals at Babhali to lift water, but only creating a pondage for individual farmers to lift for their own small irrigation needs.
 - (b) The Pochampad storage level will not remain at Babhali Barrage crest level throughout October to May but recede to a level lower than Babhali Barrage still level by end of December when there can be no lifting of water at all. Therefore, even theoretically, there is no possibility of a reserve flow into Babhali Barrage after December.
 - (c) In the absence of the Babhali Barrage Maharashtra could have utilized its permitted share of 60 TMC for new projects from this stretch of Godavari river occupied by Pochampad storage by putting up necessary capacity pumps in this stretch of Godavari river occupied by Pochampad storage to which Andhra Pradesh could not have objected.
 - (d) At Babhali Barrage Maharashtra has planned for life saving irrigation of 7995 ha. and drinking water for 58 villages and 3 towns which requires only 2.74 TMC of water of its 60 TMC share. The entire allegation of using 65 TMC of Pochampad water is baseless because such quantity cannot be lifted during the period of November to December when the level reaches the sill level. In the present Babhali Barrage scheme the intention is to only create a small pondage of about 2.74 TMC, which will be lifted by the individual farmers over a period of about 9 months. 65 TMC would be required to irrigate about 3.5 lakhs ha. which is not available at Babhali site. Moreover, for lifting 65 TMC water, a pumping capacity of about 162350 h.p. would be required and to utilize this pumping capacity about 121.11 MW of electricity will be necessary. The State of

Maharashtra has not planned to install any such pumps at Babhali.”

64. Before this Court was moved by filing the present suit, Andhra Pradesh objected to the Babhali barrage in 2005. As the dispute could not be resolved by the two states amicably, the Central Water Commission ('CWC') intervened. In the meanwhile, a public interest litigation was also filed before this Court. One of the prayers therein is for issuance of directions against Maharashtra to stop the construction of Babhali barrage and direction to the central government to take appropriate action to enforce the agreement dated 06.10.1975 reached between the two states. On 10.04.2006 this Court requested the Minister for Water Resources to call for the meetings of the officers and others from the two states with a view to resolve the issue and if it becomes necessary, the Minister may request the Prime Minister to intervene in the matter.

65. On 26.04.2006, the Chairman, CWC convened the technical committee meeting. Maharashtra on that day made a presentation highlighting the following facts:

“Storage of Babhali barrage is well within the banks. The sill level and FRL of Babhali barrage are 327 m and 338 m respectively and 13 gates of 15 m x 11 m size are proposed to be installed. The Gross storage of Srirama Sagar Project and that of Babhali barrage are 112 TMC and 2.74 TMC respectively and there is a common storage of 0.60 TMC which is just 0.54% of the storage of SRSP. Command area of Babhali barrage is 7995 ha.”

66. On behalf of Andhra Pradesh, it was stated that more than 50 per cent of the time Pochampad dam has not filled up to designed capacity and the water proposed to be stored by Babhali barrage would further reduce its storage which rightfully belongs to Andhra Pradesh and Andhra Pradesh cannot agree to construction of Babhali barrage in the submergence area of Pochampad dam. In the meeting of 26.04.2006, three alternative situations emerged which are as under:

1. Maharashtra to give their plan for the utilization of 60 TMC of water agreed with A.P. in addition to 42 TMC and the need for construction of Babhali Barrage.
2. To ensure that gates are lowered only after Sriram Sagar dam is filled up to its designed capacity or alternately on a date to be mutually agreed by both the states, whichever occurs earlier.
3. Possibility of reducing the height of Babhali Barrage to limit the storage to their minimum requirement during December to February to be explored by Govt. of Maharashtra.

67. Maharashtra agreed to examine the above suggestions and submit the proposal for consideration in the next meeting.

68. On 19.05.2006, the second meeting of the technical committee under the Chairmanship of the Chairman, CWC was held. The minutes of the meeting dated 19.05.2006 recorded as under:

- “1. The 75% dependable flows at Yelli gauging site was reported as 1530 MCM (54.03 TMC) considering a hydrologic year and 78.34 MCM (2.77 TMC) considering post monsoon months from 28th October to May end. These figures need to be rechecked and confirmed.
2. Babhali barrage to be constructed with 2.74 TMC capacity and the gates to be lowered on 28th October. This proposal was not acceptable to Govt. of Andhra Pradesh because they maintained that Babhali barrage is an

encroachment into the submergence area of Sri Ram Sagar Project (SRSP). They also apprehended that Govt. of Maharashtra can use waters several times the capacity of barrage, which will affect the storage of SRSP adversely.

3. The 2nd proposal given by the Govt. of Maharashtra was regarding reduction in the height of the gates of the Babhali barrage. They have worked out the minimum requirement from Babhali barrage considering the requirement for Rabi crop up to February and drinking water requirement up to June as 30.84 MCM (1.09 TMC). In addition to this, intercepted water of SRSP required to be released from Babhali Barrage is of the order of 17.00 MCM (0.6 TMC) and the evaporation losses may be considered of the order of 0.27 TMC. To meet the above total requirement, the gross capacity for Babhali barrage has been worked out as 1.96 TMC. For this storage, the FRL of Babhali Barrage as per the Area-Capacity curve submitted by Govt. of Maharashtra in the meeting is 336.5m, resulting in a reduction of the height of the gates by 1.5 m. This proposal was also not acceptable to Govt. of Andhra Pradesh.”

68.1. The minutes further recorded:

“Govt. of Maharashtra submitted that there is no other possibility for drinking water supply in this region since, from the month of November-December, the storage in SRSP recedes considerably and water spread falls below the border. The farmers in this region need water for irrigating their Rabi crops and at present there is no other arrangement for this purpose. Considering the requirement of Govt. of Maharashtra and keeping in view the objectives of Govt. of Andhra Pradesh, an alternative solution was suggested as under:

The capacity of the barrage should be reduced to the bare minimum requirement of Govt. of Maharashtra, which has been assessed by them as 1.09 TMC. From the Area Capacity relationship submitted by the Govt. of Maharashtra, it was observed that at an FRL of 334.20m, the capacity of the Babhali barrage reservoir is 1.03812 TMC and at FRL 334.60 m, the capacity is 1.16893 TMC. Therefore, if the FRL is kept at 334.50 m, the requirement of Govt. of Maharashtra can be met and this will reduce the height of the gates by 3.5 m. The gates will be closed only after 28th October depending on the inflow and storage condition of SRSP, to be mutually agreed by both the concerned states.

Under the existing circumstances, this was discussed by the Committee as a viable option for consideration for amicable settlement of the issue. The officials of the Govt. of Andhra Pradesh and the Govt. of Maharashtra expressed that they would need approval of their respective governments in this regard. The Chairman suggested that there may not be any need for another meeting if the response is positive and the recommendation could be submitted to the Hon'ble Union Minister for Water Resources after the response from the two states are received.”

68.2. The two states could not agree to any solution mutually thereafter.

69. Andhra Pradesh has a grievance about meetings held on 26.04.2006 and 19.05.2006 as according to it the technical committee did not examine the issues in terms of the grievance of Andhra Pradesh. According to Andhra Pradesh, CWC in the Inter-state meetings held on 11.07.2005 and 05.10.2005 have categorically opined that without the consent of Andhra Pradesh, Maharashtra is not entitled to construct the Babhali barrage within the submergence area of the Pochampad project.

70. The issue of entitlement of Maharashtra under the agreement dated 06.10.1975 has been examined in the earlier part of the judgment. The question now is, even if we accept the interpretation placed upon the agreement dated 06.10.1975 by Andhra Pradesh, should an injunction follow against Maharashtra.

71. There is a sharp conflict over the subject matter of the dispute between the two states. Andhra Pradesh does not trust Maharashtra and seriously doubts that Maharashtra would honour what it says. In this

regard, Mr. K. Parasaran, learned senior counsel for Andhra Pradesh brought to our notice the diverse acts of Maharashtra. During the pendency of the suit, Mr. K. Parasaran submitted that Maharashtra resumed the construction contrary to the directions given by CWC on 03.03.2006. In the meeting of the Chief Ministers of Andhra Pradesh and Maharashtra held on 04.04.2006, it was decided that a technical committee shall go into the details of various issues involved in Babhali Barrage project and till the technical committee submits its report, further construction work will not be done by Maharashtra. This was not adhered to by Maharashtra. On 26.04.2007, this Court by an interim order permitted Maharashtra to go ahead with construction of the Babhali barrage but directed that it shall not install the proposed 13 gates until further orders. It was clarified by this Court that as the Maharashtra is permitted to proceed with construction at its own risk, it will not claim any equity by reason of the construction being carried on by it. Contrary to and in violation of the interim order of this Court, Andhra Pradesh says that Maharashtra proceeded to install the gates. It also installed 14 gates instead of proposed 13 gates. As the Maharashtra went ahead with installation of gates (5 Nos.), Andhra Pradesh was compelled to file contempt petition.

72. There may be some merit in the grievances of Andhra Pradesh in this regard. Andhra Pradesh has suggested that to take care of its concerns, it would be appropriate to permit it to provide 1.09 TMC to Maharashtra from the water spread area of the Pochampad in the territory

of Maharashtra and direct Maharashtra to remove the installed gates. In our view, if Andhra Pradesh's apprehensions are addressed and its fears are allayed by putting in place a supervisory mechanism in the form of a committee, no substantial injury of serious magnitude would occasion to Andhra Pradesh.

73. There are views and counter views on the post monsoon yield data (October 29 to May 31). Andhra Pradesh, with reference to the post monsoon yield data furnished by Maharashtra, submits that the available yield to Maharashtra at Babhali barrage is in the range of 1537.20 MM³ (i.e. 54.29 TMC) to 77.39 MM³ (i.e. 2.73 TMC) in 75 per cent years of the 37 years series project. This enables Maharashtra to appropriate more than 2.74 TMC in 74 per cent of years as water will be drawn from pondage and replenished. During non-monsoon 7/8 months the water flows in trickles and, therefore, water will be drawn for irrigation and replenish on a regular basis even in remaining failure years of 25 per cent where non-monsoon yield is less than 2.74 TMC or years where non-monsoon flows are absolutely bare minimum, Maharashtra will be enabled to draw the water from the intercepted storage of Pochampad or by reverse flow. Andhra Pradesh emphasizes that Maharashtra has ignored 75 per cent dependability of Pochampad project. After lowering the gates of Babhali barrage on October 28, the non-monsoon flows into Pochampad are obstructed during the 75 per cent of the years. Babhali barrage has the

effect of depleting Andhra Pradesh's entitlement to the flow of water into its project constructed at 75 per cent dependability.

74. Maharashtra, on the other hand, says that Andhra Pradesh has ignored the fact that Babhali barrage comes into operation only after October 28 and the 75 per cent dependability yield at Babhali barrage after that date is only 2.73 TMC. Maharashtra asserts that it has calculated the actual 75 per cent available flows from October 29 to May 31 from 1968 to 2004 which comes to only 2.73 TMC at 75 per cent dependable yield. Hence, the utilization cannot be more than 2.73 TMC. Maharashtra also asserts that there is no occasion for it to utilize periodically 2.74 TMC from time to time as the total flow after October 28 is only 2.73 TMC. Maharashtra also says that there is no question of Maharashtra drawing water of Pochampad reservoir in the reverse direction to the extent of 65 TMC. With regard to Balegaon barrage, Maharashtra asserts that the capacity of Balegaon barrage is about 1.5 TMC out of which 0.6 TMC is the intercepted storage of Babhali barrage and the remaining 0.9 TMC is adjusted from the sanctioned utilization of Vishnupuri barrage project upstream.

75. We have carefully considered the submissions of the two states on post monsoon yield data (October 29 to May 31). The discharge data actually has been observed by the CWC at Yelli gauging site for the period 1968 to 2004, October 29 to May 31 which does indicate that on 75 per cent dependable flow, the total yield for this period is 2.733 TMC

(77.39 MM³). We find no justifiable reason to discard the discharge data observed by CWC for 36 years.

76. We have also examined the list of major, medium, minor (state sector), minor (local sector) of the projects sanctioned after 06.10.1975 below Paithan dam up to Maharashtra – Andhra Pradesh state border. A careful look at the said list shows that for the diverse projects sanctioned after 06.10.1975 in Godavari river below Paithan dam up to Andhra Pradesh state border, the total utilization is of 63018 MC feet (63.018 TMC) and the net utilization is 59112.70 MC feet (59.11270 TMC). Andhra Pradesh is right that total utilization of waters for new projects sanctioned after 06.10.1975 is 63.018 TMC. However, as noted above, the net utilization by Maharashtra of the projects sanctioned after 06.10.1975 is 59.11270 TMC. In any case, Maharashtra has to ensure that it does not exceed the restriction placed upon its utilization in Clause II(i) of the agreement dated 06.10.1975.

77. In the minutes of 19.05.2006 of the technical committee meeting convened by Chairman, CWC, it is stated that the project report of the Babhali barrage has been prepared according to the standard guidelines of the Commission. The project report of Babhali barrage which has been got approved from CWC clearly indicates that the monthly yield from November during post monsoon season is 2.64 TMC. The project report also shows that there is no scope for Maharashtra for withdrawing more than 2.73 TMC.

78. Maharashtra's assertion that Babhali barrage will trap maximum 0.6 TMC of the Pochampad storage is not a new plea raised for the first time before this Court in the amended written statement. As a matter of fact, before filing the suit by Andhra Pradesh, the said aspect was highlighted by Maharashtra in the technical committee's meeting convened by Chairman, CWC on 26.04.2006. The minutes of that meeting record, "storage of Babhali barrage is well within the banks. The sill level and FRL of Babhali barrage are 327 m and 338 m respectively and 13 gates of 15 m x 11 m size are proposed to be installed. The Gross storage of Sri Ram Sagar Project and that of Babhali barrage are 112 TMC and 2.74 TMC respectively and there is a common storage of 0.60 TMC which is just 0.54% of the storage of SRSP. Command area of Babhali barrage is 7995 ha."

79. Moreover, admittedly rainfall during monsoon months is the major contribution to the Godavari river flows. Monsoon contributes about 90 per cent of the river flow. During monsoon months, the gates of Babhali barrage shall remain lifted. Thus, river flow towards Pochampad dam during monsoon shall not be affected in any manner whatsoever. There is no diminution of flow during monsoon irrespective of construction of Babhali barrage by Maharashtra. The only difficulty is in respect of non-monsoon season which contributes about 10 per cent of the flows that too is not well defined and well spread. If this difficulty is taken care of, virtually there is no injury to Andhra Pradesh much less substantial injury in

as much as the inhabitants of seven districts (Adilabad, Nizamabad, Karimnagar, Warrangal, Nalgonda, Khammam and Medak) shall not be deprived of water for drinking purpose and irrigation which is the main concern of Andhra Pradesh. On the other hand, if Babhali barrage is made operational subject to certain conditions and some supervisory mechanism is put in place to ensure that those conditions are strictly adhered to, Maharashtra may be able to meet drinking water requirement of 58 villages and three towns and also provide water for irrigation to 7995 hectares. The matter needs to be viewed in this perspective as well.

80. We assume that apprehensions of Andhra Pradesh are bona fide and genuine. However, in our view, these apprehensions can be largely overcome and addressed. It is pertinent to notice that though with regard to present subject matter, Andhra Pradesh has taken a very rigid and hard stance but with regard to Pranhita project (Dr. B.R. Ambedkar Pranhita Chevella Sujala Sravanti Project) Andhra Pradesh and Maharashtra have adopted a very collaborative position to ensure efficient, speedy and economical investigation and execution of this project. The two Chief Ministers as recently as May 2012 have entered into an agreement for constitution of Inter-State Board to take charge of and deal with all the matters relating to all relevant items as stipulated in the 1979 award and 1980 further award with regard to Pranhita river. There is no reason why supervisory committee cannot oversee the compliance of

commitments which Maharashtra had made to this Court by way of pleadings and also in the course of hearing.

81. In view of the foregoing discussion, we may conclude our findings as follows :

(i) Under the agreement dated 06.10.1975 and the 1979 award of the Tribunal the utilization of 60 TMC water by Maharashtra for the new projects below Paithan dam site on the Godavari and below Siddheswar dam site on the Purna and below Nizamsagar dam site on the Manjra and up to Pochampad dam site on the Godavari is not confined to flowing waters alone in the territory of Maharashtra.

(ii) The thrust of the parties in Clause II(i) of the agreement dated 06.10.1975 and the essence of this Clause is to put a cap on the right of Maharashtra to utilize water of Godavari river below the three dams mentioned therein up to Pochampad dam site to the extent of 60 TMC for new projects and in no case exceeding that limit. There is no demarcation made in the agreement that the utilization of waters not exceeding 60 TMC for new projects by Maharashtra shall be from the flowing water through the river from the catchment area only.

(iii) The commitment of Maharashtra that the Babhali barrage project requires 2.74 TMC of water out of the allocation of 60 TMC for new projects under the agreement of which only 0.6 TMC is from the common submergence of Pochampad reservoir and Babhali barrage if accepted and its compliance is ensured, it may be conveniently held that Babhali barrage would not enable Maharashtra to draw and utilize 65 TMC of water from the storage of Pochampad project as alleged by Andhra Pradesh.

(iv) Alternatively, even if the interpretation placed upon the agreement dated 06.10.1975 by Andhra Pradesh is accepted that utilization of waters to the extent of 60 TMC for new projects by Maharashtra from below the three dam sites mentioned in Clause II(i) up to Pochampad dam site can be only from water flowing through the river from the catchment area and not from the pondage/water spread area of Pochampad dam, on the basis of facts which have come on record, a case of substantial injury of a serious magnitude and high equity that moves the conscience of the Court has not been made out by Andhra Pradesh justifying grant of injunction.

82. In light of the above, we hold that Andhra Pradesh is not entitled to the reliefs, as prayed for, in the suit.

83. However, a three member supervisory committee is constituted. The committee shall have one representative from the Central Water Commission and one representative each from the two states, Andhra Pradesh and Maharashtra. The representative of Central Water Commission shall be Chairman of the committee. The Committee shall select the place for its office which shall be provided by Maharashtra. Maharashtra shall bear the entire expenditure of the Committee. The powers and functions of the supervisory committee shall be as follows:

- (i) The committee shall supervise the operation of the Babhali barrage.
- (ii) The committee shall ensure that;
 - (a) Maharashtra maintains Babhali barrage storage capacity of 2.74 TMC of water out of the allocation of 60 TMC given to Maharashtra for new projects under the agreement dated 06.10.1975.
 - (b) The gates of Babhali barrage remain lifted during the monsoon season, i.e, July 1 to October 28 and there is no obstruction to the natural flow of Godavari river during monsoon season below the three dams mentioned in Clause II(i) of the agreement dated 06.10.1975 towards Pochampad dam.

(c) During the non-monsoon season i.e., from October 29 till the end of June next year, the quantity of water which Maharashtra utilizes for Babhali barrage does not exceed 2.74 TMC of which only 0.6 TMC forms the common submergence of Pochampad reservoir and Babhali barrage.

(d) Maharashtra does not periodically utilize 2.74 TMC from time to time.

(e) Maharashtra releases 0.6 TMC of water to Andhra Pradesh on 1st March every year.

(f) Maharashtra maintains the capacity of Balegaon barrage to 1.5 TMC. Out of this 0.9 TMC is adjusted from sanctioned utilization of Vishnupuri project upstream and 0.6 TMC remains the intercepted storage of Babhali barrage.

84. Suit and IA Nos. 13 and 15 are disposed of as above with no orders as to costs.

W.P.(C) No. 134/2006, W.P.(C) No. 210/2007 AND W.P.(C) No. 207/2007

85. We have heard Mr. A.K. Ganguli, learned senior counsel for the petitioners in W.P.(C) No. 207 of 2007. We have also considered the written submissions filed in W.P.(C) Nos. 207 and 210 of 2007. However, we do not find it necessary to consider these writ petitions on merits in view of consideration and decision in the original suit filed by Andhra Pradesh against Maharashtra.

86. These Writ Petitions and IA Nos. 1 and 3 in Writ Petition © No. 134 of 2006, IA Nos. 1 and 2 in Writ Petition © No. 210 of 2007 and IA No. 1 in Writ Petition © No. 207 of 2007 are disposed of accordingly.

Contempt Petition (C) No. 142 of 2009 in Original Suit No. 1 of 2006

87. In view of our judgment given in Original Suit, we are not inclined to consider the Contempt Petition on merits. It is disposed of accordingly.



.....J.
(R.M. Lodha)

.....J.
(T.S. Thakur)

.....J.
(Anil R. Dave)

NEW DELHI
FEBRUARY 28, 2013.

JUDGMENT

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