REPORTABLE

IN THE SUPREME COURT OF INDIA

ADVISORY JURISDICTION

SPECIAL REFERENCE NO. 1 OF 2004
(UNDER ARTICLE 143 (1) OF THE CONSTITUTION OF INDIA)

"IN RE: THE PUNJAB TERMINATION OF AGREEMENT ACT, 2004"

The following is the opinion of the Court:

ANIL R. DAVE, J.

1. By a Reference dated 22nd July, 2004, Hon'ble the President of India made a request for an advisory opinion to this Court under Article 143 (1) of the Constitution of India, in relation to enactment of the Punjab Termination of Agreement Act, 2004 (hereinafter referred to as "the Punjab Act") by the State of Punjab.

2. The text of the Reference referred to for the consideration & opinion of this Court is as follows:-

"WHERAS the Indus Basin comprises the rivers Indus, Jhelum, Chenab, Ravi, Beas and Sutlej;

WHEREAS the Indus Water Treaty 1960 was entered into between the Governments of India and Pakistan on 19th September, 1960, under which India is entitled to the free, unrestricted use of the waters of the Ravi, Beas and Sutlej till they finally cross into Pakistan;

WHEREAS while at the time of signing the said treaty, the waters of Sutlej had already been planned to be utilised for the Bhakra-Nangal Project, the surplus flow of rivers Ravi and Beas, over and above the pre-partition use, was allocated by the Agreement in 1955 between the concerned states as follows namely:-

Punjab (Including 1.30 MAF for Pepsu)	7.20 MAF
Rajasthan	8.00 MAF
Jammu & Kashmir	0.65 MAF
	.....
	15.85 MAF
	.....

WHEREAS after the afore-said allocation, there was a reorganisation of the State of Punjab under the Punjab Reorganisation Act, 1966 (31 of 1966) as a result of which successor states, namely, State of Punjab and State of Haryana were created and it became necessary to determine the respective shares of the successor states out of the quantum of water

which could become available in accordance with aforesaid allocation for use in the erstwhile State of Punjab and when the successor states failed to reach an agreement, a notification dated 24th March, 1976 was issued by the Central Government under Section 78 of the Punjab Reorganisation Act, 1966 under which State of Haryana was allocated 3.5 MAF quantity of water;

WHEREAS to give effect to the allocation of 3.5 MAF of water to the State of Haryana under the said 1976 notification, construction of Satluj-Yamuna Link Canal (hereinafter called SYL Canal) was started by the State of Haryana in their portion after the 1976 notification. The construction of SYL Canal was also started by Punjab in their portion in early eighties;

WHEREAS the States of Punjab, Haryana and Rajasthan entered into agreement dated 31.12.1981, by which the States of Punjab, Haryana and Rajasthan, in view of overall national interest and optimum utilisation of the waters, agreed on the reallocation of the waters among the States as follows:-

Share of Punjab	:	4.22 MAF
Share of Haryana	:	3.50 MAF
Share of Rajasthan	:	8.60 MAF
Quantity earmarked for Delhi water supply:		0.20 MAF
Share of J & K	:	0.65 MAF

.....	
Total	17.17 MAF
.....	

WHEREAS it was also agreed under the aforesaid 1981 agreement that the SYL Canal project could be completed in a time bound manner with a maximum period of two years from the date of signing of the agreement so that the State of Haryana is enabled to draw its allocated share of water. This agreement is in use for deciding the periodical distribution of waters among the concerned states by the Bhakra Beas Management Board;

WHEREAS an accord called the "Punjab Settlement" was signed on 24th July, 1985 to resolve the issues relating to the State of Punjab;

WHEREAS paragraph 9.1 of the 'Punjab Settlement' provide that the farmers of Punjab, Haryana and Rajasthan will continue to get water not less than what they are using from the Ravi-Beas System as on 1.7.1985, though waters used for consumptive purposes will also remain unaffected and that quantum of usage claimed shall be verified by the Tribunal referred to in Paragraph 9.2 of the settlement under which the claims of Punjab and Haryana regarding their shares in the remaining waters will be referred for adjudication to a Tribunal;

WHEREAS to give effect to paragraphs 9.1 and 9.2 of the 'Punjab Settlement', Section 14 was inserted

in the Inter-State water Disputes Act, 1956 under which Eradi Tribunal was constituted for verification of the quantum of usage of water claimed by the farmers of Punjab, Haryana and Rajasthan regarding shares in their remaining waters. The Tribunal forwarded a report in January, 1987. References of the States of Punjab, Haryana and Rajasthan and Central Government seeking clarification/ guidance on certain points of the report was made to the Tribunal in August, 1987 under relevant provisions of the Inter-State River Water Disputes Act, 1956. These references are under the consideration of the Tribunal at present;

WHEREAS it was also agreed under paragraph 9.3 of the 'Punjab Settlement' that the construction of the SYL Canal shall continue and it shall be completed by 15th August, 1986;

WHEREAS the SYL Canal could not be completed as the works came to a halt following the killings of Chief Engineer and a Superintending Engineer of the project in July, 1990 and were not resumed by the Government of Punjab subsequently and the State of Haryana filed Suit No. 6 of 1996 before this Hon'ble Court praying for early completion of the SYL Canal in Punjab territory;

WHEREAS the said suit was decreed by this Hon'ble Court by its order dated 15.01.2002, by relying on the 31.12.1981 agreement and the State of Punjab was directed to make the SYL

Canal functional within a period of one year;

WHEREAS the State of Punjab filed a Suit (O.S. No. 1 of 2003) seeking discharge/ dissolution of the obligation to construct the SYL Canal as directed and Suit O.S. No. 1 of 2003 was dismissed by this Hon'ble Court by its judgment and order dated 4.6.2004. The Union of India was directed in the said judgment and order dated 4.6.2004 to mobilise a central agency to take control of the canal works within a period of one month and the State of Punjab was directed to handover the works to the Central Agency within two weeks thereafter;

WHEREAS on 12th July, 2004, the State of Punjab has enacted the Punjab Termination of Agreements Act, 2004 (herein after called Punjab Act, 2004) terminating and discharging the Government of Punjab from its obligations under the agreement dated 31.12.1981 and all other agreements relating to waters of Ravi-Beas.

WHEREAS on 15th July, 2004, the Union of India filed an application for taking on record subsequent facts and developments after the passing of the order of the Hon'ble Supreme Court dated 4.6.2004 and requesting the Hon'ble Court to pass such other and further orders as deemed fit in the interest of justice;

WHEREAS doubts have been expressed with regard to the constitutional validity of the Punjab Act, 2004 and its provisions and also whether the

agreement dated 31.12.1981 can be said to have been validly terminated by the State of Punjab and whether the State of Punjab has been lawfully discharged from the said agreement;

AND whereas in view of the aforesaid, it appears that there is likelihood of the constitutional validity of the provisions of the Punjab Act 2004 being challenged in Courts of law involving protracted and avoidable litigation, that the differences and doubts have given rise to public controversy which may lead to undesirable consequences and that a question of law has arisen which is of such a nature and of such public importance that is expedient to obtain the opinion of the Hon'ble Supreme Court of India thereon;

NOW, THEREFORE, in exercise of powers conferred upon me by clause (1) of Article 143 of the Constitution of India, I, A.P.J. Abdul Kalam, President of India, hereby refer the following questions to the Supreme Court of India for consideration and report thereon, namely:

i) Whether the Punjab Termination of Agreements Act, 2004 and the provisions thereof are in accordance with the provisions of the Constitution of India;

ii) Whether the Punjab Termination of Agreements Act, 2004 and the provisions thereof are in accordance with the provisions of Section 14 of the Inter-State Water Disputes Act, 1956, Section 78 of the Punjab Reorganisation Act, 1966 and the

Notification dated 24th March, 1976 issued there under;

iii) Whether the State of Punjab had validly terminated the agreement dated 31.12.1981 and all other agreements relating to the Ravi-Beas waters and is discharged from its obligation under the said agreement(s); and

iv) Whether in view of the provisions of the Act; the State of Punjab is discharged from its obligations from the judgment and decree dated 15.01.2002 and the judgment and order dated 4.6.2004 of the Supreme Court of India."

3. In pursuance of notice issued, the learned Attorney General for India appeared and made introductory submissions with regard to the Reference and thereafter, by an order dated 2nd August, 2004, this Court, issued notices to the Union of India and States of Punjab, Haryana, Rajasthan, Himachal Pradesh, Jammu & Kashmir and the NCT of Delhi through their respective Chief Secretaries.

4. Virtually, all relevant facts which are necessary for rendering our opinion on the issues referred to this Court have been duly incorporated in the Reference and in the

circumstances, we would not like to burden our opinion by reiterating the facts. Suffice it to state that by virtue of the provisions of Article 143 of the Constitution of India this Court has to examine the validity of the Punjab Act, 2004 and we have also to examine whether the State of Punjab had validly terminated the Agreement dated 31st December, 1981 and other agreements relating to Ravi-Beas waters so as to discharge it from the obligations which it had to discharge under certain valid orders passed by appropriate authorities. However, for further clarity we may incorporate facts with regard to certain litigation, in a nutshell, which are as under:

The States of Punjab, Haryana and Rajasthan entered into an Agreement dated 31st December, 1981 which has been referred to hereinabove in the Reference, by virtue of which the States of Pubjab, Haryana and Rajasthan, in view of overall national interest and optimum utilization of Ravi and Beas waters had agreed on re-allocation of Ravi and Beas waters but as the said agreement

was not being acted upon by the State of Punjab, the State of Haryana had instituted Suit No.6 of 1996 before this Court under Article 131 of the Constitution of India impleading the State of Punjab and Union of India, seeking the following, among other, reliefs:-

> "**(a)** pass a decree declaring that the order dated 24-3-1976, the Agreement of 31-12-1981 and the Settlement of 24-7-1985 are final and binding inter alia on the State of Punjab casting an obligation on Defendant 1 to immediately restart and complete the portion of the Sutlej-Yamuna Link Canal Project as also make it usable in all respects, not only under the aforesaid order of 1976, Agreement of 1981 and Settlement of 1985 but also pursuant to a contract established by conduct from 1976 till date;
>
> **(b)** pass a decree of mandatory injunction compelling defendant 1 (failing which defendant 2 by or through any agency) to discharge its/their obligations under the said Notification of 1976, the Agreement of 1981 and the Settlement of 1985 and in any case under contract established by conduct, by immediately restarting and completing that portion of the Sutlej-Yamuna Link Canal Project in the State of Punjab and otherwise making it suitable for use within a time bound manner as may be stipulated by this Hon'ble Court to enable the

> State of Haryana to receive its share of the Ravi and Beas waters;"

5. This Court after examining all the legal aspects and provisions, passed a decree in the said Suit No. 6 of 1996 vide judgment dated 15th January, 2002, relevant portion of which is extracted hereinbelow:-

> "18. ..... The State Governments having entered into agreements among themselves on the intervention of the Prime Minister of the country, resulting in withdrawal of the pending suits in the Court, cannot be permitted to take a stand contrary to the agreements arrived at between themselves. We are also of the considered opinion that it was the solemn duty of the Central Government to see that the terms of the agreement are complied with in toto. That apart, more than Rs. 700 crores of public revenue cannot be allowed to be washed down the drain, when the entire portion of the canal within the territory of Haryana has already been completed and major portion of the said canal within the territory of Punjab also has been dug, leaving only minor patches within the said territory of Punjab to be completed. If the apprehension of the State is that on account of digging of the canal, the State of Haryana would draw more water than that which has been allocated in its favour, then the said apprehension also is thoroughly unfounded inasmuch as the source for drawing of water is only from the reservoir, which lies within the

territory of Punjab and a drop of water will not flow in the canal unless the connecting doors are open. But the quantity of water that has already been allocated in favour of the State of Haryana, must be allowed to be drawn and that can be drawn only if the additional link canal is completed inasmuch as the existing Bhakra Main Canal has the capacity of supplying only 1.62 MAF of water. This being the position, we unhesitatingly hold that the plaintiff-State of Haryana has made out a case for issuance of an order of injunction in the mandatory form against the State of Punjab to complete the portion of SYL Canal, which remains incomplete and in the event the State of Punjab fails to complete the same, then the Union Government-defendant 2 must see to its completion, so that the money that has already been spent and the money which may further be spent could at least be utilized by the countrymen. We have examined the materials from the stand point of existence of a prima facie case, balance of convenience and irreparable loss and injury and we are satisfied that the plaintiff has been able to establish each one of the aforesaid criteria and as such is entitled to the injunction sought for. This issue is accordingly answered in favour of the plaintiff and against the defendants. We, therefore, by way of a mandatory injunction, direct the defendant-State of Punjab to continue the digging of Sutlej-Yamuna Link Canal, portion of which has not been completed as yet and make the canal functional within one year from today. We also direct the Government of India – defendant 2 to discharge its constitutional obligation

> in implementation of the aforesaid direction in relation to the digging of canal and if within a period of one year the SYL Canal is not completed by the defendant-State of Punjab, then the Union Government should get it done through its own agencies as expeditiously as possible, so that the huge amount of money that has already been spent and that would yet to be spent, will not be wasted and the plaintiff-State of Haryana would be able to draw the full quantity of water that has already been allotted to its share. Needless to mention, the direction to dig SYL Canal should not be construed by the State of Haryana as a license to permit them to draw water in excess of the water that has already been allotted and in the event the tribunal, which is still considering the case of re-allotment of the water, grants any excess water to the State of Haryana, then it may also consider issuing appropriate directions as to how much of the water could be drawn through SYL Canal.
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> **19.** The Plaintiff's suit is decreed on the aforesaid terms. There will be no order as to costs."
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> [Emphasis Supplied]

6. The State of Punjab did not comply with the decree dated 15th January, 2002 passed by this Court in Suit No. 6 of 1996. On 18th January, 2002, the State of Punjab filed an application for review of said judgment dated 15th January, 2002 which was dismissed by this Court on 5th

March, 2002. On 18th December, 2002, an application was filed by the State of Haryana for enforcement of the judgment and decree dated 15.01.2002 and the said application was registered as IA No. 1 of 2002.

7. On 13th January, 2003; the State of Punjab filed suit No. 1 of 2003 under Article 131 of the Constitution of India before this Court seeking inter-alia the following reliefs:-

> **(a)** To discharge/dissolve the obligation to construct SYL Canal imposed by the mandatory injunction decreed by this Hon'ble Court in its judgment/decree dated 15.01.2002 in OS No.6/1996 for the reasons set out in the plaint;
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> **(b)** To declare that the judgment/decree dated 15.01.2002 in OS No. 6/1996 is not binding or enforceable since the issues raised in that suit could only have been decided by a Constitution Bench in terms of Article 145(3) of Constitution of India;
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> **(c)** To declare that Section 14 of the Act, 1956 is ultra-vires the Constitution of India;
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> **(d)** To declare that Section 14 of the Act, 1956 is no longer enforceable for the reasons set out in the plaint;
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> **(e)** To declare the Punjab Settlement (Rajiv Longowal Accord) is not enforceable

under the changed circumstances as set out in the Plaint:

In the alternative;

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

(f) Declare that Section 78(1) of the Act, 1966 is ultra vires the Constitution of India, and that all acts, deeds and things done pursuant thereto or in consequence thereof including all Notifications, Agreements, etc. are null and void including the notification dated 24.03.1976 and the Agreement dated 31.12.1981 as non-est and void ab initio.

8. By judgment and order dated June 4, 2004; this Court dismissed the suit filed by the State of Punjab and allowed the execution petition filed by the State of Haryana by passing inter-alia the following order:-

"96. The residuary power under Section 51(e) allows a Court to pass orders for enforcing a decree in a manner which would give effect to it. The period specified in the decree for completion of the canal by Punjab is long since over. The Union of

India has said that it had worked out a contingent action plan during this period. The contingency in the form of expiry of the one year period in January 2003 has occurred. We have not been told whether the contingency plan has been put into operation. Although it appears that the Cabinet Committee on Project Appraisals had approved the proposal for completion of the SYL canal by BRO and at a meeting convened as early as on 20-2-1991, the then Prime Minister directed that BRO take over the work for completion of the SYL Canal in the minimum time possible, BRO is not now available for the purpose. After the decree the Central Water Commission Officials have inspected the canal on 9-10-2002. The report has assessed a minimum period of about two years for removing silt deposits, clearing of trees and bushes, completing the damaged and balance works and making the canal functional and has estimated an amount of about Rs.250 crores for this purpose excluding the liabilities of Punjab. In the circumstances we direct the Union of India to carry out its proposed action plan within the following time frame:

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

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

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

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

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

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

[Emphasis Supplied]

9. In the aforestated background, on 12th July, 2004, the State of Punjab enacted the Punjab Act, 2004 with an intention to terminate the Agreement dated 31st December, 1981 and all other Agreements relating to sharing of waters of rivers Ravi and Beas. Intention behind the said enactment was also to discharge the Government of Punjab from the obligations arising under the aforestated Agreement dated 31st December, 1981 and to nullify the decrees of the Court referred to hereinabove.

10. The aforestated facts will give some further idea about the facts and circumstances in which the President of India has referred the aforestated questions to this Court for its opinion.

11. At this juncture, we would like to refer to certain unwarranted developments which took place after we started hearing this Reference. The legislature for the State of Punjab introduced Punjab Satluj Yamuna Link Canal Land (Transfer of Proprietary Rights) Bill, 2016. No assent of Goverrnor till date and therefore, it is not a legislation and will remain Bill passed by Legislative Assembly. By virtue of the aforestated legislation, the State of Punjab proposed to act in clear violation of the Agreement dated 31st December, 1981 which has been referred to in the Reference.

12. The State of Punjab had an intention to de-notify the land acquired for the purpose of construction of Sutlej Yamuna Link Canal

(hereinafter referred to as "the SYL Canal") in Punjab and in pursuance of the said enactment, the State of Punjab had started returning possession of the land already acquired to its landlords and earth moving equipments had been mobilized to level, destroy and fill up the SYL Canal which was in the process of construction.

13. In the aforestated circumstances, I.A. No.7 of 2016 had been filed by the State of Haryana praying that the operation and implementation of Punjab Satluj Yamuna Link Canal Land (Transfer of Proprietary Rights) Act, 2016 be suspended so that the entire proceedings initiated in pursuance of the Reference may not be frustrated. After hearing the concerned parties, on 17.3.2016, this Court was constrained to pass the following order:-

> "**I.A. No.7/2016 – for appropriate directions.** Taken on Board. Upon perusal of the contents of the application and upon hearing the learned counsel appearing for the parties, prima facie, it appears that an effort has been made to see that execution of a decree of this Court is

being made inexecutable and this Court cannot be a silent spectator of the said fact and therefore, we direct that status quo shall be maintained by the parties with regard to the following properties referred to in para (d)(ii) of the application:

"(d)(ii) lands, works, property and portions of the SYL canal and all lands within the alignment of the SYL canal within the territories of the State of Punjab which are covered by the judgments of this Court in State of Haryana v State of Punjab, (2002) 2 SCC 507 (paragraphs 18 and 19) and State of Haryana v State of Punjab, (2004) 12 SCC 712 (paragraph 96),".

In the circumstances, it is further directed that (i) The Secretary, Home Department, Union of India, (ii) The Chief Secretary, State of Punjab, and (iii)The Director General of Police, State of Punjab are appointed as Court Receivers as prayed for in para (d)(ii) and all the properties referred to in the said para shall be deemed to have vested in them and they shall also see that status quo is maintained with regard to the properties referred to herein-above. Counter affidavits to the application be filed on or before 28th March, 2016".

14. We have heard the learned Solicitor General of India appearing for the Union of India and learned counsel appearing for the States of Punjab, Haryana, Jammu and Kashmir (J & K),

Rajasthan, Himachal Pradesh and the NCT of Delhi at length. Several judgments were cited by the learned counsel so as to substantiate their arguments. We do not propose to refer to all the judgments cited, especially in view of the fact that the law laid down by this Court, which has been referred to by the learned counsel cannot be disputed and there are some judgments which refer to all the issues with which we are concerned. We have considered all the submissions and substance of all the judgments referred to by them and we are referring to the submissions made by them in a nutshell hereinbelow.

15. As all the questions referred to this Court are interlinked, for the sake of convenience, we have discussed the same together instead of dealing with them separately.

16. The learned counsel appearing on behalf of the State of Punjab vehemently submitted that this Reference is not maintainable under the provisions of Article 143(1) of the Constitution

of India. He submitted that several issues with regard to facts not on record are also involved and that is one of the reasons for which this Court should not render its opinion. He further submitted that it is not obligatory on the part of this Court to give its opinion in each and every matter which might be referred to this Court by the President of India. According to him, looking at the facts of this case, especially when several other incidental facts are involved in the issue referred to this Court, this Court should refuse to give its opinion. He also referred to some of the judgments which lay down law to the effect that it is not obligatory on the part of this Court to give opinion as and when a Reference is made by the President of India under the provisions of Article 143(1) of the Constitution of India.

17. He further submitted that this Court must take into account the fact that the circumstances have changed substantially in the last few years. According to him, after this Court had decreed

the suit filed by the State of Haryana referred to hereinabove, the actual position with regard to the supply of water in the rivers has remarkably changed as supply of water has been substantially reduced, which has created problems for the State of Punjab and in view of the changed circumstances, according to him, it was necessary for the State of Punjab to take a different stand and in the new set of circumstances, the Punjab Act, 2004 had to be enacted and it is imperative on the part of the Statutory Authorities and this Court to consider the said changed circumstances and therefore, the Punjab Act, 2004 cannot be said to be invalid or ultra vires the Constitution of India. He further submitted that in view of the fact that under the provisions of Section 14 of The Inter-State River Water Disputes Act, 1956 the Tribunal has already been constituted, it would be expedient to refer the entire matter to the Tribunal so that the Tribunal can consider all the relevant facts and take an appropriate decision.

18. He further submitted that the State of Punjab has already filed a suit with a prayer to constitute a Tribunal so that the dispute can be referred to the Tribunal and in the aforestated circumstances, the Reference should not be answered. Moreover, he also submitted that the law on the subject is crystal clear to the effect that whenever there is any decision with regard to sharing of waters, the decision should be reviewed periodically when the circumstances get changed i.e. when the flow of water or supply of water is changed. According to him, in the changed circumstances compliance of all earlier orders should not be insisted upon and a fresh decision based on the ground realities should be taken with regard to sharing of the waters. The sum and substance of the submissions of the learned counsel appearing for the State of Punjab was that this Reference is not at all maintainable as the law enacted by the State of Punjab is within its statutory powers.

19. In reply to the main issue with regard to the validity of the Reference the learned counsel appearing for the State of Haryana and those supporting him submitted that the Reference is maintainable and the submissions made by the learned counsel appearing for the State of Punjab did not have any substance.

20. So as to examine whether such a Reference can be made, let us consider the provisions of Article 143 of the Constitution of India, which reads as under:-

> "**Article 143: Power of President to consult Supreme Court.**-
>
> **(1)** If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion, thereon.
>
> **(2)** The President may, notwithstanding anything in the proviso to Article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon."

21. A bare perusal of Article 143 of the Constitution would show that the President is authorized to refer to this Court a question of law or fact, which in his/her opinion is of such a nature and of such a public importance that it is expedient to obtain the opinion of the Supreme Court upon it. The Article does not restrict the President to obtain opinion only on a pure question of law. The submission made by the learned counsel appearing for the State of Punjab that several questions of fact are involved in the Reference is thus hardly relevant, for the reason that an opinion can be sought on question of law and even on question of fact.

22. It is true that it is for this Court to decide whether to render its opinion to the President and it is also true that such a view has been taken by this Court and in a given case this Court can refuse to give its opinion.

23. While considering the same issue, this Court in the case of **Natural Resources Allocation, In**

Re, Special Reference No.1 of 2012 2012(10) SCC 1

has observed as under:

> **"35.** Insofar as the impact of filing and withdrawal of the review application by the Union of India against the decision in 2G case on the maintainability of the instant Reference is concerned, it is a matter of record that in the review petition, certain aspects of the grounds for review which have been stated in the recitals of the Reference as well as in some questions, were highlighted. However, there is a gulf of difference between the jurisdiction exercised by this Court in a review and the discretion exercised in answering a reference under Article 143(1) of the Constitution. A review is basically guided by the well-settled principles for review of a judgment and a decree or order passed inter se parties. The Court in exercise of power of review may entertain the review under the acceptable and settled parameters. But, when an opinion of this Court is sought by the executive taking recourse to a constitutional power, needless to say, the same stands on a different footing altogether. A review is lis specific and the rights of the parties to the controversy are dealt with therein, whereas a reference is answered keeping in view the terms of the reference and scrutinising whether the same satisfies the requirements inherent in the language employed under Article 143(1) of the Constitution. In our view, therefore, merely because a review had been filed and withdrawn and in the recital the narration pertains to the said case, the same would not be an

> embargo or impediment for exercise of discretion to answer the reference". _

24. Thus, it is within the discretion of this Court, subject to certain parameters to decide whether to refuse to answer a question on a reference. Looking at the facts of this Case, in our opinion this is not a case where this Court would like to refuse to give its opinion to the President under the provisions of Article 143 of the Constitution of India as there is no good reason for the same.

25. In the circumstances, we do not agree with the submission made by the learned counsel for the State of Punjab to the effect that we should not give our opinion simply because we are not bound to give our opinion under the provisions of Article 143 of the Constitution of India.

26. On the other hand, the learned counsel appearing for the State of Haryana narrated the history of the litigation of different States on the issue of water sharing of the rivers concerned and submitted in a nutshell that by

enacting the Punjab Act, 2004, the State of Punjab wanted to nullify the effect of the decrees passed by this Court against the said State. He further submitted that by a legislative act, a party to the litigation cannot enact a Statute which would nullify the effect of a decree passed by a Court of law and if such a thing is permitted, governance of our democracy as per rule of law would be in jeopardy because the Constitution of India provides for the manner in which the dispute among the States has to be adjudicated. If in a federal structure like ours, one State against whom a decree has been passed by this Court is permitted to enact law to nullify the decree, it would result into very hazardous consequences and mutilate the finality of a judicial verdict leading to uncertainty and that may result into legal chaos in the country. He mainly relied upon the judgments delivered by this Court in the case of **Re: Cauvery Water Disputes Tribunal**, (1993) 1 Supp. SCC 96 (II) and **State of Tamil Nadu** v. **State of Kerala and**

Another, (2014) 12 SCC 696. He submitted that our Constitution provides for separation of powers and the method of adjudication of disputes among the States. If the law incorporated in the Constitution is not followed there would not be rule of law in the country. He referred to some other judgments so as to substantiate his case, mainly to the effect that such a law would adversely affect the functioning of different branches of the Government. He also submitted that it would not be within the power of a legislature to enact law to nullify the decree of the Supreme Court.

27. He further submitted that once an Agreement with regard to sharing of waters had been executed, it becomes duty of each State, which is a party to the Agreement, to respect the Agreement and to act accordingly. In the instant case, there is not only an agreement but there are decrees of this Court, which would be nullified if such an Act is implemented. He, therefore, submitted that this Court should opine

against the constitutionality of the Punjab Act, 2004 and should also opine that it is obligatory on the part of the State of Punjab to act as per the Agreement entered into by it.

28. He further submitted that if for any reason the State of Punjab has a feeling that because of the changed circumstances, it is not possible to share waters of the rivers in the proportion decided under the Agreement or any decree, the State of Punjab or any other State, which is a party to the agreement should approach the Tribunal for getting an appropriate order so that the needful can be done for reviewing the proportion on the basis whereof the water sharing agreement had been executed. Instead of doing so, according to him, the State of Punjab has tried to exercise its legislative powers so as to nullify the decree of this Court, which is contrary to settled law.

29. He further submitted that even our federal structure would be adversely affected if a State

is permitted to act in a way which would nullify the decree passed by a competent Court. He strenuously submitted that such an Act would result into lawlessness and breaking down of the legal system.

30. The other counsel appearing for different States have supported the learned counsel appearing for the State of Haryana and they have also submitted that the State of Punjab could not have enacted the Punjab Act so as to nullify the decree of a competent Court and to unilaterally absolve itself from its liability under the Agreement.

31. Upon hearing the learned counsel and going through the record pertaining to the case and upon perusal of the judgments cited by the learned counsel, we are of the view that the Punjab Act cannot be considered to be legal and valid and the State of Punjab can not absolve itself from its duties/liabilities arising out of the Agreement in question.

32. As stated hereinabove, it is not in dispute that there was a litigation between the State of Punjab and the State of Haryana and ultimately a decree was made whereby the arrangement with regard to sharing of water as per the agreement dated 31st December, 1981 had been made. There is thus a legal sanction to the said arrangement and once a binding decree has been passed by a Court of law, a party to the litigation cannot unilaterally act in a manner which would nullify the effect of the decree.

33. In the instant case, instead of approaching the appropriate authority, namely, the Tribunal for appropriate relief, the State of Punjab exercised its legislative power by enacting the Punjab Act so as to nullify the effect of the Decree.

34. Dealing with a similar issue, this Court in the case of **State of Tamil Nadu** (supra), has held that a State "cannot through legislation do an act in conflict with the judgment of the highest

Court which has attained finality. If a legislation is found to have breached the established constitutional limitation such as separation of powers, it has to go and cannot be allowed to remain" (Para 146).

35. It has been further observed by this Court as under:-

> "**147.** It is true that the State's sovereign interests provide the foundation of the public trust doctrine but the judicial function is also a very important sovereign function of the State and the foundation of the rule of law. The legislature cannot by invoking "public trust doctrine" or "precautionary principle" indirectly control the action of the courts and directly or indirectly set aside the authoritative and binding finding of fact by the court, particularly, in situations where the executive branch (Government of the State) was a party in the litigation and the final judgment was delivered after hearing them.
>
> xxx xxx xxx
>
> **149.** This Court in Mullaperiyar Environmental Protection Forum v. Union of India [(2006) 3 SCC 643], after hearing the State of Kerala, was not persuaded by Kerala's argument that the Mullaperiyar Dam was unsafe or storage of water in that Dam cannot be increased. Rather, it permitted

Tamil Nadu to increase the present water level from 136 ft to 142 ft and restrained Kerala from interfering in Tamil Nadu's right in increasing the water level in the Mullaperiyar Dam to 142 ft. Thus, a judgment has been given by this Court in contest between the two States in respect of safety of Mullaperiyar Dam for raising the water level to 142 ft. The essential element of the judicial function is the decision of a dispute actually arising between the parties and brought before the court. Necessarily, such decision must be binding upon the parties and enforceable according to the decision. A plain and simple judicial decision on fact cannot be altered by a legislative decision by employing doctrines or principles such as "public trust doctrine", "precautionary principle", "larger safety principle" and, "competence of the State Legislature to override agreements between the two States". The constitutional principle that the legislature can render judicial decision ineffective by enacting validating law within its legislative field fundamentally altering or changing its character retrospectively has no application where a judicial decision has been rendered by recording a finding of fact. Under the pretence of power, the legislature, cannot neutralise the effect of the judgment given after ascertainment of fact by means of evidence/materials placed by the parties to the dispute. A decision which disposes of the matter by giving findings upon the facts is not open to change by legislature. A final judgment, once rendered, operates and remains in

> force until altered by the court in appropriate proceedings.
>
> **150**. The 2006 (Amendment) Act plainly seeks to nullify the judgment of this Court which is constitutionally impermissible. Moreover, it is not disputed by Kerala that the 2006 (Amendment) Act is not a validation enactment. Since the impugned law is not a validating law, it is not required to inquire whether in making the validation the legislature has removed the defect which the Court has found in existing law. The 2006 (Amendment) Act in its application to and effect on the Mullaperiyar Dam is a legislation other than substantially legislative as it is aimed at nullifying the prior and authoritative decision of this Court. The nub of the infringement consists in the Kerala Legislature's revising the final judgment of this Court in utter disregard of the constitutional principle that the revision of such final judgment must remain exclusively within the discretion of the court."

36. It has been further observed in the said judgment that a litigating person cannot become judge in its own cause. The said well known principle has been clearly depicted in paragraph 158 of the said judgment as under:-

> "**158**. There is yet another facet that in federal disputes, the legislature (Parliament and State Legislatures) cannot be judge in their own cause in the case of any dispute with another

State. The rule of law which is the basic feature of our Constitution forbids the Union and the States from deciding, by law, a dispute between two States or between the Union and one or more States. If this was permitted under the Constitution, the Union and the States which have any dispute between them inter se would enact law establishing its claim or right against the other and that would lead to contradictory and irreconcilable laws. The Constitution makers in order to obviate any likelihood of contradictory and irreconcilable laws being enacted has provided for independent adjudication of federal disputes. Article 131 of the Constitution confers original jurisdiction upon this Court in relation to the disputes between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States insofar as dispute involves any question on which the existence or extent of a legal right depends. The proviso appended to Article 131 carves out an exception to the jurisdiction of this Court to a dispute arising out of treaty, agreement, covenant, engagement, sanad or other similar instrument which have been entered into or executed before the commencement of the Constitution and continues in operation after such commencement, which are political in nature. In relation to dispute relating to waters of inter-State river or river valleys, Article 262 provides for creation of tribunal or forum for their adjudication. In

> federal disputes, Parliament or State Legislatures by law, if seek to decide a dispute between the two States or between the Union and one or more States directly or indirectly, the adjudicatory mechanism provided in Articles 131 and 262 of the Constitution would be rendered nugatory and, therefore, such legislation cannot be constitutionally countenanced being violative of separation of powers doctrine."

37. Finally, on the subject on hand, this Court observed as under in paragraph 160:

> "**160.** Where a dispute between two States has already been adjudicated upon by this Court, which it is empowered to deal with, any unilateral law enacted by one of the parties that results in overturning the final judgment is bad not because it is affected by the principles of res judicata but because it infringes the doctrine of separation of powers and rule of law, as by such law, the legislature has clearly usurped the judicial power."

38. Looking at the aforestated legal position, in our opinion, the State of Punjab had exceeded its legislative power in proceeding to nullify the decree of this Court and therefore, the Punjab Act cannot be said to be a validly enacted

legislation, as held by this Court in terms the aforestated judgments.

39. It is pertinent to note that the water dispute, which the State of Punjab and State of Haryana had, had been referred to the Tribunal as per the provisions of Section 14 of the Inter State Water Disputes Act, 1956. After considering the relevant provisions, even with regard to Section 78 of the Punjab Reorganization Act, 1966, the Tribunal had taken a judicial decision and the said decision is also sought to be disturbed by virtue of enactment of the Punjab Act. The Agreement dated 31st December, 1981 is about sharing of waters of Ravi and Beas rivers. The said Agreement could not have been unilaterally terminated by one of the parties to the Agreement by exercising its legislative power and if any party or any State does so, looking at the law laid down by this Court in the case of **State of Tamil Nadu** (supra), such unilateral action of a particular State has to be declared contrary to the Constitution of India as well as

the provisions of the Inter State Water Disputes Act, 1956.

40. Once a conclusion is arrived at to the effect that one State, which is a party to the litigation or an Agreement, cannot unilaterally terminate the Agreement or nullify the decree of the highest Court of the country, the State of Punjab cannot discharge itself from its obligation which arises from the judgment and decree dated 15th January, 2002 and the judgment and order dated 4th January, 2004 of the apex Court.

41. For the aforestated reasons, in our opinion, the Punjab Act cannot be said to be in accordance with the provisions of the Constitution of India and by virtue of the said Act the State of Punjab cannot nullify the judgment and decree referred to hereinabove and terminate the Agreement dated 31st December, 1981.

42. Thus, in our view, all the questions referred to this Court are answered in the negative.

43. This opinion shall be transmitted to the President of India in accordance with the procedure prescribed in Part V of the Supreme Court Rules, 2013.

.....J
(ANIL R. DAVE)

.....J
(PINAKI CHANDRA GHOSE)

.....J
(SHIVA KIRTI SINGH)

.....J
(ADARSH KUMAR GOEL)

.....J
(AMITAVA ROY)

New Delhi
November 10, 2016.

REPORTABLE

IN THE SUPREME COURT OF INDIA

ADVISORY JURISDICTION

SPECIAL REFERENCE NO.1 OF 2004

U/A 143(1) OF THE CONSTITUTION OF INDIA

[IN RE : THE PUNJAB TERMINATION OF AGREEMENT ACT, 2004]

O P I N I O N

SHIVA KIRTI SINGH, J.

1. Having gone through the exceedingly well formulated judgment of Anil Dave, J., I record my respectful agreement with the same. But at the same time I am tempted by the facts and nature of controversy involved in this Reference to remind all the stakeholders interested in the healthy upkeep of Indian Constitutional set-up, and particularly the States which form part of the Indian Federal structure, of the peculiar and essential features of our federal set-up. Awareness of these features is essential to keep the system healthy and transact constitutional

powers – legislative, executive and judicial on proper tracks to foster the spirit of constitutionalism.

2. It is not at all necessary to refer to a catena of judgments that tell us in most unambiguous terms that the Indian Constitution envisages a federal form of governance but with a pronounced bias and obvious tilt towards the Centre. Historically, the States were not having absolute sovereignty. The territories of States can be altered or totally taken away and even their names can be changed. Despite the distribution of legislative power by Article 246, leave aside the situations of emergency, even during normal times provisions like Articles 248, 249, 251, 252, 253 and 254 run counter to the normal legislative powers of States. Over subjects covered by the Concurrent List, in the case of any repugnancy, the laws by Parliament have superiority and prevail over those by State Legislature. Executive powers are understandably co-terminus with the legislative powers.

3. Of utmost significance, in the context at hand is supremacy of the Constitution. Even to the permissible extent, it can be amended only by the Union Parliament. The Constitution grants and recognizes supreme authority to the courts to not only interpret but also to protect the Constitution and the laws. Regardless of other features showing the Indian model to be only a quasi-federal, the Indian Constitution is very explicit and emphatic in creating checks and balances by providing for a

strong and independent judiciary and a well defined constitutional mechanism for resolving conflicts between the executive and legislative authority of the Union and those of the States. Indians have given to themselves a single Constitution and single citizenship. Judicial power is exercisable by a single set of courts within their territorial jurisdictions. High Courts are final courts at State level with constitutional powers under Articles 226 and 227. Supreme Court is undoubtedly the apex court in the hierarchy with amalgam of ultimate powers over decisions of all courts – civil, criminal, revenue and quasi-judicial tribunals. Its powers and duties are enormous not only on the appellate side but under Article 32 of the Constitution and other original jurisdictions such as Constitutional References and also original suits where the disputes may be between the States or between Union and States etc.

4. From the abovementioned set up under our Constitution, there is no difficulty in concluding that no Government, whether Central or State can usurp the power of adjudicating disputes vested in the Judiciary including High Courts and the Supreme Court. Further, as a corollary, the judgments and decrees which are the end product of exercise of judicial power cannot be set at naught by the process of legislative declaration in respect of facts and circumstances. As explained already in the main judgment,

the situation is somewhat different when a competent legislature engages itself in the exercise of validating a law declared defective or invalid for reasons which are curable.

5. An observation necessitated by the somewhat disturbing facts: delay in execution of a final judgment or decree, more so when it is of the Apex Court, should never be countenanced by any authority because it would surely tend to undermine people's faith in the judicial system of the country, entailing in turn avoidable harm to all the institutions and functionaries under the Constitution, may be even to the Constitution itself.

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
November 10, 2016