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State of Haryana v State of Punjab and Anr: Does Inter-State River Water Dispute Act override Article 131 of the Indian Constitution?

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INTRODUCTION

Water is one of the most vital natural wealth available to us by the environment, and we must learn to share it with every living being on Earth. In the past few decades, we all have faced a scarcity of water and experienced the water dispute everywhere, like the Cauvery water dispute among Kerala, Karnataka, Tamil Nadu, and Puducherry; the Krishna water dispute among Karnataka, Telangana, Andhra Pradesh, and Maharashtra. Vansadhara water dispute between Andhra Pradesh and Odisha, etc. The current case¹ revolves around one of the sensitive issues between the State of Punjab and the State of Haryana regarding the Ravi and Beas River water sharing. The Supreme Court, in this landmark case, attempts to address one of the most critical issues that will look over the inter-state water dispute cases, the Supreme Court under Article

¹ *State of Haryana v State of Punjab and Anr* (2002) 2 SC 507

131² of the Constitution or the dispute redressal Tribunal formed under the Inter-state River Water Dispute Act³.

FACTS

On 24th March 1976, Central Government released a notification, according to Section 78⁴ of the Punjab Reorganization Act. According to this notification, 3.5 MAF water has been allotted to the state of Haryana. But by the arrangement of water sharing between the two States that exist at that time i.e., through the Bhakra Main Line Canal, it was unattainable to share the allotted amount of water to Haryana by Punjab. Therefore, the Haryana Government recommends the construction of the Sutlej Yamuna link canal. This Canal would be 204km long; 112 km will be constructed in Punjab and the rest 92 km will be constructed in Haryana and the cost would bear by the central government. Later, both states approved the same.

Haryana has accomplished the construction of its part but the Punjab government showed a lack of interest in the same and has not completed its part. As a result of this, the Haryana government file a suit in the Supreme Court in 1979. Soon after, a countersuit was filed by the state of Punjab under Article 131⁵ of the Constitution challenging the notification of 1976 by the government and Section 78⁶ of the Punjab Reorganization Act. During the pendency of both the suits, an agreement was done between the two states on 31st December 1981 in which they settled on the issues like the amount of water to be shared between the states, State of Punjab was to complete its construction within 2 years of the date of signing of the agreement and the suits filed by both the states to be withdrawn.

On the 24th of July 1985, the settlement was then between the then Prime Minister of India, Late Sant Harchand Singh Longowal and then the president of Akhil Dal. The settlement was known

² Constitution of India 1950, art 131

³ Inter-state River Water Dispute Act 1956

⁴ The Punjab Reorganization Act 1966, s 78

⁵ Constitution of India 1950, art 131

⁶ The Punjab Reorganisation Act 1966, s 78

as the 'Punjab Settlement' and according to that the construction of the SYL Canal was supposed to be completed by 15th August 1986.

Under the notification release on 2nd April 1986, clauses 9.1 and 9.2 discuss specifically the issues related to water sharing, usage, and allocation and if any difference of opinion arises, it was to be dealt with by Tribunal. Clause 9.3 talked about the continuance and completion of the SYL canal by 15th August 1986. But the construction remains unfinished even by 1990. In July 1990, by doing over 90% of the construction, it was stopped and later in 1995, there was a release of a white paper that reflects the intention of the Punjab government not to complete the remaining construction of the canal. This forces the state of Haryana to file the current suit in 1996 in the Supreme Court, asking for a decree of mandatory injunction to be passed to immediately restart the leftover construction of the SYL canal by the Punjab Government and to make it usable in all aspects.

After the plaint filed by the state of Haryana, the first defendant i.e. State of Punjab, in their written statement states that the Supreme Court has no jurisdiction over the subject matter and it falls within the scope of the Inter-State Water Dispute Act⁷ and to be looked after by the Tribunal formed under the same and the state has no legal right under the Article 131⁸ of the Indian Constitution to deal with these kinds of issues. Also, they contended that the suit is barred by the limitation and the agreement made on 31st December 1981 is also invalid.

The second defended under the case i.e. Union of India states that they are not duty-bound to work on the construction of SYL Canal and they have done their part by releasing the notification on 24th of March 1973 to allocate 3.5 MAF to Haryana state and thus fulfilled their responsibility under Section 78⁹ of Punjab Reorganisation Act.

LEGAL ISSUES

1. Whether the suit is not maintainable as mentioned in the written statement?

⁷ Inter-state River Water Dispute Act 1956

⁸ Constitution of India 1950, art 131

⁹ The Punjab Reorganisation Act 1966, s 78

2. Whether the suit is barred by limitation as mentioned in the written statement?
3. Whether according to the facts presented, defendant No. 1 or defendant No. 2 is bound to make the Sutlej- Yamuna Link Canal Project, in the Punjab portion within the time defined and whether the plaintiff is entitled to the reliefs prayed?

OBSERVATIONS OF SUPREME COURT

To deal with the first issue the Supreme Court look over Article 262¹⁰ of the Indian constitution and concluded that it authorized the Indian parliament to deal with the inter-state issues concerned with water disputes. Afterward, the Parliament made an act, commonly known as 'The Inter-State Water Dispute Act 1956' which define the jurisdiction of the Tribunal over the jurisdiction of the Supreme Court or any other court. But on the other hand, Parliament has also recognized the 'Punjab settlement' and its terms and conditions were also soon after included in The Inter-State Water Dispute Act¹¹ under Section 14. According to paragraph 9.1 and 9.2 of the settlement, which states that matters related to water sharing, usage, and allocation are to be dealt with by the Tribunal but the construction of SYL Canon is mentioned in paragraph 9.3 of the settlement and its refrain from referring the dispute to the Tribunal (as not maintain along with paragraph 9.1 or 9.2) indicates that the construction matter of canal is not same as water sharing dispute. Hence concluding that, this matter is not a 'water dispute'¹².

To deal with the second issue the Supreme Court discerned that the defendant side was not giving a major focus on this particular issue and didn't have any noteworthy say on this. Further, from the petitioner's side, it was argued that according to Article 112¹³ of the limitation act, matters on behalf of or by the Central Government or any State Government are of limitation period of 30 years but if the suit is filed before the Supreme Court, then it is excluded from this limitation because the matters are usually of grave public concern.

¹⁰ Constitution of India 1950, art 262

¹¹ Inter-state River Water Dispute Act 1956, s 14

¹² Inter-state River Water Dispute Act 1956, s 2(c)

¹³ Limitation Act 1963, art 112

And lastly, to deal with the third issue which was one of the foremost concerns in this case, the Supreme Court observed that Punjab was facing the condition of turmoil and uncertainty which averted it from completing its portion of the canal. From the commencement day of the construction of the canal, the farmers of Punjab were hostile to this and contested it by doing various physical interference with the construction work. A lot of unfortunate events like militants killing the Chief Engineer and Superintendent Engineer, lead to a disturbance of law and order within the state.

Later, the Haryana government draw the attention of the Supreme Court toward the large quantity of water needed for irrigation and its limited availability leading to an increase in the number of drought-prone areas. They also contended that if the Inter-State Water Dispute Act was made by the Parliament, then the Punjab settlement was also granted Parliamentary recognition. Already more than 500 crores have been spent on the construction of this Canal in the Punjab portion and the burden of the entire money has been handled by the taxpayers and if a few leftover portions of the canal will remain unfinished, then the whole money of the taxpayer would be simply put in a dump.

JUDGEMENT

As a result, the court concluded that if the Punjab state fears that the construction of the SYL canal will lead to sharing of an additional amount of water than what is allocated in favor of Haryana, then this apprehension is erroneous, as the source of water sharing is only from the reservoir, which lies in the territory of Punjab and unless the connecting doors are open, not even a single drop of water can be shared to the state of Haryana. So the Punjab government will be in full control to check that the prescribed amount of water is only shared with Haryana. Also, the allotted quantity can't be shared with the existing canal i.e. Bhakra Main Canal, therefore there is an urgent requirement for an additional canal to share the prescribed amount of water.

After examining the situation from the point of view of a Prima facie case, the balance of convenience and irreparable loss, the court accepted the petitioner's argument and pass the

degree regarding the mandatory injection against the state of Punjab to complete the leftover portion of the SYL canal within the period of 1 year and given the responsibility to the central government to must have a check over its completion within the prescribed period and if not, then they should get it done through their agencies as soon as possible.

CURRENT SCENARIO

In January 2003, Punjab Government filed a suit against the 2002 order to dissolve its duties. Later on, in the 2004 judgment¹⁴ the Supreme Court directed the central government to take control of the Punjab government and complete the construction work of the SYL canal in the Punjab territory through its agencies. After the 2004 judgment, the Punjab Legislative Assembly repeal the water-sharing agreements with all of the neighboring States through the 'Punjab Termination of Agreements Act, 2004'. Later on, the case was again listed in the Supreme Court, and in November 2016 through a Supreme Court judgment¹⁵, the Punjab Termination of Agreement Act was declared illegal. Furious with this judgment, the Punjab government de-notified more than 5000 acres of land, which was earlier going to utilize for the construction work for the canal and return the land to its original owners, free of cost.

Further, in 2017 the Haryana state again approached the Supreme Court to seek a solution as soon as possible. The Supreme Court directed both the States government to meet and solve the matter through dialogue but Central Government informs the court that the Punjab government has refrained from coming to a negotiable table and the Punjab ministers have stated that they won't share a single drop of water to with Haryana.

ANALYSIS AND CONCLUSION

"The war of the twenty-first century will be fought over water."

- Ismail Serageldin

¹⁴ *State of Haryana v State of Punjab and Anr* (2004) Supp (2) SCR 849

¹⁵ In Re: The Punjab Termination of Agreement Act 2004

Water sharing is one of the very sensitive issues and needs to solve amicably. The Central government's statement that they have no role to solve the dispute between the two states and they have done their part, was what not they are meant for. Keeping a strong Central government is what the founding fathers of the Constitution thought so that all the states in the country are unified and well within their limits. The central government should not accept any state doing something that can harm the other state's interest rather should come forward and try to put an end to the dispute. Also, the attitude of the Punjab Government to prolong the matter and de-notify the land to raise law and order questions was perverse. These kinds of issues need to be thought from the larger interest of the country and the parties need to work it out to share the national wealth.

The most disappointing thing was that the political parties were working in a way which is in favor of their vote bank. The succeeding government must respect and continue the unfinished work of the preceding government rather than find a way to put a stop to it.