A "IN RE : NETWORKING OF RIVERS"
(Writ Petition (Civil) No. 512 of 2002)

FEBRUARY 27, 2012

[S.H. KAPADIA, CJI, A.K. PATNAIK AND
B **SWATANTER KUMAR, JJ.]**

CONSTITUTION OF INDIA, 1950:

Art. 32 - Writ petitions seeking directions to Central and
C *State Governments for effective management of water by nationalisation and inter-linking of rivers - Held: Government of India has framed National Water Policy - Further, a National Perspective Plan has been formulated for optimum utilization of water resources in the country which envisaged inter-basin transfer of water from water-surplus to water-deficit*
D *areas - River linking plan in its ultimate stage of development will also enable flood moderation - 30 links have been identified - Huge amounts of public money have been spent - These projects are to be completed with a sense of sincerity and a desire for its completion - Keeping in view the relative*
E *economic and social needs of interested States, volume of stream and its uses, land not watered, and other relevant considerations, it will be for the expert bodies alone to examine on such issues and their impact on the project - Courts have their limitations to undertake such an exercise*
F *within the scope of its power of judicial review and even on the basis of expanded principles of public interest litigation - It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter-linking of rivers program for the benefit*
G *of the nation as a whole - Union of India directed to constitute a Committee to be called a 'Special Committee for Inter-linking of Rivers' with the composition as suggested in the judgment - The Committee so constituted shall take such steps as specified in the judgment and submit reports to the*

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Cabinet of the Government of India - Central and the State Governments concerned directed to comply with the directions contained in the judgment effectively and expeditiously - Inter-State Water Disputes Act, 1956 - River Boards Act, 1956 - Public interest litigation - Judicial review - Sepration of powers.

Art. 262, Seventh Schedule, List I, Entries 56, and 97, List II, Entry 17 and List III, Entry 20 - Adjudication of disputes relating to waters of inter-State rivers - Inter-linking of rivers - Held: By and large, there is unanimity in accepting interlinking of rivers but the reservations of the States concerned can also not be ignored, being relatable to their particular economic, geographical and socio-economic needs - These are matters which squarely fall within the domain of general consensus and, thus, require a framework to be formulated by the competent Government or the Legislature, as the case may be, prior to its execution - By virtue of Art. 262 read with Entries 56 and 97 of List I Entry 17 of List II and Entry 20 of List III, Parliament gets wide field of legislation relatable to various subjects, including regulation and development of inter-State rivers and to create adjudicatory mechanism.

In the instant writ petitions filed in public interest, directions were sought against the Central Government and the State Governments concerned for effective management of water resources by nationalization and interlinking of rivers in the country. Notice was issued to all the States and the Attorney General for India inviting their stance on the issue of networking of rivers. On 31.10.2002, the Court recorded that there was, in principle, consensus amongst all the States to go ahead with the project of interlinking of rivers. A high level Task Force was set up. Feasibility Reports (FRs) were prepared for the intended links. A total number of 30 links were identified: 16 under the peninsular river development component and 14 under the Himalayan river development component. FRs of 16 links were placed on

A the website. The status report filed on behalf of the Government of India showed that a committee of environmentalists, social activists and other experts would be constituted to be involved in the consultative process of formulation and execution of the entire
B project. The status reports filed from time to time were considered by the Court.

Disposing of the writ petitions, connected IAs and the contempt petitions, the Court

C HELD: 1.1 The Government of India has always shown considerable concern regarding the management of water resources in the country and had framed, for this purpose, the National Water Policy, which seeks to make available water supply to those areas which face
D shortages. This aspect of the matter could be effectively dealt with, only if the various rivers in the country are linked and are nationalized. The Ministry of Irrigation, along with the Central Water Commission, had formulated in the year 1980 a National Perspective Plan (NPP) for
E optimum utilization of water resources in the country which envisaged inter-basin transfer of water from water-surplus to water-deficit areas. Apart from diverting water from rivers which are surplus, to deficit areas, the river linking plan in its ultimate stage of development will also
F enable flood moderation. [para 8-9] [1130-E-H; 1131-A-B]

1.2 It is significant to notice that till date no minor or major project has been actually implemented at the ground level despite the fact that this case has been pending before this Court for more than ten years. Only
G the DPR of the Ken-Betwa link has been prepared and its implementation is awaiting the approval of the State Governments as well as the allocation of funds, even to begin the work. This does not speak well of the desire on the part of any of the concerned Governments to
H implement these projects, despite the fact that there is

unanimity of views among all that this project is in the national interest. Though, it is not difficult to visualize the difficulties in preparation, execution, financing and consensus building, still, it is the need of the hour to carry out these projects more effectively and with greater sensitivity. [paras 26 and 34] [1138-F-H; 1139-A; 1141-B]

1.3 The National Council for Applied Economic Research (NCAER) report clearly opines that interlinking of river projects will prove fruitful for the nation as a whole and would serve a greater purpose by allowing higher returns from the agricultural sector for the benefit of the entire economy. This would also result in providing of varied benefits like control of floods, providing water to drought-prone States, providing water to a larger part of agricultural land and even power generation. However, when coming to the financial aspect of the programme, two concepts are of great relevance: firstly, the investment strain and secondly, the scope of financial investment and its recoupment. Primarily, it is clear from the records that this is a programme/project on which the nation and the States should have a rational but liberal approach for financial investment. [para 39 and 43] [1142-E; 1143-A-B]

1.4 From the facts, recommendations, and principles, it is clear that primarily there is unanimity between all authorities concerned including the Centre and a majority of the State Governments that implementation of river linking will be very beneficial. In fact, the expert opinions convincingly dispel all other impressions. There shall be greater growth in agricultural and allied sectors, prosperity and stimulus to the economy potentially causing increase in per capita income, in addition to the short and long term benefits likely to accrue by such implementation. These would accrue if the expert recommendations are implemented properly and within a timeframe. Then there shall be hardly any financial

A strain on the economy. On the contrary, such implementation would help advancement of India's GDP and bring greater wealth and prosperity to the nation as a whole. Besides actual benefits accruing to the common man, the Governments also benefit from the definite B possibility of saving the States from drought on the one hand and floods on the other. This project, when it becomes a reality, will provide immeasurable benefits. There is no reason as to why the Governments should not take appropriate and timely interest in the execution C of this project, particularly when, in the various affidavits filed by the Central and the State Governments, it has been affirmed that the governments are very keen to implement this project with great sincerity and effectiveness. [para 47] [1148-F-H; 1149-A-C]

D 2.1. The stand taken by the respective States shows that, by and large, there is unanimity in accepting interlinking of rivers but the reservations of these States can also not be ignored, being relatable to their particular economic, geographical and socio-economic needs. E These are matters which squarely fall within the domain of general consensus and thus, require a framework to be formulated by the competent Government or the Legislature, as the case may be, prior to its execution. However, the national interest must take precedence over F the interest of the individual States. The State Governments are expected to view national problems with a greater objectivity, rationality and spirit of service to the nation and ill-founded objections may result in greater harm, not only to the neighbouring States but G also to the nation at large. [para 50 and 52] [para 51] [1149-H; 1150-A-F]

2.2 Under Article 262, Parliament, by law, can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of water of H any inter-state river or river valley. Further, Parliament

may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any dispute or complaint as referred to in Article 262(1). Thus, Parliament can reserve to itself, the power to oust the jurisdiction of the courts, including the highest Court of the land, in relation to a water dispute as stated under this Article. The jurisdiction of the Court will be ousted only with regard to the adjudication of the dispute and not all matters incidental thereto. Once a specific adjudicatory mechanism is created, that machinery comes into operation with the creation of the Tribunal and probably, then alone will the Court's jurisdiction be ousted. [para 53-55] [1151-A-C-D-G]

Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India & Ors., 1990 (3) SCR 83 = AIR 1990 SC 1316 - relied on.

2.3 Entry 56 of List I empowers Parliament to enact laws in relation to the regulation and development of inter-State rivers and river valleys, to the extent that such regulation and development is declared by Parliament, by law, to be expedient in the public interest. Entry 17 relates to water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List I. Entry 20 of List III deals with economic and social planning. Thus, with the aid of the residual powers under Entry 97, List I, Parliament gets a very wide field of legislation, relatable to various subjects. [para 56-57] [1152-B-C, E]

3.1. Coordination is required to be generated at all levels to implement the inter-linking of rivers program, as proposed. Huge amounts of public money have been spent, at the planning stage itself and it will be travesty of good governance and the epitome of harm to public

A interest, if these projects are not carried forward with a sense of sincerity and a desire for its completion. [para 59] [1152-H; 1153-A]

State of Karnataka v. State of Andhra Pradesh & Ors. 2000 (3) SCR 301 = (2000) 9 SCC 572 - relied on.

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3.2. A greater element of mutuality and consensus needs to be built between the States and the Centre on the one hand, and the States inter se on the other. It will be very difficult for the courts to undertake such an C exercise within the limited scope of its power of judicial review and even on the basis of expanded principles of public interest litigation. A public interest litigation before this Court has to fall within the contours of constitutional law, as no jurisdiction is wider than this Court's D constitutional jurisdiction under Article 32 of the Constitution. [para 62] [1153-H]

3.3. The tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like need for acquisition and E construction of river linking channels under that program essentially should be left for the Central Government and the States concerned. Such an attempt by the Court may amount to the Court sitting in judgment over the opinions of the experts in the respective fields, without any tools F and expertise at its disposal. The requirements in the instant case have different dimensions. The planning, acquisition, financing, pricing, civil construction, environmental issues involved are policy decisions affecting the legislative competence and would squarely G fall in the domain of the Government of States and Centre. Keeping in view the relative economic and social needs of interested states, volume of stream and its uses, land not watered, and other relevant considerations, it will be for the expert bodies alone to examine on such

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issues and their impact on the project. [para 51 and 62] [1154-B-E; 1150-E]

3.4. This Court would recommend that these projects are in the national interest, as is the unanimous view of all experts, most State Governments and particularly, the Central Government. But this Court may not be a very appropriate forum for planning and implementation of such a programme having wide national dimensions and ramifications. It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter linking of rivers program for the benefit of the nation as a whole. [para 63] [1154-F-H]

3.5. Union of India and, particularly, the Ministry of Water Resources, Government of India, is directed to forthwith constitute a Committee to be called a 'Special Committee for Inter-linking of Rivers' with the composition as suggested in the judgment. The Committee so constituted shall take such steps as specified in the judgment and submit reports to the Cabinet of the Government of India. [para 64] [1155-A-B]

3.6. The Central and the State Governments concerned are directed to comply with the directions contained in the judgment effectively and expeditiously and without default. This is a matter of national benefit and progress. There is no reason why any State should lag behind in contributing its bit to bring the Inter-linking River Program to a success, thus saving the people living in drought-prone zones from hunger and people living in flood-prone areas from the destruction caused by floods. [para 65] [1159-E-F]

Case Law Reference:

1990 (3) SCR 83	relied on	para 54
2000 (3) SCR 301	relied on	para 59

A CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 512 of 2002.

Under Article 32 of the Constitution of India.

WITH

B Writ Petition (C) No. 668 of 2002.

A. Mariarputham, Ranjit Kumar (Amicus Curiae), R.S. Suri, T.S. Doabia, R.S. Khosla, Sr. AAG, S. Gurukrishna Kumar, Dr. Manish Singhvi, AAG, Nikhil Nayyar (Amicus Curiae), Sudarsh C Menon, Sanjay R. Hegde, A. Subhashini, CHadra Prakash Pandey, G. Prakash, Gopal Singh, Ravi Bhushan, Manish Kumar, Gopal Singh, Rituraj Biswas, Guntur Prabhakar, Hemantika Wahi, Rojalin Pradhan, Manik Karanjawala, Naresh K. Sharma, Tara Chandra Sharma, Kuldip Singh, R.K. Pandey, D H.S. Sandhu, Mohit Mudgil, Jagjit Chhabra, Ashok K. Mahajan, G. Umapathy, B. Balaji, R. Ayyam Perumal, Shreekant N. Terdal, Ranjan Mukherjee, S.C. Ghose, S. Bhowmick, Ramesh Babu M.R., Shekhar Prasad Gupta, D. Bharathi Reddy, Vikas Upadhyay, B.S. Banthia, Khwairakpam Nobin Singh, Sapam Biswajit Meitei, Shankar Chillarge, Asha Gopalan Nair, E Soumitra G. Chaudhuri, B.P. Yadav, Anima Kujur, Sampa Sengupta, Abhijit Sengupta, Sumita Hazarika, Alok Gupta, Abhinav Ramakrishnan, Milind Kumar, Devanshu K. Devesh, Irshad Ahmad, G.N. Reddy, R. Nedumaran, D.N. Goboursdhan, Prabal Bagchi, Shiv Kant Arora, Atin Shanker Rastogi, F Abhishek Agarwal, Sheil Mohini Sethi, Navneet Kumar, Riku Sarma (for Corporate Law Group), Anil Shrivastav, K.N. Madhusoodhanan, R. Sathish, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha (for Rajesh Srivastava), Pradeep Misra, Amit Singh, Kamlendra Mishra, Aruna Mathur, Yusuf G Khan, Kaustubh Sinha, D.D. Kamat, S.W.A. Qadri, D.K. Thakur, D.S. Mahra, Rupansh Purohit, Manjit Singh, Kamal Mohan Gupta, Edward Belho, C.M. Kennedy, K. Enatoli Sema, Amit Kumar Singh, Pardeep Kumar Rapria, Ramesh K. Mishra, Prashant Bhushan, Bhavanishankar V. Gadnis, B. Sunita Rao,

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C.K. Sucharita, Runi Chanda, Anisha Panicker, Rachana Srivastava, Ruchi Daga for the appearing parties. A

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. Nearly ten years back, the petitioner in Writ Petition (Civil) No. 668 of 2002, a practicing advocate, instituted the petition based on some study that there was a need to conserve water and properly utilize the available resources. Thus, the present petition has been instituted with the following prayers:- B C

"a. Issue an appropriate writ order or direction, more particularly a writ in the nature of Mandamus directing the respondent no. 1 to take appropriate steps/action to nationalize all the rivers in the country. D

b. Issue an appropriate writ order or direction, more particularly a writ in the nature of Mandamus, directing the respondent No. 1 to take appropriate steps/action to inter link the rivers in the southern peninsula namely, Ganga, Kaveri, Vaigai and Tambaravani. E

c. Issue an appropriate writ order or direction in the nature of mandamus directing the respondents to formulate a scheme whereby the water from the west flowing rivers could be channelized and equitably distributed." F

2. The above directions were sought by the petitioner against the Central Government as well as against various State Governments, for effective management of the water resources in the country by nationalization and inter-linking of rivers from Ganga - Cauveri, Vaigai-Tambaravarmi up to Cape Kumari. According to him, as early as in 1834, Sir Arthur Cotton, who had constructed the Godavari and Krishna dams, suggested a plan called the 'Arthur Cotton Scheme' to link the G H

A Ganga and Cauveri rivers. In 1930, Sir C.P. Ramaswamy Aiyar also suggested and supported such a scheme. Thereafter, various political leaders of the country have supported the cause; but no such schemes have actually been implemented. It is the case of the petitioner that the Inter-State Water B Disputes Act, 1956 (for short 'the Act') and the River Boards Act, 1956 were enacted by the Parliament under Article 262 read with Entry 56 of List-I of the Seventh Schedule to the Constitution of India, 1950 (hereafter, 'the Constitution'). Due to reluctance of water-rich States, the National Water C Development Agency (hereafter, 'nwda') has not been allowed to undertake detailed survey and it is argued that only by nationalization of the rivers, by the Government of India, this problem can be resolved to some extent. The petitioner had filed a writ before the High Court of Judicature at Madras, being D Writ Petition No. 6207 of 1983, praying for various reliefs. This Writ Petition was disposed of without any effective orders by the High Court. Persisting with his effort, the petitioner earlier filed writ petitions before this Court, being Writ Petition (C) No. 75 of 1998 and Writ Petition (C) no. 15 of 1999, praying inter alia for nationalized navigation and inter-linking of all the rivers E in the country.

3. We must notice, to put the records straight, that on 29th September, 1994, a Bench of this Court took suo motu notice of a write-up that had appeared in the Hindustan Times F newspaper, dated 18th July, 1994, titled "And quiet flows the maili Yamuna". Notice was issued to the Central Pollution Control Board, Municipal Corporation of Delhi, Irrigation and Flood Department of the Government of India, National Capital Territory of Delhi and the Delhi Administration. Since then, the G writ petition is being continuously monitored by this Court, till date. During the pendency of this writ petition, I.A. No. 27 came to be filed, wherein the learned Amicus Curiae in that case referred to the address of Dr. A.P.J. Abdul Kalam, the then President of India, on the eve of the Independence Day. This, H inter alia, related to creating a network between various rivers

in the country, with a view to deal with the paradoxical situation of floods in one part of the country and droughts in other parts. In other words, it related to the inter-linking of rivers and taking of other water management measures. On 16th September, 2002, this Court, while considering the said I.A., directed that the application be treated as an independent writ petition and issued notice to the various State Governments as well as the Attorney General for India and passed the following order:-

> "Based on the speech of the President on the Independence Day Eve relating to the need of networking of the rivers because of the paradoxical phenomenon of flood in one part of the country while some other parts face drought at the same time, the present application is filed. It will be more appropriate to treat to treat it as independent Public Interest Litigation with the cause title "IN RE : NETWORKING OF RIVERS -- v. ---" Amended cause title be filed within a week.
>
> Issue notice returnable on 30th September, 2002 to the respondents as well as to the Attorney General.
>
> Serve notice on the standing counsel of the respective States.
>
> Dasti service, in addition, is permitted."

4. This is how I.A. No. 27 in Writ Petition (Civil) No. 725 of 1994 was converted into Writ Petition (Civil) No. 512 of 2002. The Writ Petition (Civil) No. 512 of 2002 was taken up for hearing and notice was issued to all the States, inviting affidavits regarding their stance on the issue of networking of rivers.

5. In view of the above order, the petitioner in Writ Petition (Civil) No. 668 of 2002 withdrew Writ Petition (C) No. 75 of 1998 as well as Writ Petition (C) 15 of 1999, which leave was granted by this Court.

A 6. As already discussed above, the petitioner had filed Writ Petition (Civil) No. 668 of 2002 with somewhat similar prayers as contained in I.A. No. 27. In that writ petition, the petitioner has averred that no prayer with regard to inter linking of rivers covering the southern part of the Peninsular Region had been B claimed and it was also his contention that the southern part was most drought prone and had been witnessing more inter-state water disputes. Thus, he had filed Writ Petition (Civil) No. 668 of 2002 and prayers made therein were liable to be allowed.

C 7. In the present case, we are concerned with Writ Petition (C) No.668 of 2002, Writ Petition (C) No. 512 of 2002 as well as the I.A.s and the contempt petitions filed in these two petitions. Accordingly, this order shall dispose of all these matters but we make it clear that presently, we are not dealing D with Writ Petition (C) No. 725 of 1994.

8. It has also been averred by the petitioners and the intervenors in these petitions that the need to conserve water resources and assuring their optimum consumption can be E seen from the steps taken in this regard, not only by the developed countries but also by developing and under-developed countries. The Government of India has always shown considerable concern regarding the management of water resources in the country and had framed, for this purpose, F the National Water Policy which is being updated on a yearly basis. The National Water Policy seeks to make available water supply to those areas which face shortages. This aspect of the matter could be effectively dealt with, only if the various rivers in the country are linked and are nationalized. This has been a matter of public debate and discussion for a G considerable time and still continues to be so, without showing any reflection of ground reality.

9. The Ministry of Irrigation, along with the Central Water Commission, had formulated in the year 1980 a National H Perspective Plan (NPP) for optimum utilization of water

resources in the country which envisaged inter-basin transfer of water from water-surplus to water-deficit areas. Apart from diverting water from rivers which are surplus, to deficit areas, the river linking plan in its ultimate stage of development will also enable flood moderation. It was comprised of two components: Peninsular Rivers Development and Himalayan Rivers Development. The first involved major inter-linking of the river systems and the latter envisaged the construction of storage reservoirs on the principal tributaries of rivers Ganga and Brahmaputra in India, Bhutan and Nepal. This was to help transfer surplus flows of the eastern tributaries of the Ganga to the West, apart from linking the main Brahmaputra and its tributaries with the Ganga and Mahanadi rivers. The scheme is divided into four major parts:

(i) Interlinking of Mahanadi-Godavari-Krishna-Cauvery rivers and building storages at potential sites in these basins.

(ii) Interlinking of West flowing rivers north of Bombay and south of Tapi.

(iii) Interlinking of rivers Ken & Chambal.

(iv) Diversion of other west flowing rivers from Kerala.

10. The petitioners have also made several suggestions which have been appreciated by the competent authorities on consideration. It is emphasized that the cost is negligible when compared to the potential benefits which may be bestowed on the nation. The petitioners rely upon Article 262 of the Constitution, read along with Entry 17, List II and Entry 56 of List I of the Seventh Schedule to the Constitution to substantiate their submissions. Finally, the petitioners submit that the preservation of water resources is a part of the right to life and livelihood, enshrined in Article 21 of the Constitution and that the Central Government should take immediate and urgent steps to nationalize the rivers, so that equitable and proper

A distribution of water can be ensured for the betterment of the population. According to them, the Central Government should also adopt all necessary measures, both scientifically and naturally, to increase the usable water resources and to preserve whatever resources the Union of India has already
B been naturally gifted with.

11. As a result and because of the inaction on the part of the Central Government and the State Governments, it is submitted that grant of the reliefs as prayed for in the writ petition would be in consonance with the constitutional spirit
C and in the larger public interest.

12. The learned Amicus Curiae, who had been pursuing this public cause for a number of years, in furtherance to the request of this Court, has also submitted a detailed note with
D regard to the background and summary of the proceedings in these petitions.

13. As per the learned Amicus Curiae, on 14th August, 2002, the then President of India, Dr. APJ Abdul Kalam, in his
E address to the nation on the eve of Independence Day, had observed that the need of the hour was the creation of a Water Mission which, inter alia, would look into the question of networking of rivers with a view to deal with the paradoxical situation of floods in one part of the country and drought in the
F other. Based on this and as afore-recorded, a notice was issued, on 16th September, 2002, to the States and the Attorney General for India as respondents. In response to the said notice, none of the States or Union Territories, except the State of Tamil Nadu, had filed affidavits supporting/opposing the prayers made in the writ petition. The time for filing of
G affidavits was again extended up to 30th September, 2002, but no further affidavits were received by that time.

14. The learned then Attorney General for India, on behalf of the Union of India, stated that the Government had accepted
H the concept of interlinking of rivers and a High Powered Task

Force would be formed. Therefore, this Court, vide Order dated 31st October, 2002, recorded that there is in-principle consensus amongst all States to go ahead with the project of interlinking of rivers. A

15. Vide Order dated 30th August, 2004, it was noticed by this Court that, though there had been a change in the Government, the then Solicitor General, appearing for the Government, informed this Court that a decision had been taken, in principle, to continue with interlinking of rivers. B

16. A high level Task Force was set up. However, vide order dated 5th May, 2003, this Court observed that inputs from other experts, in many fields, were necessary and that the Task Force was to give due consideration to such inputs. Feasibility Reports (hereafter, 'FR') were prepared for the intended links. Subsequently, vide its order dated 8th April, 2005, this Court made it absolutely clear that the orders of the Court in these respects have to be complied with in letter and spirit. The FR of all links were to be put on the website after their completion. This Court had also made observations that the prior consent of any State Government was not necessary for placing the FRs on the website and directed them to be so placed. With great persuasion and efforts, the FRs of 16 links had been placed on the website. At the request of the Amicus, the website was ordered to be made interactive so that people could submit their response thereto. C D E F

17. The status report filed on behalf of the Government of India also showed that a committee of environmentalists, social activists and other experts would be constituted to be involved in the consultative process of formulation and execution of the entire project. G

18. The status reports filed, from time to time, have been considered by this Court.

19. Now, we may deal with the response of various States, H

A as they appear from the record before us. The response affidavits have been filed on behalf of ten States. However, the remaining States have not responded, despite the grant of repeated opportunities to do so. While the States of Rajasthan, Gujarat and Tamil Nadu have supported the concept of inter-
B linking of rivers, the State of Madhya Pradesh had stated that networking of rivers is a subject falling under the jurisdiction of the Central Government and the Central Government should consider the matter. The States of Karnataka, Bihar, Punjab, Assam and Sikkim have given their approval to the concept in-
C principle, but with definite reservations, i.e., a kind of qualified approval, arguing that the matters with regard to the environmental and financial implications, socio-economic and international aspects, such as inter-basin water transfer, need to be properly examined at the appropriate levels of the
D Government. For example, all the rivers in Bihar originate from Nepal and it may be necessary or desirable to take consent of neighbouring countries, is a matter which would require consideration of the appropriate authority in the Central Government. According to the State of Punjab, inter-linking of
E rivers should be started only from water-surplus States to States facing water deficit. The States of Assam, Sikkim and Kerala had raised their protests on the grounds that they should have exclusive right to use their water resources and that such transfer should not affect any rights of these States. The State of
F Sikkim was concerned with particular reference to tapping of the hydro power potential in the State and the State of Kerala entirely objected to long distance, inter-basin, water transfer.

20. The Union of India filed three different affidavits dated 25th October, 2002, 5th May, 2003 and 24th December, 2003.
G From these affidavits, the stand of the Union of India appears to be that networking of rivers had been considered with great seriousness even after the 1972 Rao Committee Report. Surveys and studies were underway. The 1980 National Perspective Plan of the erstwhile Ministry of Irrigation, presently
H the Ministry for Water Resources, envisaged inter-basin transfer

from water-surplus to deficit areas. It would have direct benefits, like the irrigation of 35 million hectares (Mha), full exploitation of existing irrigation projects of 140 Mha, power generation of 34 million Kilowatt (KW); besides the indirect benefits like flood control, navigation, water supply, fisheries, pollution control, recreation facilities, employment generation, infrastructure and socio-economic development etc. With regard to the approvals required, it is submitted that the Ministry of Environment and Forests, Union of India had given some clearances, while refusing the same in other cases. The consent of some of the States had not been received. The expected financial implication as far back as in 2002 was Rs.5,60,000 crores.

21. However, the Union of India has submitted that there is no necessity for formation of a high-powered committee as prayed for in the petitions. The high-level task force is to be set up for considering the modalities of state-wise consensus. The NWDA was set up as autonomous registered society under the aegis of Ministry of Water Resources, in new Delhi in 1992, for the purposes of preparation of FRs, conduct of water-balance and other scientific studies, etc. for Peninsular Region rivers (and for Himalayan Region rivers also, since 1990) and is headed by the Union Minister of Water Resources. The Chief Ministers and/or the Ministers and the Secretaries as their nominees for Water Resources/Irrigation of the State governments are its members. The pre-feasibility reports of all 30 identified links had been completed by the nwda.

22. The Union of India and some states have shown their concerns and their apprehensions about these projects, including questioning the reliability of water supply from distant sources, distribution of water given the existing tribunal awards and the continued availability of existing water surpluses.

23. In another affidavit, the Union of India referred to the Terms of Reference to the Task Force and the appointment of its Members. Action Plan I was prepared, which was expected

A to be implemented by 2016. Out of the independent links to be pursued for discussion, the first were the links in the States of Gujarat, Maharashtra, Chattisgarh; secondly, the States of Karnataka, Madhya Pradesh, Uttar Pradesh and Rajasthan were to be included in discussions and thirdly, the States of
B Andhra Pradesh, Tamil Nadu and Orissa were to be invited for discussion. The Detailed Project Reports (hereafter, 'DPR') were expected to be completed by December, 2006. However, from the record, it appears that these DPRs have not been completed even till today. The scheme of inter-linking of rivers/
C preparation of DPRs is stated to be under review by different groups and authorities.

24 The Union of India also intended that these project reports should encompass water sector schemes, rainwater harvesting schemes etc., as these cannot be implemented
D independent of the inter-linking scheme. The last of the affidavits filed on behalf of the Union of India was in December, 2003. This affidavit gives details of the States, with which a dialogue was to be held as also the details of constitution of sub-committees. The Terms of Reference of the Task Force
E included the approval of all links. With the intention to arrive at a general consensus, before entering into agreements, the Union of India has discussed details with Maharashtra and Gujarat and preliminary discussion has taken place with the States of Andhra Pradesh, Chattisgarh, Karnataka, Orissa,
F Tamil Nadu and Pondicherry. According to the Union of India, invoking the matter internationally, at this stage, was not advisable as the matter was premature. The nwda was to begin the DPR for the first link, i.e., the Ken-Betwa project, which itself was expected to take 30 months time. In this, the DPR has
G now been prepared; however, the implementation is yet to begin. We must notice that in all other links even the DPRs are not ready, as of now. The draft Memorandum of Understanding (hereafter, 'MoU') had been circulated for conduct of DPR of three more Peninsular links. The Standing
H Committee of the Parliament on Water Resources, (hereafter,

'the Standing Committee'), in its report for the year 2004-05 has commented that for the purpose of preparation of DPRs for the Ken-Betwa link and the Parbati-Kalisindh-Chambal link projects, a sum of Rs.14 crores had been earmarked, out of the total Rs.35 crores allocated for NWDA. However, the Standing Committee had been constrained to observe that, though the FR of the Ken-Betwa link was completed in November, 1996, the project was still at a nascent stage. At the time of the report in 2004-05, the basic MoU between the Governments of Uttar Pradesh and Madhya Pradesh, for preparation of DPR, still remained to be signed, on the ground that the State of Uttar Pradesh required more water to be allocated to it. They further observed that, if the Ministry of Water Resources, Government of India had set a time frame for finalization of issues like this, the precious time of eight years would not have been lost. The matter still rests at that stage. Today, though DPR has been prepared for this link alone, no link project has reached the implementation stage.

25. The report of the Standing Committee which, inter alia, had examined the river inter-linking proposal was presented to the Parliament of India on 23rd August, 2004. It was strongly recommended that the Government should take firm steps and fix a definite time frame to lay down the guidelines for completion of FRs, preparation of DPRs and completion of projects so that they may be completed and the benefits accrued within reasonable time and costs. It was the opinion of the Standing Committee that the inter-linking of Himalayan and Southern region rivers, if done within a definite schedule, would save the nation from the devastating ravages of chronic droughts and floods. The recommendations of the Standing Committee deal primarily with two kinds of States; the States having water shortage and the States having surplus water. Still, there would be a third category of States, which would be comprised of those States which have just sufficient water and therefore, do not fall in either the flood-affected or the drought-affected categories of States. The role of such States may not

be very project-related; but, their consent/concurrence is needed for complete implementation of the programme. Their role is relevant as some canal projects, linking different rivers, may pass through such States. But as already noticed, except one, no other DPR has so far been finalized and in fact, none put into implementation. Thus, this question would remain open and has to be examined at the appropriate stage by the competent forum.

Projection of Status Reports:-

26. Different Status Reports have been filed in this case. The last of the Status Reports have been filed by the Union of India on 18th March, 2011. It has been pointed out that the NWDA, which was to complete the task relating to preparation of FRs and DPRs of link projects, has completed 208 preliminary water-balance study of basins, sub-basins and diversion points, 74 toposheets and storage capacity studies of reservoirs, 37 toposheet studies of link alignments and 32 pre-feasibility reports of links, towards the implementation of inter-linking of rivers in the country. Based on these studies, this agency identified 30 links (16 under the peninsular river development component and 14 under the Himalayan river development component) for preparation of FRs. The process of consensus building is on-going, in regard to the feasibility of implementing other interlinking projects. These reports have shown that a significant effort and attempts have been made and the unquestionable benefits that would accrue on the implementation of the interlinking projects will be to benefit the country at large. One aspect that needs to be noticed is that, till today, no minor or major project has been actually implemented at the ground level despite the fact that this case has been pending before this Court for more than ten years. Only the DPR of the Ken-Betwa link has been prepared and its implementation is awaiting the approval of the State Governments as well as the allocation of funds, even to begin the work. This does not speak well of the desire on the part of

any of the concerned Governments to implement these projects, despite the fact that there is unanimity of views among all that this project is in the national interest.

27. The Committee of Environmentalists, Social Scientists and other Experts on inter-linking of rivers, had met after the submission of the Status Report dated 5th March, 2010. They discussed various aspects of different projects. In the Himalayan region, FRs of two remaining links were completed, i.e., the Sarda-Yamuna link and Ghagra-Yamuna Link. The field survey and investigation for Sone Dam on the southern tributaries of the Ganga link, was still in progress. The Ministry of Environment and Forests had refused permission for survey and investigation of the Manas-Sankosh-Tista-Ganga link, but the toposheet study for the alternative Jogigopa-Tista-Farakka link has been completed. In the Peninsular region, the projects relating to Bedti-Varada and netravati-Hemavati-Tapi are awaiting Karnataka Government's consent. In Netravati-Hemvati-Tapi link, the Karnataka Government has refused to consent even to the preparation of FR until decision of related cases, pending in the Courts.

28. In the Dhadun dam, relating to the Ken-Betwa link, two power houses and a link canal will be taken up in Phase I and the Betwa basin will be completed in Phase-II. Upper Betwa Sub-Basin will receive priority completion and minor projects are proposed to be completed first. Phase-II will be commenced after survey and investigation. However, this project is still at the survey and planning stage and even comprehensive clearances, from the Uttar Pradesh Government, have not been received. The State of Rajasthan refuses to consider the MoU for another priority link, Parbati-Kalisindh-Chambal, until the updation of its hydrology project.

29. Similarly, there are other projects where public hindrances are caused against carrying out of survey and investigation. In the Par-Tapi-Narmada and Damanganga-Pinjal links, residents have shown concern about the extent of

A land to be submerged on the construction of the proposed dam. In response, the State Governments of Gujarat and Maharashtra have set up Committees to take up the matters with the panchayats and to commence the projects.

B 30. The NWDA had also, in the course of framing of its policies, proposed intra-state links. Except for six States and four Union Territories, all other States and Union Territories have interest in these intra-State links. There are eight inter-linking projects which are under review by different State authorities. However, the details of the divergence between the State C Governments are not clearly spelt out, even as of now.

31. An additional study was undertaken by the National Council for Applied Economic Research (hereafter, 'ncaer') and the revised final report, published in April 2008, assessed the D economic impact of the rivers interlinking program and suggested an investment roll out plan, i.e., a practical implementation schedule, for the same. A copy of this report was submitted in the year 2011, before this Court.

E 32. As already noticed, the Task Force was constituted by the Central Government for interlinking of river projects in December 2002. It submitted its Action Plans I and II for implementation of the project and also finalized the terms of reference for the purposes of the DPRs. Action Plan I, submitted in April 2003, envisages completion of 30 FRs by F the authorities by December 2005.

33. Action Plan II, submitted in April 2004, mainly envisaged the appraisal of individual projects, in respect of their economic viability, socio-economic and environmental impacts, G preparation of resettlement plans and reaching speedy consensus among States. The reports have been submitted to the Central Government and are under consideration. With this completion of work, the Task Force had completed its object and stood dissolved. After winding up of the Task Force, a H Special Cell on interlinking of rivers was created under the

Ministry of Water Resources. However, what happened to the two Action Plan reports submitted by the Task Force is a matter left to the imagination of anyone. A

34. From the above, it is not difficult to visualize the difficulties in preparation, execution, financing and consensus building, still, it is the need of the hour to carry out these projects more effectively and with greater sensitivity. B

Economic Aspect :

35. As per the report of the Standing Committee for the year 2004-05, which was presented to the Parliament of India, the planned budgetary allocation was made under NWDA as follows : C

36. Actual allocation for 2002-03 was Rs.15.30 crores, the budget estimate for 2003-04 was 20 crores, the revised estimate for the same year was Rs.21.95 crores and for 2004-05, the budget estimate was Rs.35 crores. D

37. The Amicus Curiae, in his report, has noted that the new aggregated cost of the entire program varies between Rs. 4,44,331.20 crores, at 2003-04 prices, and Rs.4,34,657.13 crores, at 2003-04 prices, depending on the implementation of the proposed Manas-Sankosh-Tista-Ganga link or the Jogigopa-Tista-Farakka link respectively. E

38. As already noticed, the NCAER had been assigned the work of assessing the economic impact of river interlinking programmes, which in turn, suggested an investment roll-out plan for the same. The report of the NCAER was prepared in April, 2008. This report considers various financial aspects and the impact of various river interlinking projects in India. They point out that after independence, irrigation was viewed as infrastructure for agricultural development rather than as a commercial enterprise. In 1983, the Nitin Desai Committee forwarded the idea of Internal Rate of Return (hereinafter F G H

A referred to as 'IRR'), suggesting that projects should normally earn a minimum IRR of 9 per cent. However, for drought-prone and hilly areas and in areas with only 75 per cent of dependable flows in the basin, a lower IRR of 7 per cent was recommended. Successive Finance Commissions also stressed on recovery
B of a certain percentage of the capital investment apart from working expenses. The Eleventh Finance Commission has recognized that this would have to be done in a gradual manner. Receipts should cover not only maintenance expenditure but also leave some surplus as return on the capital
C invested.

39. This NCAER report, with some significance, noticed that until 2003-04, it was only in four years that the economy grew at more than 8 per cent per annum. Each of these years coincided with very high rate of growth in the agricultural sector.
D In contrast, industry and services sectors have, at best, pulled up the Gross Domestic Product (GDP) growth to 7.3 per cent per annum when there was no significant contribution from the agricultural sector. The report clearly opines that interlinking of river projects will prove fruitful for the nation as a whole and
E would serve a greater purpose by allowing higher returns from the agricultural sector for the benefit of the entire economy. This would also result in providing of varied benefits like control of floods, providing water to drought-prone States, providing water to a larger part of agricultural land and even power generation.
F Besides annuring to the benefit of the country, it will also help the countries like Nepal etc., thus uplifting India's international role. Importantly, they also point out to a very important facet of interlinking of rivers, i.e., it may result in reduction of some diseases due to the supply of safe drinking water and thus serve
G a greater purpose for humanity.

40. The Bhakra dam has also been cited as an example in this report as having enabled the States of Punjab and Haryana to register faster growth as compared to the rest of the country. This project provided an additional irrigated area
H

to the extent of 6.8 million hectares over 35 years. Increased irrigation intensity led to increased usage of High Yielding Variety (HYV) seeds which at present constitute more than 90 per cent of the area under wheat and 80 per cent of area under paddy cultivation. The region uses some of the most advanced agricultural technologies in India. NCAER, while depicting the poverty ratio vis-à-vis these States and the other States all over India, has provided the following tables:

States	Rural		Urban		All Areas	
	1973-74	1999-00	1973-74	1999-00	1973-74	1999-00
Punjab	28.21	6.35	27.96	5.75	28.15	6.16
Haryana	34.23	8.27	40.18	10.00	35.36	8.74
All India	56.44	27.09	49.01	23.62	54.88	26.10

41. Thus, they conclude that the Bhakra Dam was instrumental in helping India achieve food security, in reducing volatility of food grain prices and declining the incidence of poverty in those regions.

42. Besides pointing out the benefits of Bhakra Dam, the NCAER Report also states that the link canals have both short and long term impacts on the economy. Short term impact of link canals is in the form of increased employment opportunities and the growth of the services sector. In the medium to long term, the major impact of link canals is through increased and assured irrigation. Although the major and direct gainers from the interlinking of rivers (ILR) programme will be agriculture and agriculture-dependant households, the entire economy will benefit because of increased agricultural production and other benefits.

43. The Report of the NCAER has pointed out various benefits of rivers interlinking programme at the State and

A National levels. However, when coming to the financial aspect of the programme, two concepts are of great relevance: firstly, the investment strain and secondly, the scope of financial investment and its recoupment. Primarily, it is clear from the records before us that this is a programme/project on which
B the nation and the States should have a rational but liberal approach for financial investment. Referring to the financial strain, the NCAER Report projects two sets of investment rollout plan. At the start of the programme, investment would be small, but would increase gradually peaking in the year
C 2011-2012. It will then start falling. Investment rollout from the year 2008-2009 to 2014-2015 will have considerable strain on the Central Government finances, especially after the passage of Fiscal Responsibility and Budget Management Rules (FRBMR). The Government is now committed to reducing
D fiscal deficit by 0.3 percentage points of GDP every year and was to reduce the fiscal deficit down to 3 per cent of GDP by the fiscal year 2007-2008. The FRBMR also put a restriction on Government borrowings. In each subsequent financial year, the limit on borrowings of 9 per cent of GDP was to
E progressively reduced by at least 1 percentage point of GDP, a commitment which is to be adhered to by all Governments. The investment plan prepared by the NCAER was intended to help in clearing doubts in the minds of the people and opponents of the programme that investment is not going to take place in a single or couple of years, but over a
F period of at least ten years. Since the impact analysis undertaken by the NCAER assumes that the Interlinking of Rivers (ILR) programme is entirely financed by the Central Government, a longer rollout plan would also help in reducing the impact on public finances.

G

44. The NCAER has also suggested changes which are necessary for the effective implementation of the river networking programme. Inter alia, it includes the pricing of irrigation benefits and improvement in the quality of service.
H It will be useful to notice at this stage, these suggested

changes termed as 'Changes necessary' which are as under: A

"A revision of water rates is necessary in the interest of efficiency. However, it should go hand in hand with improvement in the quality of service (Government of India 1992). Specific recommendations were made by the Committee on Pricing of Irrigation Water (Government of India, 1992) with regards to pricing: B

1. Water rates are a form of user charges, and not a tax. Users of public irrigation must meet the cost of the irrigation service. C

2. As irrigation is one of the key inputs similar to seeds and fertilizer, its pricing should be addressed in the first step.

3. Under-pricing of irrigation is mainly responsible for the deteriorating quality of irrigation services. A revision of water rates is necessary in the interest of efficiency. However, it should go hand in hand with improvement in the quality of service. D E

4. Rates for non-agricultural users (domestic and industrial) should also be revised so that full cost is recovered.

5. Rates should be based on O&M norms and capital charges (interest and depreciation). F

6. Averaging of rates by region and/or categories of projects is desirable. Categorisation could be:

   - major and medium storage system, G
   - major and medium projects based exclusively on barrages/diversion works,
   - minor surface irrigation works, H

- lift irrigation canals, and
- lift irrigation from groundwater.

7. Distinction of rates in terms of tail and head reaches of a system, soil quality, and other criteria for rate determination should be approached with caution due to complexities involved with it.

8. Water rates should be applied on two-part tariff. All lands in command area should pay a flat annual fee on a per hectare basis for membership of the system and a variable fee linked to the actual extent of service (volume or area) used by each member.

9. The move to full-fledged volumetric pricing cannot be introduced immediately. The proposed rationalization of water pricing will have to be accomplished in three phases.

10. In the first phase, rationalization and simplification of the existing system of assessment (based on crop-wise irrigated area on an individual basis) to a system of season-specific areas rates should be taken up. The level of cost recovery to be aimed during the first phase should at least cover O&M costs and 1 per cent interest on capital employed. The irrigated area under a crop which spreads over to more than one season should be charged at the rates applicable to different seasons. However, in each season, distinction should be made between paddy, sugarcane, and perennial crops.

11. In the second phase, the aim should be on volumetric measure for irrigation water charging.

12. In third phase, the focus should be on people participation for improving water use and, thus, productivity.

13. The recommendations of the Committee on Pricing of Irrigation (also known as the Vaidynathan Committee Report) were further studied by the Group of Officers formed by the Planning Commission in October, 1992. It recommended that the irrigation water rates should cover the full annual O & M cost in phases in the next five years. These recommendations and the Vaidyanathan Committee Report were, in February 1995, sent to all the States/union territories that had started taking action with several states revising water rates upwards." A B C

To sum up the short comings and their analysis, the report states as under :

"One shortcoming of the above analysis is that it has not considered the issue of cost of resettlement of displaced people due to ILR Project. A draft National Rehabilitation Policy was prepared with the objective of minimizing development induced displacement of people by promoting non-displacing or least displacing alternatives for meeting development objectives. The draft policy is yet to be finalized by the National Advisory Council (NAC). The NAC intends to finalise a rehabilitation package that includes, inter alia, providing land for all agricultural families, implementing special employment guarantee programmes, providing homesteads and dwelling houses, bearing transportation cost, providing training and other support services, instituting a rehabilitation grant in order to compensate loss of income/livelihood. The ILR project has to consider displacement costs on the basis of norms stipulated in the national Rehabilitation Policy as and when it gets finalized." D E F G

45. Besides making the above observations and recommendations, the NCAER also suggests that after completion of the linking of rivers programme, the different river H

links should be maintained by separate river basin organizations, which would all be functioning under the direct control of the Central Water Commission or such other appropriate central body.

46. In the summing up of its Report, the NCAER has stated that water is essential for production of food, economic growth, health and support to environment. Its main contribution to economic well-being is through its use of agriculture to improve food security. Water is essential to increase agricultural productivity under modern technology. Nearly 64 per cent of the population in rural area and 4 per cent in urban area depends on agriculture as their principal source of income. The analysis carried out in the State shows that the ILR programme has the potential to increase the growth rate of agriculture, which declined from 4.4 per cent in 1980s to 3.0 per cent in 1990s and which is still susceptible to the vagaries of rainfall. In order to put our economy on the high growth path and improve the quality for life of people in the rural areas, a mixed policy of both increased availability of irrigation and increasing non-farm activity is required.

Principles Applied:

47. From the above narrated facts, stated recommendations and principles, it is clear that primarily there is unanimity between all concerned authorities including the Centre and a majority of the State Governments, with the exception of one or two, that implementation of river linking will be very beneficial. In fact, the expert opinions convincingly dispel all other impressions. There shall be greater growth in agricultural and allied sectors, prosperity and stimulus to the economy potentially causing increase in per capita income, in addition to the short and long term benefits likely to accrue by such implementation. These would accrue if the expert recommendations are implemented properly and within a timeframe. Then there shall be hardly any financial strain on

the economy. On the contrary, such implementation would help advancement of India's GDP and bring greater wealth and prosperity to the nation as a whole. Besides actual benefits accruing to the common man, the Governments also benefit from the definite possibility of saving the States from drought on the one hand and floods on the other. This project, when it becomes a reality, will provide immeasurable benefits. We see no reason as to why the Governments should not take appropriate and timely interest in the execution of this project, particularly when, in the various affidavits filed by the Central and the State Governments, it has been affirmed that the governments are very keen to implement this project with great sincerity and effectiveness.

48. The States of Rajasthan, Gujarat, Tamil Nadu have fully supported the concept. Madhya Pradesh has also supported the Scheme, but believes that it must be implemented by the Central Government. The States of Karnataka, Bihar, Punjab and Sikkim have given some qualified approvals. Their main concern is, with regard to inter basin transfer, which must involve quid pro quo, as with any other resources inter-linking must be from water surplus to water deficit States and in regard to environmental and financial implications. Some of the other States are not connected with these projects as they have no participation in inter-linking of rivers. The State of Kerala has protested to some extent, to the long distance inter basin water transfer on the basis that the State needs water to supply their intricate network of natural and man-made channels.

49. It is also the case of the State of Kerala that their rivers are monsoon-fed and not perennial in nature, therefore, Kerala experiences severe water scarcity during summer or off-monsoon months.

50. The stand taken by the respective States, as noticed above, shows that, by and large, there is unanimity in accepting interlinking of rivers but the reservations of these States can also not be ignored, being relatable to their particular economic,

A geographical and socio-economic needs. These are matters which squarely fall within the domain of general consensus and thus, require a framework to be formulated by the competent Government or the Legislature, as the case may be, prior to its execution.

B 51. The National Commission for Review of the Working of the Constitution (NCRWC) 2002 in its Report also dealt with another important facet of river interlinking i.e. sharing of river waters. Explaining the doctrines of river sharing, it described Doctrine of Riparian Rights, Doctrine of Prior Appropriation, C Territorial Integrity Theory, Doctrine of Territorial Sovereignty, English Common Law Principle of Riparian Right, Doctrine of Community Interest, Doctrine of Equitable Apportionment. It also explained that when determining what a reasonable and equitable share is, the factors which should be taken into D consideration. In that behalf, it specifically referred to agreements, judicial decisions, awards and customs that already are in place. Furthermore, relative economic and social needs of interested states, volume of stream and its uses, land not watered were other relevant considerations. E Thus, it will be for the expert bodies alone to examine on such issues and their impact on the project.

52. Be that as it may, we have no hesitation in observing that the national interest must take precedence over the interest F of the individual States. The State Governments are expected to view national problems with a greater objectivity, rationality and spirit of service to the nation and ill-founded objections may result in greater harm, not only to the neighbouring States but also to the nation at large.

G 53. Now, we may refer to certain constitutional provisions which have bearing on the matters in issue before us. Under the constitutional scheme, there is a clear demarcation of fields of operation and jurisdiction between the Legislature, Judiciary and the Executive. The Legislature may save unto itself the H power to make certain specific legislations not only governing

a field of its legislative competence as provided in the Seventh Schedule of the Constitution, but also regarding a particular dispute referable to one of the Articles itself. Article 262 of the Constitution is one of such powers. Under this Article, the Parliament, by law, can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of water of any inter-state river or river valley.

54. Article 262(2) of the Constitution opens with a non-obstante expression, that 'notwithstanding anything contained in the Constitution, Parliament may by law provide that neither the Supreme Court nor any other Court shall exercise jurisdiction in respect of any dispute or complaint as referred to in Article 262(1)'. In other words, the Parliament can reserve to itself, the power to oust the jurisdiction of the courts, including the highest Court of the land, in relation to a water dispute as stated under this Article. The jurisdiction of the Court will be ousted only with regard to the adjudication of the dispute and not all matters incidental thereto. For example, the Supreme Court can certainly direct the Central Government to fulfill its statutory obligation under Section 4 of the Act, which is mandatory, without deciding any water dispute between the States. [See : *Tamil Nadu Cauvery Neerppasana Vilaiporulgal Vivasayigal Nala Urimai Padhugappu Sangam v. Union of India & Ors.,* AIR 1990 SC 1316].

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

56. The Seventh Schedule to the Constitution spells out

A different fields of legislation under the Union List (List I), State List (List II) and Concurrent List (List III). Entry 56 of List I empowers the Union Parliament to enact laws in relation to the regulation and development of inter-state rivers and river valleys, to the extent that such regulation and development is declared B by the Parliament, by law, to be expedient in the public interest. Entry 57 deals with fishing and fisheries beyond territorial waters. Entry 97 is a residual entry, which confers those legislative fields upon the Union Parliament which are not specifically provided for under List II and/or List III. Entry 17 C relates to water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List I. Agriculture is again a State subject. The Concurrent List (List III) does not contain any entry in regard to water and agriculture, as such.

D 57. Entry 42 of List III is the law relating to acquisition and requisition of property by the Union and the State Parliaments. The result is that, in relation to acquisition, the Centre and the State, both, have power to legislate. Entry 20 of List III deals with economic and social planning. Thus, with the aid of the E residual powers under Entry 97, List I, the Union Parliament gets a very wide field of legislation, relatable to various subjects.

58. The River Boards Act, 1956 was enacted by the Parliament under Entry 56 of List I. The Inter-State Water F Disputes Act was also enacted with reference to the same Entry. Whereas the mandate of the latter is to provide a machinery for the settlement of disputes, the former is an Act to establish Boards for the regulation and development of inter-State river basins, through advice and coordination, and G thereby to reduce the friction amongst the concerned States.

59. It is this kind of coordination which is required to be generated at all levels to implement the inter-linking of rivers program, as proposed. Huge amounts of public money have been spent, at the planning stage itself and it will be travesty

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of good governance and the epitome of harm to public interest, if these projects are not carried forward with a sense of sincerity and a desire for its completion. A

60. In a more recent judgment of this Court in the case of *State of Karnataka v. State of Andhra Pradesh & Ors.* [(2000) 9 SCC 572], a Constitution Bench of this Court took the view that in Section 11 of the Act, the expression 'use, distribution and control of water in any river' are the key words in determination of the scope of power conferred on a Tribunal constituted under Section 3 of the Act. If a matter fell outside the scope of these three crucial words, the power of Section 11 in ousting the jurisdiction of the courts in respect of any water dispute, which is otherwise to be referred to Tribunal, would not have any manner of application. The test of maintainability of a legal action initiated by a State in a Court would thus be, whether the issues raised therein are referable to a Tribunal for adjudication of the manner of use, distribution and control of water. B C D

61. Further, this Court while declining to issue a mandamus directing the States of Karnataka, Andhra Pradesh and Maharashtra to constitute a common Tribunal, held: E

> "168. .....It is settled law that such a direction cannot possibly be granted so as to compel an authority to exercise a power which has a substantial element of discretion. In any event the mandamus to exercise a power which is legislative in character cannot be issued and I am in full agreement with the submission of Mr. Solicitor General on this score as well. At best it would only be an issue of good governance but that by itself would not mean and imply that the Union Government has executive power even to force a settlement upon the State." F G

62. The above stated principles clearly show that a greater element of mutuality and consensus needs to be built between the States and the Centre on the one hand, and the States inter H

A se on the other. It will be very difficult for the Courts to undertake such an exercise within the limited scope of its power of judicial review and even on the basis of expanded principles of Public Interest Litigation. A Public Interest Litigation before this Court has to fall within the contours of constitutional law, B as no jurisdiction is wider than this Court's constitutional jurisdiction under Article 32 of the Constitution. The Court can hardly take unto itself tasks of making of a policy decision or planning for the country or determining economic factors or other crucial aspects like need for acquisition and construction C of river linking channels under that program. The Court is not equipped to take such expert decisions and they essentially should be left for the Central Government and the concerned State. Such an attempt by the Court may amount to the Court sitting in judgment over the opinions of the experts in the respective fields, without any tools and expertise at its disposal. D The requirements in the present case have different dimensions. The planning, acquisition, financing, pricing, civil construction, environmental issues involved are policy decisions affecting the legislative competence and would squarely fall in the domain of the Government of States and Centre. We E certainly should not be understood to even imply that the proposed projects of inter-linking of rivers should not be completed.

63. We would recommend, with all the judicial authority at F our command, that these projects are in the national interest, as is the unanimous view of all experts, most State Governments and particularly, the Central Government. But this Court may not be a very appropriate forum for planning and implementation of such a programme having wide national G dimensions and ramifications. It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter linking of rivers program for the benefit of the nation as a whole.

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64. Realizing our limitations, we would finally dispose of this Public Interest Litigation with the following directions:-

(I) We direct the Union of India and particularly the Ministry of Water Resources, Government of India, to forthwith constitute a Committee to be called a 'Special Committee for Inter-linking of Rivers' (hereinafter referred as 'the Committee') of which, the following shall be the Members:-

(a) The Hon'ble Minister for Water Resources.

(b) Secretary, Ministry for Water Resources.

(c) Secretary, Ministry of Environment and Forests.

(d) Chairman, Central Water Commission.

(e) Member-Secretary, National Water Development Authority.

(f) Four experts to be nominated, one each from the following Ministries/bodies:

(i) One Expert from the Ministry of Water Resources

(ii) One Expert from the Ministry of Finance

(iii) One Expert from the Planning Commission

(iv) One Expert from the Ministry of Environment & Forests.

(g) Minister for Water and/or Irrigation from each of the concurring States, with the Principal Secretary of the concerned Department of the same State.

(h) The Chief Secretary or his nominee not below the rank of the Principal Secretary of the concerned

A Department in case of any other State involved directly or indirectly in the water linking river project.

(i) Two social activists to be nominated by each of the concerned Ministries.

B (j) Mr. Ranjit Kumar (Amicus Curiae).

(II) The Committee shall meet, at least, once in two months and shall maintain records of its discussion and the Minutes.

C

(III) In the absence of any person from such meeting, irrespective of his/her status, the meeting shall not be adjourned. If the Hon'ble Minister for Water Resources is not available, the Secretary, Ministry of Water D Resources, Government of India, shall preside over the Meeting.

(IV) The Committee would be entitled to constitute such sub-committees, as it may deem E necessary for the purposes of carrying on the objects of the Inter-Linking of River Program, on such terms and conditions as it may deem proper.

F (V) The Committee shall submit a bi-annual report to the Cabinet of the Government of India placing before it the status-cum-progress report as well as all the decisions required to be taken in relation to all matters communicated therewith. The Cabinet shall G take all final and appropriate decisions, in the interest of the countries as expeditiously as possible and preferably within thirty days from the date the matters are first placed before it for consideration.

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(VI) All the reports of the expert bodies as well as the status reports filed before this Court during the pendency of this petition, shall be placed before the Committee for its consideration. Upon due analysis of the Reports and expert opinions, the Committee shall prepare its plans for implementation of the project.

(VII) The plans so prepared shall have different phases, directly relatable to the planning, implementation, construction, execution and completion of the project.

(VIII) We are informed that large sums have been spent on preparation of initial and detailed project reports of the project 'Ken-Betwa Project'. The DPR is now ready. The States of Madhya Pradesh and Uttar Pradesh and also the Central Government had already given their approval and consent. The clarifications sought will be discussed by the Committee. We would direct the Committee to take up this project for implementation at the first instance itself.

(IX) Keeping in view the expert reports, we have no hesitation in observing and directing that time is a very material factor in the effective execution of the Interlinking of Rivers project. As pointed out in the Report by NCAER and by the Standing Committee, the delay has adversely affected the financial benefits that could have accrued to the concerned parties and the people at large and is in fact now putting a financial strain on all concerned.

(X) It is directed that the Committee shall take

A firm steps and fix a definite timeframe to lay down the guidelines for completion of feasibility reports or other reports and shall ensure the completion of projects so that the benefits accrue within reasonable time and
B cost.

(XI) At the initial stages, this program may not involve those States which have sufficient water and are not substantially involved in any inter-linking of river programme and the
C projects can be completed without their effective participation.

(XII) However, the Committee may involve any State for effective completion of the
D programme at any subsequent stage.

(XIII) There are projects where the paper work has been going for the last ten years and at substantial cost to the public exchequer. Therefore, we direct the Central and the
E State Governments to participate in the program and render all financial, administrative and executive help to complete these projects more effectively.

F (XIV) It is evident from the record that the Reports submitted by the Task Force have not been acted upon. Thus, the entire effort put in by the Task Force has practically been of no use to the concerned governments, much less the
G public. The Task Force has now been wound up. Let the reports of the Task Force also be placed before the Committee which shall, without fail, take due note of the suggestions made therein and take
H decisions as to how the same are to be

implemented for the benefit of the public at large. A

(XV) The Committee constituted under this order shall be responsible for carrying out the inter-linking program. Its decisions shall take precedence over all administrative bodies created under the orders of this Court or otherwise. B

(XVI) We grant liberty to the learned Amicus Curiae to file contempt petition in this Court, in the event of default or non-compliance of the directions contained in this order. C

65. We would fail in our duty if we do not place on record the appreciation for the valuable and able assistance rendered by the learned Amicus Curiae and all other senior counsel and assisting counsel appearing in the present PIL. D

66. We not only express a pious hope of speedy implementation but also do hereby issue a mandamus to the Central and the State Governments concerned to comply with the directions contained in this judgment effectively and expeditiously and without default. This is a matter of national benefit and progress. We see no reason why any State should lag behind in contributing its bit to bring the Inter-linking River Program to a success, thus saving the people living in drought-prone zones from hunger and people living in flood-prone areas from the destruction caused by floods. E F

67. With the observations and directions recorded supra, Writ Petition (Civil) No.512 of 2002, Writ Petition (Civil) No.668 of 2002 and all the applications filed in both these writ petitions are hereby finally disposed of with no order as to costs. G

R.P. Writ Petitions disposed of.

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