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N-60021/1/2021-BM Section-MOWR
GOVERNMENT OF INDIA
MINISTRY OF JAL SHAKTI
DEPARTMENT OF WATER RESOURCES, RD & GR
(BM DIVISION)

208, 2nd Floor, Block-III,
CGO Complex, Lodhi Road, New Delhi
Dated: 01/07/2021

To

**The Chairman,
Central Water Commission,
2nd Floor (South), Sewa Bhawan ,
R K Puram, New Delhi 110066**

Subject: Examination of Further Report submitted by Vansadhara Water Disputes Tribunal u/s 5(3) of the ISRWD Act, 1956.

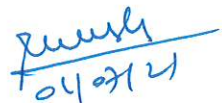
Sir,

May please refer the attached Further Report dated 21.06.2021 forwarded by Vansadhara Water Disputes Tribunal (VWDT) under section 5(3) of the ISRWD Act, 1956.

I am directed to forward this Report for examination by Central Water Commission and observations, if any, within one week positively, as one party State in the matter, Government of Andhra Pradesh, has requested to notify the Further Report.

Enc.: As above

Yours faithfully



(R.N. Singh)
Dy. Commissioner
Tel.: 24364473

VANSADHARA WATER DISPUTES TRIBUNAL

THE FURTHER REPORT

OF

THE VANSADHARA WATER DISPUTES TRIBUNAL

**IN THE MATTERS OF WATER DISPUTES REGARDING
THE INTER-STATE RIVER VANSADHARA AND
THE RIVER VALLEY THEREOF**

BETWEEN

THE STATE OF ODISHA

AND

THE STATE OF ANDHRA PRADESH

**NEW DELHI
JUNE 2021**

COMPOSITION OF
THE VANSADHARA WATER DISPUTES TRIBUNAL

(During the hearing of the References under Section 5(3) of
the Inter-State River Water Disputes Act, 1956)

CHAIRMAN

Justice Dr. Mukundakam Sharma
(Former Judge, Supreme Court of India)

MEMBERS

Mr. Justice B.N. Chaturvedi
(Former Judge, Delhi High Court)

Mrs. Justice Pratibha Rani
(Former Judge, Delhi High Court)

ASSESSORS

1. Mr. M.S. Agrawal
(Former Chairman,
Godavari River Management Board,
Ministry of Water Resources, RD & GR,
Government of India)

2. Mr. Vinay Kumar
(Former Chief Engineer,
Central Water Commission,
Ministry of Water Resources, RD & GR,
Government of India)

Advocates who represented the State Governments and Central Government before the Vansadhara Water Disputes Tribunal

1. For the State of Odisha

- i. Ms. Indira Jaising, Senior Advocate
- ii. Mr. Jayant Bhushan, Senior Advocate
- iii. Mr. Arun Kathpalia, Senior Advocate
- iv. Mr. Mohan V. Katarki, Senior Advocate
- v. Mr. Ranvir Singh, Advocate
- vi. Mr. Pawan Bhushan, Advocate
- vii. Mr. Radha Shyam Jena, Advocate-on-Record

2. For the State of Andhra Pradesh

- i. Mr. C.S. Vaidyanathan, Senior Advocate
- ii. Mr. P. Sudhakar Reddy, Additional Advocate General
- iii. Mr. G. Umapathy, Advocate
- iv. Mr. K. Janaki Rami Reddy, Advocate
- v. Mr. Y. Rajagopala Rao, Advocate-on-Record

3. For the Central Government

- i. Mr. S. Wasim A. Qadri, Senior Advocate
- ii. Smt. Vimla Sinha, Advocate
- iii. Brig. (Retd.) Dinkar Adeeb, Advocate
- iv. Mr. Saeed Qadri, Advocate

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INTRODUCTORY

**Reference No.1 of 2017
(Filed by the State of Odisha)**

And

**Reference No.2 of 2017
(Filed by the Central Government)**

Background of Decision and Order dated 13th September, 2017

1.1 The State of Andhra Pradesh initiated a proposal to construct Neradi Barrage so as to enable the State of Andhra Pradesh to start irrigation process and to supply water to its cultivators of about 203 villages covering an area of 1,07,280 acres. But in order to do it successfully and to get the said irrigation project at Neradi properly and successfully executed, it required acquisition of 106 acres of land within Odisha Territory. The State of Odisha agreed to the aforesaid proposal of construction of the Neradi Barrage which is crystal clear on a reading of the minutes of the inter-State meeting held on 04.09.1962 and also on a reading of the letter dated 03.10.1962 of the Chief Minister of the State of Odisha informing the Chief Minister of the State of Andhra Pradesh that he had taken note of the record of the discussions held between the Engineers of the two States on 04.09.1962 and 30.09.1962 and that Andhra Pradesh might now go ahead with the construction of the Neradi Barrage. The aforesaid agreement is an inter-State agreement and it is the stand of both the party States that they abide and stand by the same even today.

1.2 In order to confine the acquisition to only 106 acres of land in Odisha for implementation of the Neradi Project, the State of Andhra Pradesh forwarded a proposal in February, 1987 to the Central Water Commission (CWC) as well as to the State of Odisha duly proposing for construction of a flood protection wall of 3.5 km upstream of the barrage on left bank in Odisha territory and also a catch drain for draining out the water behind the protection wall.

1.3 This proposal was discussed in the meeting convened by the Central Water Commission on 08.04.1988 and the said proposal was agreed to by all concerned and a decision was taken with regard to the afflux. It was agreed in the said meeting convened by the Central Water Commission that the afflux due to the barrage as computed by the State of Andhra Pradesh and the effect of the afflux beyond 3 km of the protection wall upstream of the barrage is within permissible limits. However the aforesaid decision could not be given effect to immediately due to various reasons consequent upon which there was considerable delay due to which the State of Andhra Pradesh proposed construction of a side weir and connecting flood flow canal on its side of the river at Katragada as a temporary measure to draw about 8 TMC water from the river Vansadhara to meet the urgent need to provide drinking water and irrigation facilities to the inhabitants of the command area of Vansadhara Phase-II requirement. The said proposal was for construction of a 300 metre long side weir with crest level of 70.4 metres (0.9m above bed level) at 2 km upstream of the proposed Neradi Barrage. The proposed construction of the side weir did not involve any submergence and back water effect at all.

1.4 The State of Odisha conveyed its objections against the implementation of the proposed side weir on the ground that such diversion would deprive the existing irrigation of 30,000 acres of land on the Odisha side and drinking water

supply to 18 villages and would cause irreparable damage to the environment, flora-fauna and river morphology.

1.5 Being aggrieved, the State of Odisha filed a complaint to the Central Government – Ministry of Water Resources, Government of India – on 14.02.2006 under Section 3 of the Inter-State River Water Disputes Act, 1956 (hereinafter called the Act) seeking constitution of an Inter-State Water Disputes Tribunal to adjudicate the water dispute in respect of the inter-State river Vansadhara and its valley thereof with regard to the proposed construction of side weir with a flood flow canal planned on the river Vansadhara at Katragada.

1.6 In the para 5 of said complaint, the State of Odisha has outlined the specific matters in dispute whereas Para 6 thereof dealt with matters connected with or relevant to the water dispute.

1.7 But even subsequent to filing of the aforesaid complaint before the Central Government for necessary action, the negotiations and discussions between the two States continued. The State of Odisha not being satisfied with the outcome of such negotiations and discussions filed a Writ Petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court wherein the Government of India was made Respondent No.1 and State of Andhra Pradesh was made Respondent No.2 seeking the following two reliefs:

“(a) direct the Government of India to constitute an appropriate Tribunal under Section 4 of the Inter-State Water Disputes Act, 1956 and thereafter, refer to it the dispute relating to the construction of Side Channel Weir and Flood Flow Canal Project at Katragada on River Vansadhara by the State of Andhra Pradesh;

(b) issue a writ of mandamus commanding the State of Andhra Pradesh to forbear from carrying on any works of the proposed project;”

1.8 A Notice was issued on the said Writ Petition and after service of the same, the Government of India and the State of Andhra Pradesh entered appearance. Respondent No.2, the State of Andhra Pradesh filed its reply. On completion of the pleadings in the Writ Petition, arguments were heard by the Hon’ble Supreme Court. After conclusion of the arguments, the Hon’ble Supreme Court passed its orders on 6th February, 2009 allowing the Writ Petition and directing the Central Government to constitute a Water Disputes Tribunal in respect of the river Vansadhara within a period of six months from the date and to refer to the said Tribunal the dispute relating to the construction of the Side Channel Weir and Flood Flow Canal Project at Katragada on river Vansadhara by the State of Andhra Pradesh.

1.9 While allowing the Writ Petition, the Hon’ble Supreme Court in paragraph 41 observed that in principle the two States had agreed to the sharing of the Vansadhara river waters on an equal basis. The said Writ Petition was accepted by the Hon’ble Supreme Court and while allowing the said prayer the Hon’ble Supreme Court held as follows:

“.....the prayer made by the State of Odisha does not appear to be unreasonable since the dispute between the two States does not confine itself to the construction of the side channel weir and the flood flow canal, but primarily it involves the unilateral decision taken by the State of Andhra Pradesh to divert the river waters to the State of Andhra Pradesh, which could possibly disturb the agreement to share the waters of the river equally.”

1.10 Consequently, such dispute was held to be a water dispute and a direction was issued for constitution of Water Disputes Tribunal within six

months from the date of the passing of the order of the Hon'ble Supreme Court.

1.11 Subsequent to the disposal of the aforesaid Writ Petition by the Hon'ble Supreme Court, the State of Andhra Pradesh also filed a complaint under Section 3 of the Inter-State River Water Disputes Act, 1956 referring to the proposal of the Andhra Pradesh in respect of construction of Neradi barrage on the inter-State river Vansadhara. The grievances of the State of Andhra Pradesh and specific matters in dispute are enumerated in para (III) and para (V) of the said complaint.

1.12 Upon receipt of the order passed by the Hon'ble Supreme Court and also upon receipt of the complaints filed by the State of Odisha and the State of Andhra Pradesh, the Central Government in terms of the provisions of Section 4 of the Act constituted a Tribunal by issuing a Notification dated 24th February, 2010. The Central Government referred the aforesaid disputes under sub-Section (1) of Section 5 of the Act to the Tribunal for adjudication.

1.13 The Tribunal issued a notice to the parties on receipt of which the State of Odisha, the State of Andhra Pradesh and the Central Government entered appearance whereupon the State of Andhra Pradesh and the State of Odisha filed their pleadings. The Central Government did not file any pleadings in the said reference but was always represented by its Counsel before the Tribunal. On completion of the pleadings of the parties, issues were framed, evidence was allowed to be adduced by both the parties at their request and on completion of the proceedings, passing of the Final Order/award was reserved.

1.14 The Tribunal after considering the pleadings of the parties, evidence adduced in the nature of both oral and documentary and upon considering the

arguments of the Counsel appearing for the parties, passed a final order on 13th September, 2017. The final order and decision of the Tribunal which is summarised and recorded in Chapter 12 of the Report is extracted herein below for reference:

“At the end, the Tribunal records its final order and decision in the following manner:-

Clause I

The complaint filed by the State of Andhra Pradesh is held to be maintainable.

This order shall come into operation on the date of publication of the Decision of this Tribunal in the Official Gazette under section 6 of the Inter-State River Water Disputes Act, 1956.

Clause II

The Tribunal hereby declares that the yield of the river Vansadhara at Gotta Barrage is 115 TMC and this shall be shared by both the States on 50:50 basis. This was agreed to by the State of Andhra Pradesh and the State of Odisha during the meeting held on 30th September, 1962.

Clause III

The Tribunal hereby permits the State of Andhra Pradesh to construct the Side Weir along with ancillary structures as proposed. The State of Andhra Pradesh is permitted to withdraw water only upto 8 TMC from 1st of June to 30th of November every year through the Side Weir. The gates of the Head Regulator of Flood Flow canal of the Side Weir shall be closed on 1st of December or earlier, as the case may be, i.e., as soon as the total drawal of water equals to 8 TMC and the gates shall remain closed till 31st May of next year.

Clause IV

The Tribunal hereby permits the State of Andhra Pradesh to construct the Neradi Barrage across the river Vansadhara with ancillary structures. The Barrage will have a Right Head Sluice of design capacity of 8000 cusecs for meeting the requirements of State of Andhra Pradesh. The Barrage will also have a Left Head Sluice for meeting the requirements of the State of Odisha below Neradi Barrage. The capacity of this Left Head Sluice will be intimated by the State of Odisha to State of the Andhra Pradesh within six months of the publication of this order in the official Gazette. The cost of Left Head Sluice shall be borne by the State of Odisha. If and when in future, irrigation is decided in Odisha State, the cost of the proposed Neradi Barrage shall be borne between the two States on ayacut basis. This is as per the agreed resolution dated 4th September, 1962 between the two States.

Clause V

The Tribunal hereby permits the State of Andhra Pradesh to withdraw the water of Vansadhara river from Neradi Barrage during the first crop period i.e. from 1st of June to 30th of November every year. All flows thereafter shall be let down in the river for use by both the States as agreed upon.

Clause VI

Side Weir at Katragada shall be totally plugged and made completely non-functional immediately after the Neradi Barrage is commissioned.

Clause VII

The proposed Neradi Barrage project as well as the proposed Side Weir project must get necessary clearances from Central Water Commission; Ministry of Water Resources, River Development & Ganga Rejuvenation; Ministry of Environment, Forest and Climate Change; Ministry of Tribal Affairs and other statutory bodies, as required.

Clause VIII

The State of Odisha shall acquire 106 acres of land as per relevant provisions of the concerned Act in its territory, required for the Neradi Barrage Project and hand it over to the State of Andhra Pradesh within a period of one year from the date of publication of this order in the official Gazette.

Clause IX

Andhra Pradesh shall pay to Odisha all costs including compensation, charges and expenses incurred by Odisha for or in respect of the compulsory acquisition of lands, as provided in the Detailed Project Report of Neradi Barrage, which are required to be acquired for Neradi Barrage.

Clause X

Setting up of Supervisory Committee

We make the following orders with regard to setting up of Inter-State Regulatory Body (Supervisory Committee) for implementing the decision of the Tribunal. The composition, functions and powers of the Supervisory Committee are as follows:

- (1)** *A Supervisory Committee consisting of four members – two from the Central Water Commission; one from the State of Andhra Pradesh; and one from the State of Odisha shall be constituted to supervise the functioning of the Side Weir complex at Katragada and Neradi Barrage when constructed and also for implementation of the order of the Tribunal.*
- (2)** *The composition of the Committee shall be:*
 - (i) Chief Engineer, CWC - Chairman*
 - (ii) Representative of State of Andhra Pradesh - Member*
 - (iii) Representative of State of Odisha - Member*

(iv) *Superintending Engineer/Director, - Member
CWC Secretary*

(3) *The Committee shall have following functions and powers:*

(i) *To supervise the operation of the gates, of the Head Regulator of Flood Flow Canal of Side Weir complex, including the closure of the same.*

(ii) *To ensure that total drawal of water through Head Regulator of Flood Flow Canal of Side Weir complex, during the months of June to November in any year shall not in any case exceed 8 TMC, constituting a part of 50% share of water of the State of Andhra Pradesh.*

(iii) *To ensure that the gates of the Head Regulator of the Flood Flow Canal of Side Weir complex, shall open on 1st June and close on 1st December or earlier as soon as the total drawal of water equals to 8 TMC every year and the gates shall so remain closed till 31st May of next year.*

(iv) *To maintain the record of the flow upstream of the Side Weir and also of the flow passing through the Head Regulator of Flood Flow Canal. When the Flood Flow Canal is operational, it may be ensured that the flow downstream of the Side Weir is equal to or more than 4000 cusecs.*

(v) *To make periodical survey, as it deems necessary, for assessing aggradation and degradation in the river near the Side Weir and take appropriate steps thereto so as to ensure that the bed level of the Side Weir at all times shall be as per its original design.*

(vi) *To keep a close watch on the river behaviour and to ensure that if there be any silting or sedimentation in front of the Side Weir at Katragada or upstream near the Neradi Barrage, the same shall be got cleared, as and when required, through the State Government of Andhra Pradesh.*

(vii) *To ensure that the Side Weir is totally plugged and made completely non-functional immediately after commissioning of the Neradi Barrage.*

(viii) *To supervise the regulation of flows from Neradi Barrage so as to ensure:*

(a) *that the water from Vansadhara river at Neradi Barrage is withdrawn by the State of Andhra Pradesh and the State of Odisha during the period from 1st of June to 30th of November every year.*

(b) *that during the period from 1st December to 31st May every year, entire water reaching Neradi Barrage, flows down the river for use by both the States.*

(ix) *To visit the flood affected areas of Odisha, if any, impacted due to the backwater of Neradi Barrage beyond its pool level and make assessment for giving recommendations regarding compensation to be paid to the flood affected families/persons. For this purpose, the Committee may co-opt any member(s) as it deems fit.*

(4) *The Committee shall select the place for its office which shall be provided by the State of Andhra Pradesh.*

- (5)** *The expenses for the maintenance of office and all expenses for conducting the monitoring activity shall be borne by the State of Andhra Pradesh.*

The Central Government and the party States shall nominate members of the Supervisory Committee at the earliest, in any case, not later than 3 months from the date of publication of this decision in the official Gazette. No decision of the Supervisory Committee shall be invalid merely because of non-appointment of any member by any State or by reason of absence of any member.

Clause XI

The State of Andhra Pradesh, on the recommendation of the Supervisory Committee, which shall be final and binding, shall make the payment to the State of Odisha on account of the compensation for the damages, if any, caused by backwater of Neradi Barrage beyond its pool level.

Clause XII

The decision or directions as contained in this order shall be read in reference and context with the preceding discussions and the findings recorded on different issues alongwith the reasoning thereof. It is further provided that any direction given or provision made under any issue or otherwise not finding mention in this order shall also be binding and complied with by both party States as a part of this decision and this order.

Clause XIII

Nothing contained herein shall prevent the alteration, amendment or modification of all or any of the foregoing clauses by agreement between the parties or by legislation of the Parliament.

Clause XIV

Order as to costs of proceedings

The States of Andhra Pradesh and Odisha shall bear their own costs. The expenses and costs of the Tribunal shall be borne and paid by the two States in equal shares.”

1.15 Sub-Section (3) of Section 5 of the Act provides that the Central Government and/or any State Government, in case it is of the opinion that anything therein contained in the decision of the Water Disputes Tribunal requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, may within three months from the date of the decision, again refer the matter to the Tribunal for further consideration. Invoking and exercising the aforesaid power incorporated in the Act, the State of Odisha filed an application before this Tribunal on 11.12.2017 and the Central Government also filed a separate application on 12.12.2017 seeking explanation and/or guidance on the decision rendered in the Report and Final Order dated 13.09.2017 submitted by the Tribunal. The reference applications filed by the State of Odisha and the Central Government have been registered as Reference No.1 of 2017 and Reference No.2 of 2017 respectively. Both the references have been filed within the prescribed period of three months from the date of the decision.

1.16 It may be mentioned here that Mr. Justice Gulam Mohammed, one of the Members of the Tribunal unfortunately passed away on 23rd November, 2017. The vacancy so caused was filled by appointment of Mrs. Justice Pratibha Rani, as a Member of this Tribunal, who joined on 27th August, 2018. Therefore, the proceedings of the Tribunal could begin thereafter only.

1.17 The State of Odisha has sought explanation/guidance on the points like identification and submission of a map delineating 106 acres of land, manning of the secretariat of the Supervisory Committee, providing a forum for filing appeal against the decision of the Supervisory Committee, automation of regulating system by the Supervisory Committee, engaging an agency for removal of silt, plugging of side weir and taking original bank levels/ground contour levels adjacent to proposed Neradi Barrage and Side Weir.

1.18 The Central Government has sought clarification/guidance on the points like percentage dependability of declared yield of 115 TMC, availability of water or yield in river Vansadhara, project-wise utilization of respective shares of both the States, period of water year and sharing the yield in years of surplus or deficit by providing suitable distress sharing formula, quantum of water of both States to be withdrawn from Neradi Barrage when the yield is less than 115 TMC, quantum of water out of 8 TMC to be withdrawn from Side Weir in deficit or surplus years, techno-economic clearance by CWC for proposed Neradi Barrage and the Side Weir, techno-economic appraisal of DPR in CWC, authorizing Supervisory Committee for having control over upstream reservoirs and attaching a complete layout drawing of the project.

1.19 During the pendency of the aforesaid two applications, stand was taken by the State of Odisha that the State of Andhra Pradesh should identify and submit a map to the Supervisory Committee delineating and identifying 106 acres of land (to be acquired by the State of Odisha) for its approval which is necessary because in the last DPR (1986) of Neradi barrage, which was without construction of a protection wall of 3.5 km, the submergence of 1326.07 acres was indicated. According to the State of Odisha, this is more so required in view of the fact that there is no Detailed Project Report on the Neradi barrage

with a protection wall of 3.5 km. A similar stand for identification of 106 acres of land and preparation of a map in respect thereto was taken by the Central Government as well and raised in their application filed under sub-Section (3) of Section 5 of the Act. The question framed by the State of Odisha in respect of the aforesaid stand, as Question No.1 in the application, reads as follows:

“Question-1: With reference to clause VIII of the Final Order, explain and/or clarify – whether the State of Andhra Pradesh should identify and submit a map to the Supervisory Committee delineating 106 acres of land (to be acquired by the State of Odisha) for its approval?”

1.20 As stated above, the clarification sought for by the Central Government is similar in nature to that of the aforesaid clarification being Question No.1 sought by the State of Odisha. The State of Andhra Pradesh also in their reply to the notice of the aforesaid stand of the State of Odisha and the Central Government stated that it would be necessary to undertake a detailed survey and investigation of the said area so as to identify and prepare a map showing the protection wall, inspection path, catch drain and foot bridges on the left side of the river upstream of the proposed Neradi barrage. It was added that the State of Odisha was required to furnish the details as specified therein so as to enable both the States to submit the required documents and information. In view of the aforesaid position and stand taken by the parties to the proceedings and upon hearing their arguments, an order was passed by the Tribunal on 5th April, 2019 (annexed as **Annexure-I**).

1.21 The above order was issued directing that such an exercise of identifying 106 acres of land and preparing a map thereof should be done at that stage itself so as to enable all the stakeholders to identify the 106 acres of land and then carry out survey and then prepare a map which can be attached with the

Further Report which could be submitted by the Tribunal on conclusion of hearing of two applications. The following directions were issued:

“Upon considering the entire facts and circumstances of the case, we are of the considered opinion that the aforesaid exercise should be carried out through a topographical survey adhering to the accepted norms using Total Station. Consequently, we order that such a survey should be made at this stage for identification of 106 acres of the land and for preparation of a map in that regard. So far as clarification sought for by the State of Odisha under question No.7 is concerned, consideration of the same is deferred and the same would be considered and decided after hearing further arguments of the learned counsel appearing for the parties.”

1.22 The specific directions which were issued by the Tribunal in that regard were also incorporated in the said order. The State of Odisha, not being satisfied with the aforesaid order passed by the Tribunal, filed another application being IA No.1 of 2019 seeking clarification/modification/recalling of the order dated 5th April, 2019 passed by the Tribunal. The said application was taken up for arguments and upon conclusion thereof passing of the order thereon was reserved.

1.23 In the application (I.A.No.1/2019), the State of Odisha had stated that the Hon’ble Supreme Court, while hearing their SLP (filed earlier in the Supreme Court against the Order passed by this Tribunal on 5th April, 2019) on 2nd July, 2019, allowed them to withdraw the SLP to urge all aspects for clarification before the Tribunal. In this regard, it is mentioned that the aforesaid statement is not the clear reflection of the contents of the order of the Hon’ble Supreme Court, which reads as follows:

“During the course of the hearing, it is stated on behalf of the petitioner that the petitioner will withdraw the Special Leave

Petition since it intends to move the Tribunal with an application for clarification.”

1.24 It is clear therefrom that the Hon’ble Supreme Court merely recorded the statement of the counsel for the State of Odisha while passing the above-quoted order and did not grant any liberty to the State of Odisha for urging all the aspects for clarification.

1.25 Be that as it may, after hearing all parties, their replies and counter replies, this Tribunal pronounced again an Order on 23rd September, 2019 (annexed as **Annexure-II**) reiterating the directions issued by the Tribunal in its Order dated 5th April, 2019, which were to be carried out immediately and that exercise of survey and preparation of the map was to commence immediately after the monsoon was over i.e. by the end of October, 2019 positively and completed within a period of six weeks under the active and direct supervision of the Superintending Engineer, Planning circle, CWC, Faridabad. The said authority of the CWC, after completion of the exercise, was to submit a report to the Tribunal along with attachment of the survey carried out and a map prepared on or before 30th December, 2019, with copies to the representatives of both the States and the Union of India.

1.26 As the pleadings in respect of both the applications, Reference No.1 of 2017 and Reference No.2 of 2017 were complete, we took up both the applications for final arguments. Ms. Indira Jaising, Senior Counsel, Mr. Mohan Katarki, Senior Counsel and Mr. Jayant Bhushan, Senior Counsel appearing for the State of Odisha at different stages of hearing, Mr. C.S. Vaidyanathan, Senior Counsel representing the State of Andhra Pradesh and Mr. S. Wasim A Qadri, Senior Counsel followed by Mrs. Vimla Sinha, Counsel for the Central Government were heard at length on different dates on the issues of

clarifications and guidance sought and upon conclusion of the same the order was reserved.

1.27 The Counsel appearing for the parties have also filed their written arguments so as to support their oral arguments advanced during the oral hearing.

1.28 Upon consideration of the pleadings and the oral arguments followed by the written arguments filed by the parties, we have prepared our Further Report/Order which is being pronounced today.

Scope of Proceedings under Section 5(3) of the Act

1.29 Before we advert to the merits of the applications, we may mention that certain legal issues were raised by the Counsel appearing for the parties which are required to be dealt with at the very initial stage and record our views on the same. We, therefore propose to deal with those issues specifically raised in the applications by way of preliminary points.

1.30 Ms. Indira Jaising, Senior Counsel for the State of Odisha, who was earlier engaged by the State of Odisha, made certain preliminary submissions regarding the scope and extent of the powers as prescribed under Section 5(3) of the Act.

1.31 Mr. Jayant Bhushan, Senior Counsel, who was later on engaged by the State of Odisha to represent it, also made his submissions on the aforesaid scope and extent of the powers under Section 5(3) of the Act.

1.32 Mr. C.S. Vaidyanathan, Senior Counsel appearing for the Respondent State of Andhra Pradesh also made his submissions explaining to us the extent

and powers of Section 5(3) of the Act and also the dictionary and legal meanings of the two expressions, “explanation” and “guidance”.

1.33 So far as the issue with regard to the extent of powers and jurisdiction of the Tribunal to give explanation and/or guidance as indicated under Section 5(3) of the Act is concerned, the Senior Counsel for both the parties referred to us and relied upon the observations and findings of the various Water Disputes Tribunals. In order to appreciate the observations and findings made/recorded by various Water Disputes Tribunals on the scope of powers and jurisdiction exercisable under Section 5(3) of the Act, relevant portions thereof are extracted herein below:

1.34 The Krishna Water Disputes Tribunal-I headed by Mr. Justice R.S. Bachawat (former Judge of the Supreme Court of India) in its Further Report in 1976 under Section 5(3) of the Act considered the scope of Section 5(3) and observed thus:-

“This Tribunal is set up under the Inter-State Water Disputes Act, 1956. Its powers are circumscribed by the provisions of that Act. It has no inherent powers. It has some trappings of a Court. Section 9 of the Act gives the Tribunal some powers of a Civil Court and also enables it to regulate its practice and procedure. But the powers under Section 151, 152 or under Section 114 or Order 47 Rule 1 of the Code of Civil Procedure have not been conferred on it.”

“The dictionary meaning of the word “explain” is (1) to make plain or intelligible; to clear of obscurity or difficulty; (2) to assign a meaning to, state the meaning or import of; to interpret; (3) to make clear the cause, origin or reason of ; to account for; see Murray’s Oxford English Dictionary; (4) (a) to say in explanation that (b) to speak one’s mind against, upon, see The Shorter Oxford English Dictionary, 3rd Edition, Page 657. The word “explanation”

means (1) the act of explaining, expounding, or interpreting; exposition; illustration; interpretation; the act of clearing from obscurity and making intelligible; (2) the process of adjusting a misunderstanding by explaining the circumstances; reconciliation; see Webster's New Twentieth Century Dictionary, 2nd Edition, page 646; (3) explaining, esp. with view to mutual understanding or reconciliation; statement, circumstance, that explains, see The Concise Oxford Dictionary, 5th Edition, page 426; (4) that which explains, makes clear, or accounts for; a method of explaining, see The Shorter Oxford English Dictionary, 3rd Edition, page 657; (5) something that explains or that results from the act or process of explaining, see Webster's Third New International Dictionary Vol.I (1966) page 801.

The word "guide" means (1) to point out the way for; direct on a course; conduct; lead; (2) to direct (the policies, action, etc.) of; manage; regulate; govern. The word "guidance" means the act of guiding, or leading; direction, see Webster's New Twentieth Century Dictionary, 2nd Edition, Vol. I page 808."

"In interpreting Section 5(3) we must bear in mind that the jurisdiction of all Courts is barred in respect of any water dispute which has been referred to the Tribunal and that on publication in the Official Gazette, the decision of the Tribunal will be final and binding on the parties to the dispute. In this background, Section 5(3) should be construed liberally and the amplitude of the powers given by it should not be cut down by a narrow interpretation of the words "explanation" and "guidance"."

"The matters arising for consideration under Section 5(3) in these references are of such a varied nature that instead of giving a rigid and exhaustive definition of the word "explanation" used in Section 5(3) we prefer to enumerate some of the explanations that may be given with regard to things contained in the original decision. For example, explanations may be necessary (1) to make the original decision intelligible by correcting arithmetical or

clerical mistakes or errors arising from accidental slips or omissions, (2) to correct mistakes arising from allowance of water in respect of any claim more than once by inadvertence, (3) to make explicit the meaning and intention of any direction or observation in the original Report, (4) to interpret or give the meaning of any word or technical term. An omission to give necessary directions or to consider and take into account relevant material or relevant factors in arriving at any conclusion on any particular point or any lacuna in the decision may require explanation. For example, an explanation may be necessary in respect of (1) the omission to consider whether the restrictions on the uses of any State in any area require revision as and when return flows become progressively available for its use and to consider the effect of any revision of such restrictions on the uses of other States, (2) the omission to provide guidelines for the operation of the Tungabhadra Reservoir which is the common source of supply for several projects of the States of Karnataka and Andhra Pradesh, (3) the omission to take into consideration the effect of prolonged and continuous irrigation on return flow and on the quantum of dependable flow available for distribution among the parties, (4) the omission to consider relevant matters in respect of Clause XIV(B) of the Final Order.

If the Tribunal gives any explanation, the Tribunal may also give all consequential directions and reliefs arising out of such explanation.”

1.35 The Narmada Water Disputes Tribunal headed by Mr. Justice V. Ramaswami (former Judge of the Supreme Court of India) in 1979 also considered the scope of Section 5(3) of the Act and observed thus:-

“1.2.8 It is manifest that there is a sharp contrast between the language of Section 5(1) and (2) and Section 5(3) of the Act. Under Section 5(1) and (2) of the Act, the Tribunal is required to adjudicate the water dispute and give its decision on the matters referred to it. Under these sub-sections, the Tribunal shall

investigate the matters referred to it under Section 5(1) and on adjudication of the dispute, a report is to be made to the Central Government. In Ballentine's Law Dictionary (1948 edition) the word "adjudication" is defined thus: "A solemn or deliberate determination of an issue by the judicial power, after a hearing in respect to the matters claimed to have been adjudicated. See Sams v. City of New York-31 N.Y. Misc. Rep. 559, 560 64 N.Y. Supp. 68". In Bovier's Law Dictionary (8th Edition) the word "adjudication" is defined as "A judgement; giving or pronouncing judgment in a case. Determination in the exercise of judicial power. Street v. Benner 20 Fla. 700 Joseph C Irwin & Co. v. U.S." The adjudication of the dispute the investigation of the matters referred to it under Section 5(1) and the making of a report containing its decision are all obligatory on the Tribunal. The Report of the Tribunal is to contain the facts as found by the Tribunal and the decision of the Tribunal on the matters referred to it. It is manifest that after the report contemplated by Section 5(2) is forwarded to the Central Government, the adjudication process is complete. Under Section 5(3) of the Act, however, there is a provision that the Central Government or any State Government may again refer the matter for further consideration if the Central Government or the State Government is of the opinion that anything contained in the report of the Tribunal requires explanation or guidance. On receipt of such reference, the Tribunal may "forward to the Central Government a further report giving such explanation or guidance as it deems fit". It is manifest that under Section 5(3), there is no decision to be given by the Tribunal or any investigation of the matters referred to it. It is also significant to notice that on a reference under Section 5(3), it is discretionary with the Tribunal to give or not to give the explanation or guidance asked for. We are of the opinion that on a proper interpretation of Section 5(3), there cannot be a de novo trial before the Tribunal of the matter already decided. Nor is it open to the Central Government or the State Government to ask the Tribunal on a reference under Section 5(3) to re-adjudicate

any of the matters already decided by it or to modify its decision on any point already given. But the jurisdiction of the Tribunal under section 5(3) is limited to: (i) the explanation of anything contained in the report and decision under Section 5(2) and (ii) guidance upon any point which was not originally referred to the Tribunal but referred to for the first time under Section 5 (3)."

"1.3.5 Having regard to the natural meaning of the words "explanation" and "guidance" in sub-Section 5(3) of the Act and having regard to its context in relation to sub-Section 5(2) of the Act, we are of the opinion that the Tribunal cannot assume the power under Section 5(3) of the Act to review any part of its decision under Section 5(2) of the Act or to reconsider the matters already decided by it. But the Tribunal is empowered to give explanation by supplying details or to make its decision plain or intelligible by removing any obscurity or difficulty or by clearing any ambiguity. It is also permissible for the Tribunal under Section 5(3) of the Act to ascribe a meaning or to interpret any finding or any direction given under Section 5(2). The Tribunal may also under Section 5(3) correct arithmetical or clerical mistakes or errors arising from accidental slips or omissions. The Tribunal is also empowered under Section 5(3) to (a) make explicit the meaning and intention of any direction in the original report and (b) to modify its original direction or fresh direction in the nature of guidance on any matter not originally referred to the Tribunal."

".....on a fair and proper construction of Section 5(3) it must be held that Tribunal has power only of clarification and not of review or revision nor it can exercise any inherent power in giving explanation on matters referred to it. Under second clause the Tribunal has power of adjudication limited to question of guidance on matters, not originally referred to but at the same time it must be consistent with Tribunal's original decision. Any question touching the correctness or validity of Tribunal's decision, under Section 5(2) would be outside the scope of Section

5(3) of the Act.” [Different view expressed by a Member of NWDT in Further Report (Vol.II, Part I, Page 6) of NWDT]

1.36 The Krishna Water Disputes Tribunal-II headed by Justice Mr. Brijesh Kumar (former Judge of the Supreme Court) in 2013 considered the observations made by KWDT-I regarding scope of Section 5(3) of the Act and finally observed thus:-

“We feel that it may, however, be difficult to construe meaning of the expression “further consideration” so as to equate it with appeal, revision or review of a decision. It is well established that review of the decision is not permissible unless the Court is vested with the power to review its decision.

The legislature has not used any of the expressions indicated above in sub-section (3) of Section 5 of the Act. It has been preferred to use the expression explanation and guidance, as may be required, on consideration of the decision of the Tribunal. It is, therefore, clear that it was never envisaged in the scheme of the Act that a decision which is once rendered, may be subjected to re-hearing of the matter or re-appraisal of the evidence and material on record which has already been considered. There may be cases where it may be possible to take two views of the matter but one already taken by the Tribunal would not be upset or substituted only because another view was also possible. The legislature chose the expression used in sub-section (3) of Section 5 as it thought fit in its wisdom instead of expressions like appeal, revision or review which are well known expressions used in the statutes.

May be, it can be viewed that explanation and guidance may be required for securing and ensuring the implementation of the decision of the Tribunal removing the impracticability in the way of implementation of the decision. Any doubt or obscurity may be explained or guidance be provided to facilitate the implementation of the Decision of the Tribunal.

Otherwise, once the matter has been considered on appraisal of the evidence, there is no occasion to interfere with the same. The expression "further consideration" used in sub-section (3) of Section 5 is in the background of the provision contained in sub-section (2) which provides for investigation into the matter referred to it, by the Tribunal, whereafter to forward the report and the decision to the Central Government. The expression "further consideration" may, by no stretch of imagination, means that the matter is to be re-heard and material on the record is to be re-appraised. The expression "further consideration" is confined to and for the purpose of explanation required and the guidance needed. It can also be said, the remedy of reference under sub-Section (3) of Section 5 of the Act is not for supplanting anything in the decision of the Tribunal but only for supplementing the same by providing explanation or guidance so that the implementation of the decision will be ensured in the right perspective.

It will, however, narrow down the scope of the provision by sticking to the literal meaning, that too in a very strict manner, rather than to look to the spirit behind it. May be, it would not be possible to say that explanation and guidance must always be provided only to facilitate the implementation of the decision and for nothing else. There may still be some cases, though not generally, where some explanation or guidance may be required which may logically lead to consequential changes on the merit of the matter. If that be not so, it may amount to rendering the provisions contained under sub-section (3) of Section 5 redundant. The meaning of the words explanation and guidance may also imply and convey some broader sense of the expression."

"Considering the arguments of the learned Counsels, as indicated above, and our Order dated 27.4.2007 and the discussion and the views expressed by KWDT-I on the scope of sub-section (3) of Section 5, it is clear that the scope of the provisions cannot be as wide as that of the appeal which may entitle a party to re-argue

the matter or may press for fresh appraisal and re-appreciation of the material on record to take a different view or to upset the finding and decision already arrived at. No interference is envisaged to be made only because of possibility of two views on a matter. The phraseology used in sub-section (3) of Section 5 restricts and narrows the scope of interference but not to the extent that the provision may be rendered nugatory or devoid of any consequence. The meaning of the expression "explanation" and "guidance" is to be considered in a wider perspective so that, if necessary, as a consequence of explanation required modification in the decision may be made as also envisaged in the later part of sub-section (3) of Section 5. Some examples of different situations have been given by KWDT-I as to in what kind of circumstances, an explanation or guidance may be required. There may be a case where there may be misreading of the evidence or a finding may be recorded on mistaken facts or on by omitting material facts having bearing on merits, in such a situation, it may require an explanation, or guidance on further consideration of the matter. Hence, the consequential changes may be required to be made in the decision and the provision and contained under sub-section (3) of Section 5 would not fall short of it.

In the result, we are of the view that the expression explanation and guidance used under sub-section (3) of Section 5 is to be liberally construed for the reason which have already been indicated in our Order dated 27.4.2007 and there seems to be no reason to take any different view in the matter as has been taken by KWDT-I in its Further Report."

1.37 To begin with, we subscribe to the exposition of legal aspect of the issue at hand and respectfully agree with the views and findings, recorded by respective Tribunals as reflected from the excerpts, extracted hereinabove, on the ambit of powers exercisable by the Tribunals under Section 5(3) of the Act.

1.38 Adverting to the point for consideration with respect to scope of powers enjoyed by the Tribunal, constituted under Section 4(1) of the Act, it is to be borne in mind that being a statutory creation, scope of powers of this Tribunal are circumscribed by the provisions of the Act. The expressions ‘explanation’ or ‘guidance’ are not defined in the Act. Inevitably, thus, one has to fall back on the dictionary meaning thereof, as noticed in the above extracted part of Further Report of the Krishna Water Disputes Tribunal-I. At the same time, it is felt that to find true purport and import of these expressions, instead of confining to a bare literal dictionary meaning, the context in which the same occur in Section 5(3) and underlying purpose sought to be achieved thereby also need to be traversed through.

1.39 Section 5(2) of the Act mandates that on a reference under Section 5(1), the Tribunal is to embark upon a fact finding exercise by undertaking an investigation, to adjudicate upon the disputes under reference and forward its report setting out the facts as found by it and giving its decision on the matters referred to it, to the Central Government.

1.40 Further, Section 5(3) of the Act embodies a provision for another reference, within three months, by the Central Government or the State Government(s) or both, if it/they upon consideration of the Report under Section 5(2) find that anything contained therein requires ‘explanation’ or ‘guidance’, for further consideration by the Tribunal. The Tribunal may thereupon give such ‘Explanation’ or ‘Guidance’ as it deems fit, and proper and forward its Further Report under Section 5(3) to the Central Government and in that case, the decision of the Tribunal in its Report under Section 5(2) “shall be deemed to be amended accordingly”. Thus, Section 5(3) itself clearly indicates that a Report under Section 5(2) is very much amenable to

changes/amendments in terms of ‘explanation’ or ‘guidance’ given by the Tribunal. Implicitly, no amendment of the Report under Section 5(2), other than the ones consequential to ‘explanation’ or ‘guidance’ can be effected, in exercise of powers under Section 5(3). Thus, the power of the Tribunal under Section 5(3) is restricted to amendments, which are necessitated as a consequence of clarifications/explanations or guidance rendered by it and nothing beyond that. Such power cannot be exercised for review or revision of the Final Order already passed. The expression ‘further consideration’ as used in Section 5(3) of the Act is also to be understood in that context of giving effect to the power of clarification and guidance in respect of the final order and not for using the power of review or revision or for taking up a matter which is not a subject matter of Section 5(2) of the Act.

1.41 Clearly, the provisions envisaged under Section 5(3), are intended to operate as supplemental to the one contained under Section 5(2) and aim at facilitating implementation of the Tribunal’s decision under Section 5(2) by removing element(s) of impracticability, if any. The underlying purpose behind empowerment of the Tribunal under Section 5(3), as aforesaid, is to enable it to clear or remove all such difficulties, by way of ‘explanation’ or ‘guidance’ that are likely to arise and have potential to impede the implementation of its decision under Section 5(2) of the Act and no further.

1.42 Noticeably, through Section 9(1) of the Act vests the Tribunal with powers of a Civil Court, as provided under the Code of Civil Procedure, 1908 but only to a limited extent, as specified therein. The Act carries no provision for appeal, review or revision nor powers exercisable by a Civil Court under Section 151/152 of the Code of Civil Procedure are available to the Tribunal.

1.43 Cognizant of the legal position as stated in the preceding para and conscious of the fact that under the Scheme of the Act, the decision of the Tribunal attains finality on its publication by the Central Government, it was observed by the respective Tribunals referred to at the outset, that the expressions ‘explanation’ or ‘guidance’, occurring in Section 5(3), must be construed liberally in a wide perspective. Undoubtedly, keeping in mind the objective, which is aimed at being achieved, a liberal construction of these expressions, shorn of a narrow interpretation, is wholly warranted though from a different point of view. By virtue of a recent decision of the Hon’ble Supreme Court in the case of State of Karnataka and State of Tamil Nadu, reported in 2017 (3) SCC 362, a decision of the Tribunal under Section 5(2) of the Act, no longer remains immune from challenge as a challenge under Article 136 is held to be permissible. In that decision, it was held that once the Tribunal decides a dispute and passes a final order, a party aggrieved can always have the remedy for invoking the jurisdiction under Article 136 of the Constitution of India. The Hon’ble Supreme Court has expressly stated in that decision that the Court has no scintilla of doubt that the founding fathers did not want the award or the final order passed by the Tribunal to remain immune from challenge. However, in spite of the same being open to challenge now, one cannot lose sight of efficacious import of the provision under Section 5(3), enacted to overcome practical difficulties likely to arise and adversely impacting the implementation of the Report under Section 5(2), which could ultimately, if not removed/resolved/remedied, frustrate/ defeat the very purpose of incorporating the same.

1.44 In the ultimate analysis thus, we are of the view that the expressions ‘explanation’ or ‘guidance’ must be accorded a liberal construction in a wide perspective, in the light of observations made in preceding paras, to achieve

the objective of enacting Section 5(3); to pave way by undoing/resolving/removing such difficulties/impediments as brought out in the reference under Section 5(3) and ensuring/facilitating thereby full implementation of the Tribunal's Report under Section 5(2) of the Act.

1.45 The point relating to the scope of proceedings under Section 5(3) of the Act stands answered/decided accordingly.

Implementation of the Order of Tribunal

1.46 The next issue which was raised for our consideration is regarding as to which is the appropriate machinery for implementation of the order of the Tribunal. This issue was raised by Mr. C.S. Vaidyanathan, Senior Counsel appearing for the State of Andhra Pradesh. So far as this issue is concerned, the machinery for implementation of the order of the Tribunal is guided by the provisions of Section 6A of the Act, 1956 which was introduced by way of an amendment of the Act of 1956 by the Inter-State Water Disputes (Amendment) Act, 1980.

1.47 The statement of Objects and Reasons of Amendment Act, inter-alia reads as under:

“2. The decision of the Narmada Water Disputes Tribunal constituted by the Central Government under the said Act for the adjudication of the water dispute relating to the river Narmada and the river Valley thereof has revealed that the implementation of the decision of a Tribunal under the Act may involve the setting up of a machinery for the purpose. The decision of the Narmada Water Disputes Tribunal envisages inter-alia the setting up of an Inter-State administrative authority to be called the “Narmada Control Authority”, for the purpose of securing compliance with the decision and for the constitution of a Review Committee with

powers to review decision of the said Authority with respect to certain matters. For the effective functioning of the said Narmada Control Authority, it would be necessary to give effect to ensure that it can function as a distinct legal entity.”

1.48 The amendment was introduced to enable Central Government to frame a scheme for giving effect to the decision of the Tribunal rendered under sub-Sections (2) and (3) of Section 5 of the Act, 1956.

1.49 By Amendment Act 14 of 2002 to the Inter-State River Water Disputes Act, 1956, sub-Section (2) of Section 6 was introduced which inter-alia reads as under:

“(2) The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court.”

1.50 The decision of the Tribunal, on its publication in the Official Gazette by the deeming fiction has the same force as an order or decree of the Hon’ble Supreme Court.

1.51 Section 6A of the Act, 1956 is an enabling power to make a scheme to implement the decision of a Tribunal. It begins as “without prejudice to the provisions of Section 6, the Central Government may”. Introduction of Section 6A in 1980 was keeping in view the final order of NWDT, which provided for establishment of Narmada Control Authority (NCA). Pursuant to the amendment, the Central Government constituted the NCA as contained in the final order of NWDT.

1.52 Cauvery Water Disputes Tribunal (CWDT) elaborately discussed the issue of machinery for implementation of its decision and made deliberations on the

power under Section 6 & 6A of the Act, 1956 to frame a scheme and after considering the decisions of other Tribunals viz., KWDT and NWDT proceeded to hold as under:

“13. The Inter-State Water Disputes Amendment Act, 1980 does not provide for details in regard to constitution of the Machinery and its functions, the Tribunal has implied power to make recommendations in this respect. The Tribunal, considering various aspects can make recommendations for implementing its decision.

14. For this purpose, we recommend that Cauvery Management Board on the lines of Bhakra Beas Management Board may be constituted by the Central Government. In our opinion, the necessity of setting up a suitable mechanism is of utmost importance; besides whatever machinery is set up should be adequately empowered to implement the Tribunal’s decision, as otherwise, we are afraid our decision would only be on a piece of paper.

15. The mechanism shall have to be independent in character comprising of technical officers from the Central Government and representatives from the Governments of the party States on the lines of Bhakra Beas Management Board (BBMB), to achieve objective of the distribution of waters as per equitable shares determined by the Tribunal.”

1.53 To the same effect is the decision of Krishna Water Disputes Tribunal-II recorded in its Further Report. At page 357 of the said report, it is held thus:-

“Section 6A simply means that the function or power of the Central Government does not end with the publication of the decision of the Tribunal under Section 6(1) and the decision on publication becomes binding on the parties who are also under obligation to give effect to it. Section 6A has been introduced

without prejudice to Section 6. Section 6A empowers the Government to further discharge a function of framing scheme or schemes to give effect to the decision.”

1.54 The Hon’ble Supreme Court in Civil Appeal (State of Karnataka Vs. State of Tamil Nadu & Ors.), arising out of the decision rendered by CWDT, gave its judgment reported in 2018 (4) SCC 1, while interpreting Section 6A of the Act, 1956, inter-alia held in para 445 as under:

“445. We have referred to the aforesaid passages as the award of the Tribunal has to be treated as decree of the Supreme Court. It is so stated in Section 6(2) to give teeth to the award passed by the Tribunal so that none of the States can raise objection to the same and be guided by the directions of the Tribunal. The purpose of framing the scheme is exclusively for implementation of the award. The authorities cited by Mr. Ranjit Kumar, we are afraid, are of no assistance in the present context. It needs no special emphasis to state that the purpose of Section 6-A is to act in the manner in which the award determines the allocation and decides the dispute with regard to allocation or sharing of water.

Keeping that in view, we direct that a scheme shall be framed by the Central Government within a span of six weeks from today so that the authorities under the scheme can see to it that the present decision which has modified the award passed by the Tribunal is smoothly made functional and the rights of the States as determined by us are appositely carried out. When we say so, we also categorically convey that the need-based monthly release has to be respected. It is hereby made clear that no extension shall be granted for framing of the scheme on any ground.”

1.55 The Hon’ble Supreme Court directed the Central Government to frame a scheme for implementation of the decision of the Tribunal as modified by it. Pursuant to the directions, the Central Government notified the machinery for

implementation of the decision of CWDT as modified by the Hon'ble Supreme Court on 02.06.2018.

1.56 In Clause X of the final order rendered under Section 5(2) of the Act, 1956, this Tribunal inter-alia provided for setting up of Supervisory Committee for implementing its decision, and provides for composition, functions and powers of the Supervisory Committee rendered by it. The decision of the Tribunal on its publication shall become final and binding. The Central Government is thus mandated to set up the Supervisory Committee in terms of the decision of this Tribunal.

1.57 The Central Government is also mandated to prepare a scheme in terms of the findings and the conclusions recorded in the Report/Final Order of the Tribunal dated 13th September, 2017. Section 6 of the Act provides as follows:

“6. Publication of decision of Tribunal. - (1) The Central Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them.

(2) The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court.”

1.58 Section 6(1) of the Act requires the Central Government to publish the Tribunal's decision whether by way of the Report under Section 5(2) and/or Further Report under Section 5(3) in the Official Gazette. On publication, the said decision of the Tribunal becomes final and binding on the parties to the dispute and the parties are required to give effect to the same. Section 6(2) stipulates in mandatory terms that after publication in the Official Gazette by the Central Government, the decision of the Tribunal shall have the same force as an order or decree of the Supreme Court.

1.59 At this stage, it would be necessary to refer to a recent Supreme Court decision laying down the principles as to whether the final order or award passed by the Tribunal is totally immune from challenge and also as to what is the scope and extent of power under Section 6(2) of the Act. The said decision is in the case of State of Karnataka and State of Tamil Nadu (reported in 2017 (3) SCC 362) (supra). So far as the issue of immunity to challenge of the final order or award passed by the Tribunal is concerned, this is what was held by the Hon'ble Supreme Court in paragraph 71 of the judgment:-

“71. The purpose of referring to the aforesaid definition is to arrive at the conclusion that once a water dispute, as defined Under Article 262(1) read with provisions of the 1956 Act is adjudicated by the tribunal, it loses the nature of dispute. A person aggrieved can always have his remedy invoking the jurisdiction Under Article 136 of the Constitution of India. We have no a scintilla of doubt in our mind that the founding fathers did not want the award or the final order passed by the tribunal to remain immune from challenge. That is neither the express language of Article 262(1) nor it impliedly so states. Thus, the contention of the Union of India with regard to maintainability of the appeal by special leave Under Article 136 of the Constitution of India on this score stands repelled.”

1.60 So far as the scope and extent of power under Section 6(2) of the Act is concerned, the Hon'ble Supreme Court observed as follows in paragraphs 81 and 82 of the judgment:-

“81. When we apply the aforesaid principles of statutory interpretation to understand the legislative intendment of Section 6(2) it is clear as crystal that the Parliament did not intend to create any kind of embargo on the jurisdiction of this Court. The said provision was inserted to give the binding effect to the award passed by the tribunal. The fiction has been created for that

limited purpose. Section 11 of the 1956 Act, as stated earlier, bars the jurisdiction of the courts and needless to say, that is in consonance with the language employed in Article 262 of the Constitution. The Founding Fathers had not conferred the power on this Court to entertain an original suit or complaint and that is luminescent from the language employed in Article 131 of the Constitution and from the series of pronouncements of this Court. Be it clearly stated that Section 6 cannot be interpreted in an absolute mechanical manner and the words "same force as on order or decision" cannot be treated as a decree for the purpose for excluding the jurisdiction of this Court. To elaborate, it cannot be a decree as if this Court has adjudicated the matter and decree is passed. The Parliament has intended that the same shall be executed or abided as if it is a decree of this Court. It is to be borne in mind that a provision should not be interpreted to give a different colour which has a technical design rather than serving the object of the legislation. The exposition of the principles of law relating to fiction, the intendment of the legislature and the ultimate purpose and effect of the provision compel us to repel the submissions raised on behalf of the Union of India that Section 6(2) bars the jurisdiction conferred on this Court Under Article 136."

"82. We would like to clarify one aspect. Learned senior Counsel appearing for the State of Karnataka as well as the State of Tamil Nadu have commended us to various authorities which we have already referred to in the context of Article 136 of the Constitution, but the purpose behind the said delineation is to show the broad canvas of the aforesaid constitutional provision in the context of maintainability of the civil appeals. How the final order passed by the tribunal would be adjudged within the parameters of the said constitutional provision has to be debated when we finally address the controversy pertaining to the subject matter of the Civil Appeals."

1.61 By virtue of the sub-Section (2) of Section 6, the decree or order for enforcement of the order immediately becomes applicable to such a report as the Parliament has intended that such a final order would be executed or abided by, as if it is a decree of the Supreme Court. But at the same time, we have to keep in mind the principle laid down by the Hon'ble Supreme Court in State of Karnataka (supra) that the final order of a Tribunal can be treated as a decree but subject to the power and jurisdiction of the Supreme Court under Article 136 of the Constitution of India.

1.62 By virtue of the deeming fiction contained in Section 6(2), the decision of the Tribunal has the same force as an order or decree of the Hon'ble Supreme Court. Thus, in the event of non-compliance in the nature of publication of the final order in the Official Gazette, the remedy available to the aggrieved State is to approach the Hon'ble Supreme Court for execution of the decision of a Tribunal, which is a deemed decree under the Act of 1956.

1.63 This discussion therefore settles the aforesaid issue with regard to implementation of the order of the Tribunal. Having held thus we may now proceed to deal with the points/clarification/guidance sought for by the State of Odisha and the Central Government.

2

REFERENCE NO.1 OF 2017 BY THE STATE OF ODISHA

2.1 As the Reference of the State of Odisha was prior in point of time, therefore, we propose to deal with all the contentions and clarifications sought for therein and after consideration and expressing our observations on that, we would deal with various contentions and clarifications and guidance sought for by the Central Government in its reference. If, however, there is a common question which is raised by both State of Odisha and Central Government, we propose to deal with the same at one place.

Identification and Preparation of a Map delineating 106 acres of land

2.2 Ms. Indira Jaising, Senior Counsel firstly referred to the issue being Question No.1 relating to identification and preparation of a map delineating 106 acres of land (to be acquired by the State of Odisha). The Question No.1 which is framed by the State of Odisha is to the following effect:

Question-1:

With reference to clause VIII of the Final Order, explain and/or clarify – whether the State of Andhra Pradesh should identify and submit a map to the Supervisory Committee delineating 106 acres of land (to be acquired by the State of Odisha) for its approval?

2.3 It is also stated that in another application filed by the Central Government (Reference No.2 of 2017) seeking clarifications on issues mentioned therein, Clarification No.9 is similar to the issue as raised by the

State of Odisha as Question No.1. In support of the said question framed by the Central Government, it is submitted that no drawing showing submergence area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the protection wall is attached to the Report or decision of the Tribunal due to which the decision and report to that extent is not fully comprehensible. The Clarification No.9 framed by the Central Government reads as under:

Clarification No.9:

Under para 9.1 of the report, the Hon'ble Tribunal has listed out the objections of the Odisha regarding construction of the Neradi barrage. More specifically under point (3) of the said para Hon'ble Tribunal has recorded as under:

"Project regarding the construction of the Neradi barrage would call for and require acquisition of land of more than 106 acres on the side of State of Odisha as is mentioned in some of the Minutes regarding the discussions".

Under Para 9.16 of the report, the Hon'ble Tribunal has recorded its findings on the said objection which is as under:

"It is thus established that the entire embankment on the left side of the river stands on government land and when protection wall is constructed upon the same land, there is no requirement of acquisition of any land to that extent. If the existing embankment is used and utilised which has already been acquired/used for the purpose, construction of Flood Protection Wall on the said embankment and a catch drain behind the Protection Wall may require acquisition of land even less than 106 acres. Therefore, no additional land over and above 106

acres as agreed upon by both the States is required or needs to be acquired by the State of Odisha for the said purpose. Thus this objection raised by the State of Odisha is also found to be baseless and without any merit. (para 9.16)”

It is respectfully submitted that no drawing showing submergence area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the Protection Wall is attached in the report or decision of the Hon’ble Tribunal and as result the decision and report to the extent is not fully comprehensible. Hon’ble Tribunal may kindly consider attaching a complete layout drawing of the project and drawing showing submergence as above with its report and/or decision to make the report and decision fully comprehensible.

2.4 This matter regarding survey of 106 acres of land to be acquired in Odisha under proposed Neradi Barrage Project for identification and preparation of a map for 106 acres of land was heard by the Tribunal and an Order dated 5th April, 2019 (annexed as **Annexure-I**) was pronounced. The survey of 106 acres of land was to be carried out through a topographical survey adhering to the accepted norms using Total Station method by a joint survey team of the officers of the States of Odisha and Andhra Pradesh under the supervision and guidance of the Superintending Engineer, Planning Circle, Central Water Commission, Faridabad. The exercise of the survey and preparation of the map was to commence from 20th May, 2019 and to be completed within four weeks. After completion of the aforesaid exercise, a report was to be submitted by the Central Water Commission (CWC) to the Tribunal along with the attachment regarding the survey carried out and the map prepared on or before 1st July, 2019. In the meantime, the State of

Odisha filed an application (I.A.No.1 of 2019) on 8th July, 2019 praying this Tribunal for clarification/modification/recall of the order dated 5th April, 2019.

2.5 It is pointed out that in the application (I.A.No.1/2019), the State of Odisha had stated that the Hon'ble Supreme Court, while hearing their SLP (filed earlier in the Supreme Court against the Order passed by this Tribunal on 5th April, 2019) on 2.7.2019, allowed them to withdraw the SLP to urge all aspects for clarification before the Tribunal. In this regard, it is mentioned that the aforesaid statement is not the clear reflection of the contents of the order of the Hon'ble Supreme Court, which reads as follows:

“During the course of the hearing, it is stated on behalf of the petitioner that the petitioner will withdraw the Special Leave Petition since it intends to move the Tribunal with an application for clarification.”

2.6 It is clear therefrom that the Hon'ble Supreme Court merely recorded the statement of the counsel for the State of Odisha while passing the above-quoted order and did not grant any liberty to the State of Odisha for urging all the aspects for clarification.

2.7 After hearing all parties, their replies and counter replies, this Tribunal pronounced again an Order on 23rd September, 2019 (annexed as **Annexure-II**) reiterating the directions issued by the Tribunal in its Order dated 5th April, 2019, which were to be carried out immediately and that exercise of carrying out a survey and preparation of the map was to commence immediately after the monsoon was over i.e. by the end of October, 2019 positively and completed within a period of six weeks under the active and direct supervision of the Superintending Engineer, Planning Circle, CWC, Faridabad. The said authority of the CWC, after completion of the exercise, was to submit a report

to the Tribunal along with attachment of the survey carried out and a map prepared on or before 30th December, 2019, with copies to the representatives of both the States and the Union of India.

2.8 On the day of next hearing i.e. 10th January, 2020 by this Tribunal, Mr. Jayant Bhushan, Senior Counsel for the State of Odisha informed that they have preferred an SLP against the Report and the Award passed by this Tribunal, which was pending consideration before the Hon'ble Supreme Court. Besides, another SLP had also been filed by the State of Odisha against the last Order passed by this Tribunal on 23rd September, 2019 and both the SLPs were listed on that day for orders before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court passed an Order for taking up both the petitions for consideration and disposal on 4th March, 2020.

2.9 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that as no stay had been granted by the Hon'ble Supreme Court on this SLP, the Tribunal should continue the hearing in both the applications (Reference Nos.1 & 2 of 2017).

2.10 The Tribunal fixed the next date of hearing on 30th March, 2020. The Hon'ble Supreme Court on 3rd March, 2020 ordered for listing both the SLPs filed by the State of Odisha, on 15th April, 2020.

2.11 Mr. Jayant Bhushan, Senior Counsel for the State of Odisha submitted before this Tribunal on 6th October, 2020 and again on 4th March, 2021 at the time of hearing of both the applications (Reference Nos.1 & 2 of 2017) that the SLPs before the Hon'ble Supreme Court, which were slated for hearing on 15th April, 2020, however, could not be heard on that date owing to the on-going COVID-19 pandemic.

2.12 The Senior Counsel for the State of Odisha submitted in the written argument filed on 19th March, 2021 that the area of 106 acres would be for all purposes including the construction of the Neradi Barrage as well as any submergence which may result consequent to the construction of the proposed Neradi Barrage as well as the submergence due to flooding and consequent backwater effect once the barrage exists. Similarly, the Central Government has requested for attaching a complete layout drawing showing submergence area of 106 acres, etc. with the Report of this Tribunal.

2.13 We feel it necessary to clarify here that 106 acres of land in the territory of Odisha, which is required to be acquired by the State of Odisha, is for the purpose of construction of a protection wall, inspection path, catch drain, foot bridges etc. on left side of the river and it is not the submergence area as stated by the Senior Counsel for the State of Odisha and also mentioned by the Central Government in its clarification sought. The Tribunal has clearly stated in its Report and Final Order that after construction of 3.8 km long protection wall, the backwater effect would be confined only to 3 km from protection wall. As such, the area of submergence would be within the river course between the high banks/protection wall. This position at one stage i.e. on the day of final argument by Mr. Jayant Bhushan on 4th March, 2021 was accepted by him and so he submitted that he is skipping this particular issue. But later on while filing written argument he has included the words *“as well as any submergence”*. As observed hereinbefore the said land of 106 acres, to be acquired, is only for the purpose as mentioned in the beginning of this paragraph.

2.14 We are of the view that the Tribunal has already passed the Order on this question/clarification sought by the State of Odisha on 23rd September,

2019 giving detailed reasons for coming to such conclusions. This Order stands and shall form part of this Further Report but would be subject to the outcome of the SLP filed before the Hon'ble Supreme Court by the State of Odisha wherein a challenge is made to the Order passed by this Tribunal on 23rd September, 2019, which is pending. Therefore, the Question No.1 (raised by the State of Odisha) and Clarification No.9 (raised by the Central Government) shall stand answered in terms of the order passed by this Tribunal on 23rd September, 2019 but subject to the outcome of the SLP filed by the State of Odisha before the Hon'ble Supreme Court.

Secretariat of Supervisory Committee

2.15 The next question, which has been taken up by the State of Odisha relates to Secretariat of Supervisory Committee. The question as referred in the Reference Petition on this subject is as follows:

Question-2:

With regard to the powers and functions of the Supervisory Committee (Clause X of the Final Order), clarify whether the Supervisory Committee should have its Secretariat manned by personnel drawn from the Central Water Commission (CWC) and/or from non-party states.

2.16 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that a Supervisory Committee would be set-up for implementing the decision of the Tribunal as provided in Clause X of the Final Order. The Supervisory Committee is an independent body. This committee has to necessarily have a Secretariat manned by the technical and non-technical persons. The Senior Counsel submitted that the technical and non-technical personnel should either be drawn from the CWC and/or from non-party States. The Senior Counsel further

submitted that the clarifications and guidelines are necessary as prayed to avoid any unnecessary friction affecting the functioning of the Committee.

2.17 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the Supervisory Committee, being an independent body, and the members of the Committee, being high officials with vast experience, it would be entirely for the Committee to decide on all such matters.

2.18 The relevant provision regarding Supervisory Committee under Clause X of the Final Order of this Tribunal is as under:

“Setting up of Supervisory Committee

We make the following orders with regard to setting up of Inter-State Regulatory Body (Supervisory Committee) for implementing the decision of the Tribunal. The composition, functions and powers of the Supervisory Committee are as follows:

(1) A Supervisory Committee consisting of four members – two from the Central Water Commission; one from the State of Andhra Pradesh; and one from the State of Odisha shall be constituted to supervise the functioning of the Side Weir complex at Katragada and Neradi Barrage when constructed and also for implementation of the order of the Tribunal.

... ..
... ..

(4) The Committee shall select the place for its office which shall be provided by the State of Andhra Pradesh.

(5) The expenses for the maintenance of office and all expenses for conducting the monitoring activity shall be borne by the State of Andhra Pradesh.”

2.19 After hearing the arguments of the Counsel appearing for the parties, we agree that in order to carry out the task entrusted to the Supervisory Committee effectively, it must have a functional secretariat manned by technical and non-technical persons. So we clarify the point raised by the State of Odisha as under:

2.19.1 Necessarily, it is for the Supervisory Committee to take a call as to in what manner and how its secretariat shall function and to be manned. It would also therefore decide the source from which its manpower is to be drawn. But the fact remains that the Secretariat of the Supervisory Committee is necessarily to be manned by both technical and non-technical persons with minimum strength just to carry out the functions assigned to the Committee. Posting of personnel drawn from non-party States for the Supervisory Committee will not be workable. As such, it could be appropriate that technical persons be drawn from CWC. In case CWC is not in a position to post all the technical persons, then such persons may be posted by both the States in equal strength. All the non-technical persons (Group 'C' and Group 'D') may be posted by both the States, viz. Andhra Pradesh and Odisha in equal strength.

2.19.2 Clause X of the Final Order dated 13th September, 2017 of the Tribunal stands clarified as indicated above.

Appeal against the Decision of Supervisory Committee

2.20 The next question, which has been taken up by the State of Odisha relates to the appeal by the aggrieved State to the Secretary to the Union Ministry of Water Resources against the decisions of the Supervisory Committee. The question No.3 which is framed by the State of Odisha on this subject is as follows:

Question-3

With regard to the Supervisory Committee (Clause X of the Final Order), explain and/or clarify whether guidelines are necessary with regard to appeal by the aggrieved State to the Secretary to the Union Ministry of Water Resources against the decision of the Supervisory Committee?

2.21 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that the Supervisory Committee, constituted under the Report and Final Order dated 13.09.2017 of this Hon'ble Tribunal, has been conferred with various functions and powers which includes, inter alia, supervision of the operation of gates (Cl. X(3)(i)) and drawal of water (Cl. X(3)(ii)) at the Side Weir and Supervision of the regulation of flow from Neradi Barrage (Cl. X(3)(vii)). Therefore, guidelines may be required with regard to the timely processing of appeal against the direction issued by the Supervisory Committee while exercising its powers and functions conferred under Cl. X(3).

2.22 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the Supervisory Committee, being an independent body, and the members of the Committee, being high officials with vast experience, the Appellate Authority is not necessary on its decisions.

2.23 Mr. S. Wasim A Qadri, Senior Counsel for the Central Government cited the scheme called Narmada Water Scheme formulated under Section 6A of the Inter-State River Water Disputes Act, 1956 for implementing the decision of the Narmada Water Disputes Tribunal. Under this Scheme, Narmada Control Authority and a Review Committee were set up. The Review Committee (Appellate Authority in this case) consists of five Members including the Chairman viz. Union Minister In-charge of Irrigation as Chairman,

Chief Ministers of four States, namely, Madhya Pradesh, Gujarat, Maharashtra and Rajasthan as its Members. The Secretary to the Government of India, Ministry of Irrigation is its Convenor, but shall not have any voting right. The Review Committee may review the decision of the Authority and its decisions will be by consensus. In case where no consensus is possible, the decisions shall be by majority of votes of Members including the Chairman. The decisions of the Review Committee shall be recorded in writing and shall be final and binding on all the States.

2.24 Now, the relevant provisions under Clause X of the Final Order of this Tribunal are as under:

“Clause X

Setting up of Supervisory Committee

We make the following orders with regard to setting up of Inter-State Regulatory Body (Supervisory Committee) for implementing the decision of the Tribunal. The composition, functions and powers of the Supervisory Committee are as follows:

(1) *A Supervisory Committee consisting of four members – two from the Central Water Commission; one from the State of Andhra Pradesh; and one from the State of Odisha shall be constituted to supervise the functioning of the Side Weir complex at Katragada and Neradi Barrage when constructed and also for implementation of the order of the Tribunal.*

... ..

(3) *The Committee shall have following functions and powers:*

- (i) To supervise the operation of the gates, of the Head Regulator of Flood Flow Canal of Side Weir complex, including the closure of the same.*
- (ii) To ensure that total drawal of water through Head Regulator of Flood Flow Canal of Side Weir complex, during the months of June to November in any year shall not in any case exceed 8 TMC, constituting a part of 50% share of water of the State of Andhra Pradesh.*
- (iii) To ensure that the gates of the Head Regulator of the Flood Flow Canal of Side Weir complex, shall open on 1st June and close on 1st December or earlier as soon as the total drawal of water equals to 8 TMC every year and the gates shall so remain closed till 31st May of next year.*
- (iv) To maintain the record of the flow upstream of the Side Weir and also of the flow passing through the Head Regulator of Flood Flow Canal. When the Flood Flow Canal is operational, it may be ensured that the flow downstream of the Side Weir is equal to or more than 4000 cusecs.*
- (v) To make periodical survey, as it deems necessary, for assessing aggradation and degradation in the river near the Side Weir and take appropriate steps thereto so as to ensure that the bed level of the Side Weir at all times shall be as per its original design.*
- (vi) To keep a close watch on the river behaviour and to ensure that if there be any silting or sedimentation in front of the Side Weir at Katragada or upstream near the Neradi Barrage, the same shall be got cleared, as and when required, through the State Government of Andhra Pradesh.*
- (vii) To ensure that the Side Weir is totally plugged and made completely non-functional immediately after commissioning of the Neradi Barrage.*

(viii) *To supervise the regulation of flows from Neradi Barrage so as to ensure:*

(a) *that the water from Vansadhara river at Neradi Barrage is withdrawn by the State of Andhra Pradesh and the State of Odisha during the period from 1st of June to 30th of November every year.*

(b) *that during the period from 1st December to 31st May every year, entire water reaching Neradi Barrage, flows down the river for use by both the States.*

(ix) *To visit the flood affected areas of Odisha, if any, impacted due to the backwater of Neradi Barrage beyond its pool level and make assessment for giving recommendations regarding compensation to be paid to the flood affected families/persons. For this purpose, the Committee may co-opt any member(s) as it deems fit.*

... ..
... ..”

2.25 After hearing the arguments of the Counsel appearing for the parties, we express that it would be appropriate to have a Review Authority for reviewing the decision of the Supervisory Committee constituted for effective implementation of the decision of the Tribunal. We clarify the point raised by the State of Odisha as under:

2.25.1 The Supervisory Committee (an Inter-State Regulatory Body) has been ordered to be set up and entrusted with supervising the functioning of the Side Weir complex at Katragada and Neradi Barrage, when constructed, and also for implementation of the order of the Tribunal. Needless to state that the members of the Committee would be highly placed officers with vast

experience and therefore, the decision that would be taken by such committee would be appropriate, just and proper.

2.25.2 We are of the view that since the Supervisory Committee is to only implement the decision of the Tribunal and no other decision is required to be taken by the Committee, the question of appeal by the aggrieved State to the Secretary to the Union Ministry of Water Resources against the decision of the Supervisory Committee in normal circumstances should not arise. It may be mentioned here that there is one member each from Andhra Pradesh and Odisha in the Supervisory Committee. The action taken/directions issued by the Supervisory Committee in implementation of the decision of the Tribunal would be considered one and a conscious decision. In case, there is a disagreement on any issue it would be decided by a majority. However, for effective implementation of the decision of the Tribunal, a Single Member Review Authority may be set up to review the decisions of the Supervisory Committee constituted for implementation of the decision of the Tribunal as provided under Section 6A(2) of the Act.

2.25.3 Therefore, it is provided as follows:

Review Authority: The resolution/direction of the Supervisory Committee shall be reviewable on application of either of the party States and the decision of the Review Authority on the review petition, if any preferred, shall be final and binding on both the States. The Secretary of the Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti, Government of India would be the Single Member Review Authority. The Review Authority so constituted shall give opportunity of hearing to the Party States to the Review Petition, before taking any decision in the matter. The Review Authority may also, if necessary, call for the records and comments of

the Supervisory Committee on the Review Petition. The decision shall be recorded in writing.

2.25.4 The provision as made in the preceding paragraph shall be added as sub-Para 10.94.1 at page 324 under Para 10.94 (relating to the Supervisory Committee) to the Report (Vol.-II) and the Decision of this Tribunal shall be deemed to be modified to the extent indicated above by adding the above noted clause as Clause X(A) after Clause X of the Final Order and Decision dated 13th September, 2017 of the Tribunal.

2.25.5 Now, the existing provision under Clause XI of the Final Order of the Tribunal is as under:

“The State of Andhra Pradesh, on the recommendation of the Supervisory Committee, which shall be final and binding, shall make the payment to the State of Odisha on account of the compensation for the damages, if any, caused by backwater of Neradi Barrage beyond its pool level.”

2.25.6 Consequent upon the constitution of the Review Authority, the aforesaid clause stands deemed to be modified partly by inserting the words “subject to the decision, if any, by the Review Authority” in this clause and the modified clause is as under:

“The recommendation of the Supervisory Committee, subject to decision, if any, by the Review Authority, shall be final and binding, and the State of Andhra Pradesh, on the basis of recommendation of the Supervisory Committee/ Review Authority, shall make the payment to the State of Odisha on account of the compensation for the damages, if

any, caused by backwater of Neradi Barrage beyond its pool level.”

2.25.7 The Report and the Final Order of this Tribunal shall be deemed to be modified to the extent indicated above.

Automation of Regulating System

2.26 The next question, which has been raised by the State of Odisha relates to Automation of regulating system by the Supervisory Committee by installing State of the art telemetry network and GPS video system. The question as referred in the Reference Petition on this subject is as follows:

Question-4:

With regard to the Supervisory Committee (Clause X of the Final Order) explain and/or clarify whether guidelines are necessary for automation of the regulating system by the Supervisory Committee by installing State of art telemetry network and GPS video system.

2.27 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha as also Mr. Jayant Bhushan, Senior Counsel submitted that the Supervisory Committee has been conferred with various functions and powers which includes, supervision of the operation of gates (Cl. X(3)(i)), drawal of water (Cl. X(3)(ii)) from the Side Weir and the regulation of flow from Neradi Barrage (Cl. X(3)(vii)). He further added that under Clause III, the State of Andhra Pradesh is permitted to withdraw water only up to 8 TMC from 1st of June to 30th November through the Side Weir. Hence, a live streaming of flow data is necessary from the Supervisory Committee effectively and also to avoid or prevent violations. Mr. Bhushan requested for issuing appropriate guidelines for installation of the State of art telemetry network and GPS video system. He

further submitted that the clarifications and guidelines are necessary as prayed for because it may create unnecessary friction affecting the functioning of the Supervisory Committee.

2.28 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the clarification has been sought by the State of Odisha regarding framing guidelines for automation of the regulating system, establishment of Telemetry System. It is for the Supervisory Committee, comprising the experts in the respective fields, to take appropriate decision for implementation of the decision of the Tribunal.

2.29 Now, the relevant provisions of the Final Order of this Tribunal is as under:

Clause III

“The Tribunal hereby permits the State of Andhra Pradesh to construct the Side Weir along with ancillary structures as proposed. The State of Andhra Pradesh is permitted to withdraw water only upto 8 TMC from 1st of June to 30th of November every year through the Side Weir. The gates of the Head Regulator of Flood Flow canal of the Side Weir shall be closed on 1st of December or earlier, as the case may be, i.e., as soon as the total drawal of water equals to 8 TMC and the gates shall remain closed till 31st May of next year.”

Clause X(3)

“(i) To supervise the operation of the gates, of the Head Regulator of Flood Flow Canal of Side Weir complex, including the closure of the same.

(ii) To ensure that total drawal of water through Head Regulator of Flood Flow Canal of Side Weir complex, during the months of June to November in any year shall

not in any case exceed 8 TMC, constituting a part of 50% share of water of the State of Andhra Pradesh.”

(iii) To ensure that the gates of the Head Regulator of the Flood Flow Canal of Side Weir complex, shall open on 1st June and close on 1st December or earlier as soon as the total drawal of water equals to 8 TMC every year and the gates shall so remain closed till 31st May of next year.

(iv) To maintain the record of the flow upstream of the Side Weir and also of the flow passing through the Head Regulator of Flood Flow Canal. When the Flood Flow Canal is operational, it may be ensured that the flow downstream of the Side Weir is equal to or more than 4000 cusecs.

...

(viii) To supervise the regulation of flows from Neradi Barrage so as to ensure:

(a) that the water from Vansadhara river at Neradi Barrage is withdrawn by the State of Andhra Pradesh and the State of Odisha during the period from 1st of June to 30th of November every year.

(b) that during the period from 1st December to 31st May every year, entire water reaching Neradi Barrage, flows down the river for use by both the States.”

2.30 After hearing the arguments of the Counsel appearing for the parties, we are of the opinion that a State of the art telemetry network is required to be installed and clarify the point raised by the State of Odisha as under:

2.30.1 The telemetry network is an automatic water level and flow measuring system, which records the desired flow parameters continuously and enables availability of the data for any desired time. We, therefore,

recommend installation of a robust State of the art telemetry network at the Side Weir and Neradi Barrage for monitoring drawal of water from the Side Weir and regulation of flow from Neradi Barrage. The Supervisory Committee would be fully competent to get installed the telemetry network, operate the system systematically and according to technical requirement, and also to frame the necessary guidelines. Therefore, no guidelines in this regard are being issued by the Tribunal. As per Tribunal's Final Order, all the expenses for conducting monitoring activity shall be borne by the State of Andhra Pradesh and therefore, the cost of the telemetry network including O&M costs shall also be borne by the State of Andhra Pradesh.

2.30.2 Clause III and sub-clauses (i), (ii), (iii), (iv) & (viii) of Clause X(3) of the Order dated 13th September, 2017 of the Tribunal stand clarified as indicated above.

Engaging Agency for Removal of Silt

2.31 The next question, which has been taken up by the State of Odisha relates to engaging a central agency or a private agency, in the event of non-cooperation by the State of Andhra Pradesh, for removal of the silt. The question as referred in the Reference Petition on this subject is as follows:

Question-5:

With reference to Clause X (3)(vi) of the Final Order, explain and/or clarify whether the Supervisory Committee is also competent to engage a central agency or a private agency, in the event of non-cooperation by the State of AP, for removal of the silt.

2.32 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that under Clause X(3)(vi), it

is directed that the Supervisory Committee shall ensure that in the event of silting and sedimentation in front of the proposed Side Weir at Katragada or upstream of the Neradi Barrage, the same shall be cleared through the State of Andhra Pradesh. Any delay in addressing the aggradation of the river may cause enormous damage to the life and property of the inhabitants living closer to the bank of the river and therefore, it was submitted that appropriate guidelines may be issued to engage a central agency, in the event of non-cooperation by the State of Andhra Pradesh, for removal of the silt.

2.33 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh stated that the clarification has been sought by the State of Odisha regarding need for central agency or private agency in the event of non-cooperation by the State of Andhra Pradesh for removal of silt. As regards removal of silt, there is provision for undersluices in the design of Neradi Barrage, which will prevent siltation on upstream.

2.34 The Senior Counsel for the State of Andhra Pradesh further submitted that the Tribunal has dealt with this aspect in para 9.20 at page 258 of the Report (Vol.-II) of the Tribunal, wherein it has been indicated that there is hardly any chance of the pond getting cumulatively silted up. It is also mentioned in Para 9.21 at Page 258 of the Report (Vol.-II) that Prof. Yoganarasimhan's study (witness of Odisha) also categorically stated that undersluice gates in the barrage will flush out all sedimentation in front of the gates. Thus, the apprehension of Odisha that the siltation will cause enormous damage is totally misplaced. However, State of Andhra Pradesh will take up desiltation as per the decision taken by the Supervisory Committee. It is for the Supervisory Committee to take appropriate decision for implementation of the decision of the Tribunal.

2.35 Now, the relevant provision under Clause X(3)(vi) of the Final Order of this Tribunal is as under:

“To keep a close watch on the river behaviour and to ensure that if there be any silting or sedimentation in front of the Side Weir at Katragada or upstream near the Neradi Barrage, the same shall be got cleared, as and when required, through the State Government of Andhra Pradesh.”

2.36 After hearing the arguments of the Counsel appearing for the parties, we state that in the Final Order, we directed the Supervisory Committee that as and when required, the silt or sediment in front of the Side Weir at Katragada or upstream near the Neradi Barrage may be got cleared through the State Government of Andhra Pradesh. However, to obviate any confusion, we clarify the point raised by the State of Odisha as under:

2.36.1 It clarified that the Supervisory Committee is competent enough to get the said work and given task carried out and may devise its own method and manner of tackling the issue. The apprehension of the Odisha that any delay in addressing the aggradation in the river may cause enormous damage to the life and property of the inhabitants living closer to the bank of the river is baseless and not correct as the aggradation is a gradual process and the Supervisory Committee is and would always keep a close watch and get cleared the silt, as and when required. The State of Andhra Pradesh has stated that they will take up desiltation as per the decision taken by the Supervisory Committee. We must note and accept the statement of the Counsel for the State of Andhra Pradesh regarding removal of silt for which it is stated that there would be provision for undersluices in the design of Neradi Barrage, which would prevent siltation on upstream. Prof. Yoganarasimhan, the witness of State of Odisha also supported the view. This statement of the witness was

referred to and relied upon by the Tribunal as appearing in para 9.21, page 258, Vol. II of the Report. As regards the apprehension of Odisha regarding delay in addressing the aggradation of the river, the decision for engaging a central agency or otherwise for removal of the silt would be considered and decided by the Supervisory Committee depending upon need based and the actual ground situation of silting in the river.

2.36.2 For the reasons mentioned above, we find no force in Question-5 of the State of Odisha. The point raised under the clarification sought only deserves to be rejected.

Plugging of Side Weir

2.37 The next question, which has been taken up by the State of Odisha relates to the plugging of the Side Weir under the supervision of the Supervisory Committee. The question as referred in the Reference Petition on this subject is as follows:

Question-6:

With reference to Clause X (3)(vii) of the Final Order, explain and/or clarify whether after plugging the Side Weir, the crest level of the Side Weir should be raised up to High Flood Level (HFL) under the Supervision of Supervisory Committee.

2.38 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that the Supervisory committee has been directed to ensure that the Side Weir is totally plugged and made completely non-functional immediately after commissioning of the Neradi Barrage. The height of the proposed side weir is 0.7 mtrs from the bed level, which is lower than the banks on right side of the river lying in the State of Andhra Pradesh. He requested for clarification by the Tribunal that after the

Side Weir is totally plugged, the height of the Side Weir should be increased up to the height of the banks in order to prevent the water of the river Vansadhara from escaping over the Side Weir.

2.39 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that in the Side Weir complex, the body wall of the Side Weir has no controlled regulation and flood waters spill over it. The Head Regulator of the Side Weir complex, which is a gated structure, has got the controlling arrangement and thus acts as a control to stop the flow of Vamsadhara river water into the Flood Flow Canal. The entire Side Weir complex is fully protected even beyond the High Flood Level (HFL) since a Free Board of 1.80 m is provided over and above HFL. He submitted that the Head Regulator of the Side Weir complex will be fully plugged so that no flood waters will be discharged through the Head Regulator of the Side Weir complex after commissioning of the Neradi Barrage.

2.40 Mr. S. Wasim A Qadri, Senior Counsel for the Central Government submitted that the task of plugging and making it completely non-functional is given to the Supervisory Committee in terms of the Clause X(3)(vii) of the Final Order. The purpose of making such provision is not to allow any additional water to flow down the Side Weir purposely or otherwise. He further submitted that the Supervisory Committee can take necessary steps for making the Side Weir completely non-functional depending on the experience gained by it over a period of time and, therefore, the matter should be left to the discretion of the Supervisory Committee.

2.41 Now, the relevant provision under Clause X(3)(vii) of the Final Order of this Tribunal is as under:

“To ensure that the Side Weir is totally plugged and made completely non-functional immediately after commissioning of the Neradi Barrage.”

2.42 After hearing the arguments of the Counsel appearing for the parties, we observe that necessary direction in that regard is already issued by us as indicated hereinabove but to obviate any confusion we issue a clarification to the point raised by the State of Odisha as under:

2.42.1 The Order of the Tribunal is to totally plug the Side Weir and make it completely non-functional. This direction implies that all appropriate measures may be taken to ensure that no water flows through it at any level of water in the river. It is further clarified that the plugging of the Side Weir may be done at the location where the river bank has been cut and the weir has been constructed. Further, the plugging has to be done to the height upto the level of the original natural banks of the river. By plugging the weir site, no water shall flow down the Side Weir and that there shall be no flow at all to go through the Side Weir. The members of the Supervisory Committee being technical persons and also possessing wide experience would definitely use their vast experience and expertise to implement and give effect to the Order of the Tribunal.

2.42.2 The provision as made in the preceding paragraph shall be added as sub-Para 10.87.1 at page 319 under Para 10.87 to the Report (Vol.-II).

2.42.3 The Report and the Decision of this Tribunal shall be deemed to be modified to the extent by inserting a sub paragraph at page 359 after Clause X(3)(vii) of the Final Order and Decision dated 13th September, 2017 of the Tribunal as below:

“The plugging of the Side Weir shall be done at the location where the river bank has been cut and the side weir has been constructed. The plugging may be done to the height upto the level of the original natural banks of the river.”

Taking Original Ground Levels adjacent to Neradi Barrage and Side Weir

2.43 The next question, which has been taken up by the State of Odisha relates to taking original bank levels, ground contour levels of the river bed and lands adjacent to the river near proposed Neradi Barrage and the Side Weir. The question as referred in the Reference Petition on this subject is as follows:

Question-7:

With reference to the functions of the Supervisory Committee (Clause X(vi)), clarify and/or explain whether it is necessary to take the original bank levels, ground contour levels of the river bed and lands adjacent to the river at an interval of 300 mtrs from Kashinagar to Gunupur (before the start of the civil works of the proposed Neradi Barrage and the Side Weir) and have it deposited with the CWC with copies to the States?

2.44 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that the Supervisory Committee has been entrusted with the task of removal of the Silt and payment of damages due to the flooding etc. Therefore, it is necessary to have the original profile of the river and the lands adjacent to it. He further submitted that the basic principle behind the question raised is that the Supervisory Committee and the party States must know the ground contour levels of the river bed prior to the construction of the Neradi Barrage in order to accurately determine how much silt needs to be removed/cleared after the process of construction and working of the Neradi Barrage. According to them, if a point

of reference like the current ground contour levels of the river bed are not known before starting the construction activity, there will be no accurate way of ascertaining how much silt and sediment has settled in the upstream of the Neradi Barrage and at the site of Side Weir and how much of it would require to be removed for the purpose of safety as contemplated in Question-5 above. They further submitted that this Tribunal may direct a study to be conducted to ascertain the original profile of the river and lands adjacent to it.

2.45 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the sedimentation is a natural phenomenon in any river, which depends on the quantum of flow of water. In any event, the sediment carried with the flow eventually settles down even without the construction of the barrage or Side Weir. The submissions of the State of Andhra Pradesh before pronouncement of the Final Order and Report by the Tribunal to that effect along with the documentary evidences produced - particularly several graphs for different years and different chainages across the river (OW-2/10) - has been extensively dealt with at para 9.19.14 and 11.10.3 of the Report of the Tribunal. As such, no clarification is required to be given by the Tribunal.

2.46 The relevant provisions under of the Final Order of this Tribunal are as under:

Clause X(3)(v)

“To make periodical survey, as it deems necessary, for assessing aggradation and degradation in the river near the Side Weir and take appropriate steps thereto so as to ensure that the bed level of the Side Weir at all times shall be as per its original design.”

Clause X(3)(vi)

“To keep a close watch on the river behaviour and to ensure that if there be any silting or sedimentation in front of the Side Weir at Katragada or upstream near the Neradi Barrage, the same shall be got cleared, as and when required, through the State Government of Andhra Pradesh.”

2.47 After hearing the arguments of the Counsel appearing for the parties, we observe that we have already dealt with the issue very appropriately as observed hereinbefore but still clarify the point raised by the State of Odisha as under:

2.47.1 It is mentioned that the issue regarding occurring of any heavy sedimentation or siltation either near the proposed Neradi Barrage or near the site of construction of the Side Weir at Katragada has been dealt with in this Tribunal’s Report extensively in Chapter 9 and our findings have been recorded in its para 9.20 and 9.21, which are reproduced as under:

“9.20 We have very minutely perused the evidence on record, both of Odisha and Andhra Pradesh as also the submissions of the counsel appearing for the parties on this issue and, upon going through the same, we find that the apprehension of Odisha is not based on hard facts and they are mere apprehensions without there being any base for such apprehensions. The studies carried out by CWC on the basis of Mathematical Model Studies establish that no case of heavy sedimentation is made out. At this stage, we would like to reiterate the observations of CWC in its Report of March, 1994. As per the analysis of the sediment transport data, the river carries only fine sediment (wash load) of size less than 0.075 mm during the low flows. However, this wash load is expected to get lifted up from the bottom and washed down as suspension during the flood season when the gates are open. A

discharge more than 600 cumecs for about 12 hours was considered sufficient to wash the load. The minimum flow of 600 cumecs is available for about 3 days in the monsoon period on an average. Therefore, there is hardly any chance of the pond getting cumulatively silted up. As such there is no adverse effect of the lean season deposition due to ponding.”

“9.21 Prof. Yoganarasimhan’s study also shows similar results. He has also categorically stated that undersluice gates in the barrage will flush out all sedimentation in front of such gates. But he also admitted that he is not a sediment transport expert. These studies categorically establish that despite construction of Neradi Barrage there will be regular flow of the river and that there would be no heavy sedimentation either upstream or downstream of the Neradi Barrage. The design of the Neradi Barrage was revised due to the heavy flood of 1980 and in that revised design, more under sluice gates have been provided which will definitely enable more sediments to be flushed out. Even assuming that there is little sedimentation and siltation occurring near the sill of the Barrage, the same could be cleared by the project authorities, as and when required. Therefore, the case sought to be made out by the State of Odisha regarding heavy deposit of sediment due to construction of Neradi Barrage is found to be without merit and the same is rejected.”

2.47.2 It is further clarified that in compliance to our Final Order and Decision dated 13th September, 2017, recorded under Clause X(3)(vi), the silt deposited in front of the Side Weir or upstream near the Neradi Barrage will be got cleared by the Supervisory Committee, as and when required, so that the water in the river at lower levels also flows down unobstructed.

2.47.3 Regarding taking original profile of the river and lands adjacent to the proposed Neradi Barrage, it is clarified that the profile may be taken just

before the start of the civil works of the proposed Neradi Barrage, which shall be the point of reference for silt deposited prior to and during construction and/or after commissioning of the barrage. It is further clarified that such profile in respect of Neradi Barrage shall be taken as per directions of the Supervisory Committee and there is no need of taking such profile at this stage.

2.47.4 Regarding compensation to be paid to the flood affected families/persons, it is stated that the Tribunal's order under Clause X(3)(ix) is clear. If any information is to be collected in this regard, it is left to the Supervisory Committee.

2.47.5 Regarding taking original profile of the river and lands adjacent to the Side Weir at Katragada, it is clarified that since the Side Weir has already been operationalised in compliance to the interim order dated 17th December, 2013 of the Tribunal, the present profile of the river and lands adjacent to the Side Weir at Katragada may be taken as per directions of the Supervisory Committee (if in place by that time), otherwise, by carrying out survey by a joint survey team of the officers of the States of Odisha and Andhra Pradesh under the supervision and guidance of Central Water Commission (CWC). This shall be the point of reference for the purpose in respect of the Side Weir only. It is also clarified that our Order dated 13th September, 2017 under Clause X(3)(vi) shall be complied with by both the States.

2.47.6 Therefore, the Report and the Decision of this Tribunal shall be deemed to be modified to the extent by inserting a sub paragraph at page 358 after Clause X(3)(v) relating to taking original ground levels adjacent to Neradi Barrage and Side Weir in the Final Order and Decision dated 13th September, 2017 of the Tribunal as below:

“Original profile of the river and lands adjacent to the proposed Neradi Barrage may be taken just before the start of the civil works of the proposed Neradi Barrage. As the Side Weir at Katragada has been operationalised, the present profile of the river and lands adjacent to the Side Weir at Katragada may be taken as per directions of the Supervisory Committee (if in place by that time), otherwise, by carrying out survey by a joint survey team of the officers of the States of Odisha and Andhra Pradesh under the supervision and guidance of Central Water Commission (CWC).”

2.47.7 Rest of the clarifications sought under this question deserve to be rejected and it is held accordingly.

3

REFERENCE NO.2 OF 2017 BY THE CENTRAL GOVERNMENT

Percentage Dependability of Declared Yield of 115 TMC; and Project-wise Utilisation of respective Shares of Both the States

3.1 The Central Government has sought clarifications regarding percentage dependable yield under Clarification No.1 and assessment of yield in river Vansadhara and project-wise utilisation of respective shares of both the States under Clarification No.2. The percentage dependable yield and the assessment of yield of a basin are inter-related and, therefore, the Clarifications Nos.1 & 2 are being dealt with conjointly and together. The Clarifications Nos.1 & 2 as referred in the Reference Petition on this subject are as follows:

Clarification No.1:

Immediately after disposal of the Writ Petition 443 of 2006 by the Hon'ble Supreme Court, the State of Andhra Pradesh also filed a complaint under Section 3 of the Inter-State River Water Disputes Act, 1956 referring to its proposal with regard to the construction of Neradi barrage on the inter-State river Vansadhara. The grievances of the complainant and specific matters in dispute are outlined in para (III) and para (V). Para (V) in part is extracted hereunder:

“V. Specific matters in dispute:

a)

b

c) The water availability in river Vamsadhara need to be assessed afresh based on the fresh data for utilization of Andhra Pradesh’s share in new projects in the future.” (p.61-63 Vol. I of the report)”

The Tribunal thereafter, in view of the completion of the pleadings of the parties in respect of the reference proceeded to frame issues in the proceedings, which arise for consideration. It is seen from the list of issues framed finally in the proceedings in the presence of the parties (p76-78) that fresh assessment of water availability in river Vamsadhara is not framed as issues to be decided by the Tribunal. The Tribunal in Clause II of its final order has provided as under.

“The Tribunal hereby declares that the yield of the river Vansadhara at Gotta barrage is 115 TMC and this shall be shared by both the States on 50:50 basis. This was agreed to by the State of Andhra Pradesh and the State of Odisha during the meeting held on 30th September, 1962.”

The declared yield of 115 TMC is the average yield or some percentage dependable yield is neither mentioned in the agreement of 30th September, 1962 nor in the order of the Hon’ble Tribunal. Hon’ble Tribunal may kindly consider clarifying the above aspect.

Clarification No.2:

The Hon’ble Tribunal declared that the yield of the river Vansadhara at Gotta barrage as 115 TMC and also directed to share the same between the two States on 50:50 basis. Thus the shares of the State of Odisha and Andhra Pradesh in the said 115 TMC are 57.5 TMC each respectively. While the projects through which State of Andhra Pradesh may utilise its

shares of 57.5 TMC is mentioned in general in the report (namely existing utilisation, Gotta barrage and Neradi barrage), no mention of the projects through which State of Odisha proposes to utilise its share of 57.5 TMC is made in the report.

NWDA, a Society under the MoWR, RD & GR has in April 2017 revised its water balance study report of Vansadhara basin. According to the said report, the requirement of both States in Vansadhara basin for the year 2050 is 61.6 TMC.

Recently assessed 75% dependable yield of Vansadhara river at Gotta barrage by Central Water Commission based on yield series of 1982-83 to 2006-07 is of the order of 70 TMC. The irrigation projects are generally planned for 75% dependable yield. In view of the different figures of availability and utilisation of water of the basin, Hon'ble Tribunal may kindly consider clarifying the project wise utilisation of respective shares of both States.

3.2 Mr. S. Wasim A. Qadri, Senior Counsel for the Central Government submitted that the declared yield of 115 TMC as per agreement dated 30th September, 1962 between the States of Andhra Pradesh and Odisha does not specify the percentage dependable yield i.e. whether it is average yield or some percentage dependable yield? The Senior Counsel also submitted that the annual yield in any year in future can be estimated with some degree of dependability associated with it. Thus, for example 75% dependable yield of the basin is the annual run off volume from the basin, on the average, 3 out of 4 years. Thus, mentioning yield of the basin without specifying dependability is not sound hydrologic practice. He further submitted that Central Government in the past constituted Tribunals namely, Cauvery Water Disputes Tribunal (CWDT), Narmada Water Disputes Tribunal (NWDT), Krishna Water Disputes Tribunal-I (KWDT-I) and Krishna Water Disputes Tribunal-II (KWDT-II), which

have mentioned yield of the basin at particular dependability in their final order. He further submitted that for techno economical appraisal of the projects in Vansadhara basin, the criteria of 75% dependability for Major and Medium Irrigation projects will also be followed by CWC. If the Tribunal does not specify the dependability at which yield of 115 TMC has been assessed then it will pose difficulty in techno economical appraisal of the projects by CWC and to follow the decree of the Tribunal. Therefore, the Tribunal may kindly consider clarifying the dependability of the declared yield of 115 TMC in the report or adopt the yield as mentioned in CWC report submitted before the Tribunal in Reference No.2.

3.3 Senior Counsel for the Central Government further submitted that the yield of river Vansadhara at Gotta barrage is 115 TMC, while the yield at 75% dependability as assessed by CWC is 70 TMC. If the available yield is to be utilised on 50:50 basis, the share of each State works out to 57.5 TMC as per agreed yield and 35 TMC as per the yield assessed by CWC. He further submitted that in view of the different figures of availability and utilisation of water of the basin, the Tribunal may consider clarifying project-wise utilisation of respective shares of both States. It will help the Supervisory Committee in implementing the decision of the Tribunal and techno economic examination of projects from inter-State angle by CWC.

3.4 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha in response to the Reference No.2 filed by the Government of India submitted that this clarification or explanation sought by the Government of India is not maintainable, because it is not in the nature of clarification or explanation of the Decision of this Hon'ble Tribunal. The question is intended to explain the basis of the declaration made by this Tribunal in Clause-II of the Final Order

that the “yield of the river Vansadhara at Gotta Barrage is 115 TMC”. The State of Odisha submitted that in any case, the yield of the Vansadhara at Gotta Barrage has been agreed by the party States and therefore, the same cannot be reopened at the instance of Applicant Union of India under Section 5(3) of the Act. In view of the above, the clarification sought by the Central Government be rejected.

3.5 With regard to dependability, Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha submitted that there is no hard and fast rule that the projects are to be cleared at 75% dependability. There are projects which have been cleared even at 50% dependability. He further submitted that moreover, the Water Balance Study (Technical Study No.WBS-48, Index No.18) conducted by the National Water Development Agency (NWDA) in 2017 suggested that the yield is about 104.35 TMC at 75% dependability. Therefore, there is not much variation in what was estimated in 1962 as 115 TMC. The party States have not disputed the same and therefore, the same has been rightly retained by the Tribunal in Clause II of the Final Order. In view of this, it was submitted, no clarification or explanation is warranted from the Tribunal. In order to facilitate a proper understanding of the said stand taken by the State of Odisha in their reply filed on 29.10.2018, we deem it appropriate to extract the said paragraphs herein below:

“5. In re: Clarification No.1: The Applicant Union of India has stated that – “The declared yield of 115 TMC is the average yield or some percentage dependable yield is neither mentioned in the agreement of 30th September, 1962 nor in the order of the Hon’ble Tribunal. Hon’ble Tribunal may kindly consider clarifying the above aspect.” However, the Respondent Odisha submits that this clarification or explanation is not maintainable, because it is not in the nature

of clarification or explanation of the Decision of this Hon'ble Tribunal. The question is intended to explain the basis of the declaration made by this Hon'ble Tribunal in Clause-II of the Final Order that the "yield of the river Vansadhara at Gotta Barrage is 115 tmc". In any case, the Respondent Odisha submits that the yield of the Vansadhara at Gotta Barrage has been agreed by the party States and therefore, the same cannot be reopened at the instance of Applicant Union of India under Sec.5(3) of the Act of 1956. In view of the above, the Clarification sought by the Applicant Union, it is submitted, be rejected.

6. In re: Clarification No. 2: *The clarification or explanation sought by Applicant Union of India in clarification No.2 is that – "Recently assessed 75% dependable yield of Vansadhara river at Gotta Barrage by Central Water Commission based on yield series of 1982-83 to 2006-07 is of the order of 70 TMC. The irrigation projects are generally planned for 75% dependable yield. In view of the different figures of availability and utilisation of water of the basin, Hon'ble Tribunal may kindly consider clarifying the project-wise utilisation of respective shares of both States." However, the Respondent Odisha submits that this Hon'ble Tribunal has declared in Clause-II of the Final Order that "the yield of the river Vansadhara at Gotta barrage is 115 tmc and this shall be shared by both the States on 50-50 basis". This Hon'ble Tribunal has also clarified that the said estimation "was agreed to by the State of Andhra Pradesh and the State of Odisha during the meeting held on 30.09.1962". Therefore, in the facts of this case, the available water is to be shared on 50-50 basis, by treating 115 tmc as the upper limit of available water. Hence, both the States have right to plan projects on an aggregate equal to 57.50 tmc. With regard to dependability, the Respondent Odisha submits that there is no hard and fast rule that the projects are to be cleared at 75% dependability. There are projects which have been*

cleared even at 50% dependability. The allocations made by the Cauvery Water Disputes Tribunal vide Final Order dated 05.02.2007 is also at 50% dependability and which has been upheld by the Hon'ble Supreme Court vide judgment dated 16.02.2017. The Krishna Water Disputes Tribunal in its Final Order dated 31.12.2010 has allocated a part of water at 50% dependability. Moreover, the Respondent Odisha submits that the yield study conducted by the National Water Development Agency in 2017 suggest that the yield is about 104.35 tmc at 75% dependability (Technical Study No.WBS-48; Index No 18). Therefore, there is not much variation in what was estimated in 1962 as 115 tmc. The party States have not disputed the same and therefore, the same has been rightly retained by this Hon'ble Tribunal in Clause II of the Final Order. The Respondent Odisha reserves right to file the technical study No. WBS - 48 of the Vansadhara Basin prepared by the National Water Development Agency, with the leave of the Hon'ble Tribunal. In view of this, no clarification or explanation is warranted from this Hon'ble Tribunal."

3.6 However, later on in the last and final hearing date, the Senior Counsel for the State of Odisha, Mr. Jayant Bhushan changed the stand from initially requesting for rejecting the clarification sought by the Central Government to a stand of supporting the argument made by the Senior Counsel for the Central Government. He also submitted for specifying the dependability of the yield of 115 TMC declared by the Tribunal in its Report dated 13.09.2017. Mr. Jayant Bhushan, Senior Counsel for the State of Odisha further submitted that assessment of the yield based on 75% dependability is necessary for clearance of a project proposal by CWC because the major and medium irrigation projects are planned for 75% dependability in an inter-State river basin. He further submitted that although this was not a specific question referred to the Tribunal for determination originally, it is a fundamental issue

on which the Tribunal's guidance may be required. Therefore, the State of Odisha is of the view that a fresh determination of yield of the Vansadhara basin at 75% dependability ought to be computed by an expert body along with both the States under the guidance of CWC in order to obviate future disputes. Therefore, the stand of the State of Odisha now taken is in direct conflict with the stand taken by the State in writing earlier.

3.7 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh in response to the reference filed by the Central Government submitted that the Central Government has sought clarification mainly on the two aspects viz. (a) it is seen from the list of issues framed finally in the proceedings in the presence of the parties (Para 5.14 from pages 76 to 78 of the Report (Vol. I)) that fresh assessment of water availability in river Vansadhara is not framed as issues to be decided by the Tribunal and (b) the declared yield of 115 TMC is the average yield or some percentage dependable yield is neither mentioned in the Agreement of 30th September, 1962 nor in the order of the Tribunal. The State of Andhra Pradesh submitted that the Act contemplates that when the Central Government is unable to settle a water dispute by negotiations, it shall refer the dispute to a Tribunal. In the present case, with regard to the yield of river Vansadhara, the stand of both the States was that the parties had agreed that yield of river Vansadhara at Gotta Barrage is 115 TMC. The yield of river Vansadhara was not an issue before the Tribunal at the stage of original reference under Section 5(2) of the Act. Further, the States were ad idem on the yield of the river and the extent of its shares. The Senior Counsel further submitted that even in the Special Leave Petition filed by the State of Odisha before the Hon'ble Supreme Court, the issue with respect to yield/dependability was not raised by the State of Odisha. Thus, this issue has attained finality.

3.8 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the Act is enacted by the Parliament for adjudication of disputes relating to waters of Inter-State Rivers. If the two party States have no dispute in regard to the yield of the river or the dependability percentage, there would be no occasion for the Central Government to attempt to resolve the differences by negotiations or on its failure to refer the matter. There will be no dispute which will be required to be referred. If this is so at the initial stage, it would be so, even more, at the stage of Section 5(3) of the Act. The Narmada Water Disputes Tribunal while examining scope of Section 5(3) has inter-alia held in para 1.2.8 of its Further Report as under:

“.....It is manifest that under Section 5(3), there is no decision to be given by the Tribunal or any investigation of the matters referred to it. It is also significant to notice that on a reference under Section 5(3), it is discretionary with the Tribunal to give or not to give the explanation or guidance asked for. We are of the opinion that on a proper interpretation of Section 5(3), there cannot be a de novo trial before the Tribunal of the matter already decided. Nor is it open to the Central Government or the State Government to ask the Tribunal on a reference under Section 5(3) to re-adjudicate any of the matters already decided by it or to modify its decision on any point already given. But the jurisdiction of the Tribunal under Section 5(3) is limited to: (i) the explanation of anything contained in the report and decision under Section 5(2) and (ii) guidance upon any point which was not originally referred to the Tribunal but referred to for the first time under Section 5(3).”

3.9 The Senior Counsel for the State of Andhra Pradesh submitted that thus, the yield of the river cannot be reopened at the instance of Central Government under Section 5(3) of the Act. It would not only be beyond the

scope of Section 5(3) but also would not be covered by the expression “not originally referred to the Tribunal”. It will be beyond the competence of the Central Government to make a fresh reference of determination of yield and dependability, when the Party States to the reference did not seek its adjudication in proceedings under Section 5(2) and parties were ad idem.

3.10 The Senior Counsel for the State of Andhra Pradesh further submitted that the reference by the Central Government to the decision of Cauvery Water Disputes Tribunal and Krishna Water Disputes Tribunals - I & II, where the Tribunals determined the yield and apportioned the dependable flows is of no relevance to the present dispute. The disputes raised therein were with regard to equitable apportionment of waters available in the basin and its allocation to the existing on-going and future projects. In the present case, the issue was with regard to construction of Neradi Barrage and Side Weir and allied issues.

3.11 The Senior Counsel for the State of Andhra Pradesh also submitted that the clarification sought is wholly misplaced and is contrary to the Agreement of 1962, and pleadings before the Tribunal and as such, the issue with regard to fresh assessment of water availability does not arise before the Tribunal. Any clarification with regard to the yield and the extent of utilisation between the parties at the instance of the Central Government also does not arise. It is submitted that no clarification is necessary for the above, as the same falls beyond the scope of the reference under Section 5(3) of the Act.

3.12 The Senior Counsel for the State of Andhra Pradesh in response to the reply made by the Senior Counsel for the State of Odisha to the written submissions filed by the Central Government in Clarifications Nos.1 & 2 submitted that the present stand of the State of Odisha in its reply regarding

the fresh assessment of the yield of the river Vansadhara is not only beyond the scope of the reference under Section 5(3) of the Act but also against its reply dated 29th October, 2018 filed in response to the Reference Petition No.2 of 2017 filed by the Central Government. Further, it is not open to the State of Odisha to take a conflicting stand and seek a fresh study of yield of Vansadhara basin at 75% dependability. The consequent techno-economic viability of Neradi Barrage as sought by the State of Odisha is beyond the scope of the reference under Section 5(3) of the Act. It is only a dilatory tactics to avoid implementation of the decision rendered by the Tribunal.

3.13 Now, the relevant provision under Clause II of its Final Order of this Tribunal is as under:

“The Tribunal hereby declares that the yield of the river Vansadhara at Gotta barrage is 115 TMC and this shall be shared by both the States on 50:50 basis. This was agreed to by the State of Andhra Pradesh and the State of Odisha during the meeting held on 30th September, 1962.”

3.14 After hearing the arguments of the Counsel appearing for the parties, we observe and answer the point raised by the Central Government as stated hereunder:

3.14.1 The Central Government seeking clarification on the aforesaid point has itself mentioned that after completion of the pleadings of the parties in respect of the reference the Tribunal proceeded to frame issues in the proceedings which arose for consideration. At that stage, fresh assessment of water availability in river Vansadhara was not framed as an issue to be decided by the Tribunal as there was no such reference and no dispute regarding the same at any stage of the proceeding. The Senior Counsel representing the State of Andhra Pradesh was also of the view that fresh assessment of water

availability of the basin was not an issue before the Tribunal. He also pointed out that initially, Senior Counsel representing the State of Odisha had also submitted that the yield of the Vansadhara at Gotta Barrage has been agreed by the party States and therefore, the same cannot be reopened at the instance of Applicant Central Government under Sec.5(3) of the Act. Moreover, Senior Counsel for the State of Odisha has cited the Water Balance Study (Technical Study No.WBS-48, Index No.18) conducted by National Water Development Agency in 2017, which mentions the yield of the basin as 104.35 TMC at 75% dependability. We find that there is not much variation in the Study of NWDA and the yield estimated in 1962 as 115 TMC. It is also stated that (para 7.5, page 142-143 of the Report, Vol.I) the re-assessment of the yield in the river Vansadhara using the yield series up to year 2005 was done by a Joint Working Group comprising of the officers of CWC and co-basin States of Andhra Pradesh and Odisha during the year 2006 as desired by the representative of the Odisha. According to the study, the 75% dependable yield for Vansadhara basin at Gotta Barrage was worked out to be 105 TMC. This study was carried out as per the decision taken in the meeting Chaired by the Secretary (WR) on 24th April, 2006 with the Secretaries (WRD), Government of Odisha and Government of Andhra Pradesh. Thus, the yield assessed through the studies carried out by the Joint Working Group comprising of the officers of CWC and co-basin States of Andhra Pradesh and Odisha during the year 2006 and the yield assessed by NWDA are more or less the same and also close to the agreed yield of 115 TMC.

3.14.2 Now, we take up the issue raised by The Central Government that for techno economical appraisal of the projects in Vansadhara basin also, CWC will follow criteria of 75% dependability for Major and Medium Irrigation projects. In this regard, it is stated that the projects for different usages are cleared for

different dependability criteria, for example a drinking water supply project is considered for 100% dependability, a hydropower generation project is considered for 90% dependability and an irrigation project is considered for 75% dependability. Moreover, the dependability criterion for a project is applied with reference to the yield/water availability at the project site and not with reference to the yield for the whole basin. The CWC will examine the individual project as per norms and extant guidelines for techno-economic appraisal within the available yield for the basin. As per agreement of 1962 between the two parties, the yield of 115 TMC is to be shared on 50:50 basis. There is no dispute at all with regard to this position between the two States and the Central Government has to accept this position.

3.14.3 It is made clear that the issue of percentage dependability of 115 TMC of available water was never raised by any of the parties at the time of adjudication of the dispute before it. There were no pleadings filed by either of the two States nor by the Central Government as is stated now. As a matter of fact neither any documentary nor any oral evidence was led by any of the parties including the Central Government in that regard. Therefore, the said issue did not fall for and arise for consideration of the Tribunal at any stage during the pendency of the Reference under Section 5(2).

3.14.4 We are of the view that no fresh assessment of the yield at certain dependability is necessary and make it clear that as agreed to by the States of Andhra Pradesh and Odisha during the meeting held on 30th September, 1962, the yield of the river Vansadhara at Gotta Barrage is 115 TMC and this shall be shared by both the States on 50:50 basis. When water availability in any year is less or more than 115 TMC, both the States will share the same proportionately on 50:50 basis.

3.14.5 We now address the submission of the Central Government that mentioning yield of basin without specifying dependability is not a sound hydrologic practice in support of which the Central Government is relying upon the decision of CWDT, NWDT and KWDT - I & II where the aforesaid Tribunals determined the yield and apportioned the dependable flows. The disputes raised therein in the other Tribunals to which mention is made by the Central Government were with regard to equitable apportionment of waters available in the basin and its allocation to the existing, on-going and future projects. In the present case, such issue was not at all involved and raised at any stage. What was alone involved was in respect of construction of Neradi barrage and the Side Weir and allied issues. The answer and the decision of the Tribunal has to be relatable always to the issues and the points under reference and therefore, fact situation and the decision of each Tribunal is dependent on the issues involved. From a bare perusal of the issues framed in this proceeding which arose out of the pleadings of the parties, would make the position clear that as regards the yield or dependability there was no dispute rather both the States were ad idem in this regard. This is also the stand of the State of Odisha in their written submissions filed on 29.10.2018, referred to and extracted hereinbefore. Therefore, the issue of the yield or dependability was never a matter of dispute or of concern of this Tribunal. A reference to Clause II of the Final Order would also make it clear that the yield and shares of the two States were based on the agreement of both the States, which was duly recorded in the Report and Final Order. Therefore, the clarification sought for by the Central Government regarding the fresh assessment of the yield is found to be beyond the scope of reference under Section 5(3) of the Act.

3.14.6 As regards project-wise utilisation of respective shares of both the States, it is clarified that the reference made to this Tribunal was relating to

Neradi Barrage and side weir at Katragada only and specifying project-wise utilisation of respective shares of both the States by the Tribunal was not pleaded and not requested and never argued and therefore, not called for. That is more so, when no evidence either by way of documentary or oral evidence was led on the issue nor the issue was raised during the proceedings under Section 5(2) of the Act. As such, project-wise utilisation of respective shares of both the States was not an issue before the Tribunal. It is clarified that the Supervisory Committee has been ordered to be set up for implementation of the decision of the Tribunal including supervising the functioning of the Side Weir complex at Katragada and Neradi Barrage, when constructed. The project-wise utilisations in the upstream as well as downstream commitments/utilisations, if any, are to be and will be considered as and when necessary by the CWC at the time of techno-economic appraisal of a project as per applicable norms and prevailing guidelines.

3.14.7 For the reasons indicated above, we have given our clarifications and guidance in the aforesaid manner so far as the Clarifications Nos.1 & 2 of the Central Government are concerned.

Period of Water Year and Distress Sharing Formula

3.15 The Central Government sought the clarification regarding the period of water year and manner of sharing the yield in the years of surplus or deficit by providing suitable distress sharing formula. The clarification as referred in the Reference Petition on this subject is as follows:

Clarification No.3:

The Hon'ble Tribunal declared that the yield of the river Vansadhara at Gotta barrage as 115 TMC and also directed to share the same between the two States on 50:50 basis. Thus,

the shares of the State of Odisha and Andhra Pradesh in the said 115 TMC are 57.5 TMC each respectively. The yield of river basin at any cross section of river varies from year to year which the Hon'ble Tribunal is very much aware of. If yield of the river Vansadhara at Gotta barrage is more in any water year or less in some water year, there is no provision in the order of the Hon'ble Tribunal for deciding the shares of the States in such years of surplus or deficit. Further, in the Clause III of the order of the Hon'ble Tribunal, there is mention of starting date of withdrawal of water by the State of AP as June 1st of every year and also mention is made that gates shall remain closed till 31st May of the next year. However, whether a period of June to May shall be reckoned as water year for the purpose of the assessment of the yield of Vansadhara basin is not clearly mentioned in the order of Hon'ble Tribunal. Hon'ble Tribunal may kindly consider clarifying the period of water year and manner of sharing the yield in years of surplus or deficit possibly by providing suitable distress sharing formula in the Order.

3.16 Mr. S. Wasim A Qadri, Senior Counsel for the Central Government submitted that some agreements signed among the basin States specifying allocations of water for basin States and decisions pronounced by the Tribunals have provided for water sharing in surplus or deficit years. Such provisions are as under:

“Clause-VII of Report and Decision of Cauvery Water Disputes Tribunal (CWDT):

In case the yield of Cauvery basin is less in a distress year, the allocated shares shall be proportionately reduced among the States of Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry.

In CWDT's Report-Vol V at page 212, para 28, it has been mentioned that in case the yield is less in a distress year, the

allocated shares shall be proportionately reduced amongst the States of Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry by the Regulatory Authority.”

“Clause IV(2) of Report and Decision of Narmada Water Disputes Tribunal:

In the event of the available utilisable waters for allocation in any water year from 1st of July to 30th June of the next calendar year falling short of 28 Million Acre Feet (34,537.44 M.cu.m.), the shortage should be shared between the various States in the ratio of 73 for Madhya Pradesh, 36 for Gujarat, 1 for Maharashtra and 2 for Rajasthan.”

3.17 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that there are two parts in this clarification. On the first part, the Respondent Odisha submits that the period of water year is June to May as has been understood by the party States and which is implicit in the Final Order. On the second part, the Respondent Odisha submits that there are several methods for sharing of waters of Inter-State River. The first method is the percentage method, which does not require any rider on sharing of surplus or deficit. The second method is the method of ensuring guaranteed flows by the upper riparian at the Inter-State border out of the dependable flow. However, if the flow is less than the dependable flow, the burden shall be reduced in an appropriate manner and if the flows are more than the dependable flows, the same shall be shared or utilised by the upper riparian, depending on how the Tribunal decides. The third method is the method of permitting the upper riparian State to hold its share of water in every water year (if available) and leave the rest to the downstream State. However, in this method, there is no sharing of deficit by the upper riparian, because the downstream State receives the benefit of

entire surplus water. On the first method, there is no decided case by any Tribunal or judicial forum either in inter-State or in any international water dispute. The second methodology has been applied in the Cauvery Water Dispute, where the upper riparian Karnataka ensures guaranteed flow of 177.25 tmc in a normal year at the inter-State border, if the total yield of the basin is 740 tmc at 50% dependability. With regard to the surplus, the State of Karnataka has been given liberty to utilise what is available in its territory. The third methodology has been implemented in Krishna Water Dispute. In the Krishna (both Tribunal-I and Tribunal-II), both upper riparian States of Karnataka and Maharashtra are permitted to utilise their share of water and not more. The rest flows down to the downstream State of erstwhile Andhra Pradesh (now Telangana and Andhra Pradesh). The upstream States of Karnataka and Maharashtra do not share the distress, but they do not get the benefit of surplus water. The downstream erstwhile Andhra Pradesh alone bears the burden of deficit, but the same is compensated, because it alone enjoys the benefit of surplus water.

3.18 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that since the parties have agreed to share the available water on 50:50 basis and therefore, evolving a separate distress sharing formula is unnecessary as the party States would share the available flows on 50:50 basis.

3.19 After hearing the arguments of the Counsel appearing for the parties, we agree for having a formula for water sharing in case the availability of water is less or more than the agreed yield of 115 TMC and, therefore provide the formula as under:

3.19.1 It is clarified that the yield of a river basin is never constant. It varies from year to year. Therefore, we hold that since the inter-State agreement

between the party States envisages sharing of water on 50:50 basis, necessarily the same principle would have to be followed in a year of distress. In that event also when there is shortage of water in a particular year, sharing of water would be proportionately reduced. When there is an increase in the water availability in the river, it would be so increased proportionately. The distress sharing formula for Vansadhara river basin as specified herein will be applicable for the total utilisation in the basin by each State. The formula cannot be suggested for Neradi Barrage alone. It is also clarified that the water year is from 1st June to 31st May of the next calendar year. The Order of the Tribunal for opening or closing of the gates has been made for the water year.

3.19.2 Therefore, the Report and the decision of this Tribunal shall be deemed to be modified to the extent by inserting two clauses relating to distress sharing formula and water year respectively at page 354 after Clause II in the Final Order of the Tribunal as below:

“Since the inter-State agreement between the party States envisages sharing of water on 50:50 basis, the same principle shall be followed in a year of distress. In that event also when there is shortage of water in a particular year, sharing of water would be proportionately reduced. When there is an increase in the water availability in the river, it would be so increased proportionately. The distress sharing formula for Vansadhara river basin as specified herein will be applicable for the total utilisation in the basin by each State.”

“The water year is from 1st June to 31st May of the next calendar year.”

Quantum of Water to be Withdrawn from Neradi Barrage when the Yield is less than 115 TMC and Quantum of 8 TMC of Water to be Withdrawn from Side Weir in deficit or surplus years

3.20 The Central Government has sought clarification regarding quantum of water to be withdrawn from Neradi Barrage when the yield is less than 115 TMC under Clarification No.4 and quantum of 8 TMC of water to be withdrawn from Side Weir in deficit or surplus years under Clarification No.5. The clarifications sought are similar and, therefore, the Clarifications Nos.4 & 5 are being dealt with conjointly and together. The Clarifications Nos.4 & 5 as referred in the Reference Petition on this subject are as follows:

Clarification No.4:

The Hon'ble Tribunal in Clause IV of its Order has permitted the State of Andhra Pradesh to construct the Neradi barrage across the river Vansadhara with ancillary structures and also mentioned the design capacity of Right Head Sluice of the barrage as 8000 cusecs for meeting the requirements of State of Andhra Pradesh. Further, in Clause V, it has also specified the time period of June to November for withdrawal of water by the State of AP from Neradi barrage. However, there is no mention of quantum of water out of its share of 57.5 TMC of which the State of AP is entitled to draw from the barrage is essential for smooth functioning of the Supervisory Committee in the years when the yield of Vansadhara is less than 115 TMC and also keeping in view the fact that yield of Vansadhara is assessed at Gotta barrage. To say it differently, when the quantum of water out of share of 57.5 TMC of both States to be withdrawn from Neradi barrage is mentioned in the order of the Hon'ble Tribunal, during the year when yield of Vansadhara at Gotta barrage is less than 115 TMC, the entitlements of both States could be estimated by proportionately reducing the quantum of water out of share of 57.5 TMC of both States to be

withdrawn from Neradi barrage. Hon'ble Tribunal may kindly consider clarifying the quantum of water out of share of 57.5 TMC of both States to be withdrawn from Neradi barrage.

Clarification No.5:

The Hon'ble Tribunal in Clause IV of its order has directed that the State of Andhra Pradesh is permitted to withdraw water only upto 8 TMC from 1st June to 30th of November every year through the Side Weir. The gates of the Head Regulator of Flood Flow canal of the Side Weir shall be closed on 1st of December or earlier, as the case may be, i.e., as soon as the total drawl of water equals to 8 TMC and the gates shall remain closed till 31st May of next year. Under Clause X(3)(ii) of its order Hon'ble Tribunal provides that Supervisory Committee shall ensure that total drawl of water through Head Regulator of Flood Flow Canal of Side Weir complex, during the months of June to November in any year shall not in any case exceed 8 TMC, constituting a part of 50% share of water of the State of Andhra Pradesh (emphasis supplied). The yield of river basin at any cross section of river varies from year to year which the Hon'ble Tribunal is very much aware of. If yield of the river Vansadhara at Gotta barrage is more in any water year or less in some water year, there is no provision in the order of the Hon'ble Tribunal for deciding the shares of the States in such years of surplus or deficit. A clarification to this effect has already been sought from Hon'ble Tribunal under Clarification No.3. The submission under this para is that since 8 TMC quantum of water constitutes a part of 50% share of water of the State of Andhra Pradesh, whether this 8 TMC will also change in the years when yield of the river Vansadhara at Gotta barrage is more in any water year or less in some water year. To put it differently, when yield of the river Vansadhara at Gotta barrage is more in any water year or less in some water year, the 50% share of State of Andhra Pradesh will vary in accordance with scheme to be clarified by the Hon'ble Tribunal

for such years. Therefore quantum of 8 TMC of water which constitutes a part of 50% share of water of the State of Andhra Pradesh is also liable to change according as 50% share of State of Andhra Pradesh varies in accordance with scheme to be clarified by the Hon'ble Tribunal in deficit or surplus years. Hon'ble Tribunal may kindly consider clarifying the aforesaid.

3.21 Mr. S. Wasim A Qadri, Senior Counsel for the Central Government submitted that the Tribunal in its Order has mentioned that the State of Andhra Pradesh can draw 8 TMC of water through Side Weir during the period from June to November. As the barrage is designed for 8000 Cusecs, State of Andhra Pradesh can draw water more than 8 TMC at a future date on the plea that its share is not determined from Neradi Barrage and 8 TMC is meant for specified command and it is not the share of Andhra Pradesh from Neradi Barrage as nowhere the Tribunal has very clearly mentioned so. Similar plea can be taken by State of Odisha also. He further stated that it is essential to specify a quantum of water for both States which can be withdrawn from the barrage for smooth functioning of the Supervisory Committee especially, in the years when the yield of Vansadhara is less than 115 TMC.

3.22 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that in view of the clarification proposed by the Respondent Odisha to clarification No.3, no further clarification to this clarification No.4 is necessary. In reference to clarification No.5, the Senior Counsel for the State of Odisha submitted that the limit of 8 TMC as a permissible drawal of water from the Side Weir at Katragada irrespective of the flow in the river has been imposed, having regard to the peculiarities of the system, particularly the sensitivities related to the river morphology, sedimentation and adverse impact on the drawal of water

on the left side of the bank lying in the Respondent Odisha. Therefore, no clarification is warranted on clarification No.5.

3.23 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the Tribunal has permitted Andhra Pradesh to draw 8 TMC of water through Side Weir during June to November. The Supervisory Committee is mandated to ensure that only 8 TMC is drawn by Andhra Pradesh. Thus, the clarification sought by Central Government to specify quantum of water for both States, which can be drawn in years when the yield of Vansadhara would be less than 115 TMC is wholly unnecessary. As stated earlier, the available yield is to be utilised on 50:50 basis and the Supervisory Committee, based on the ground realities has to make appropriate directions for implementation of the decision of the Tribunal.

3.24 Now, the relevant provisions under the Final Order of this Tribunal are as under:

Clause III

“The Tribunal hereby permits the State of Andhra Pradesh to construct the Side Weir along with ancillary structures as proposed. The State of Andhra Pradesh is permitted to withdraw water only upto 8 TMC from 1st of June to 30th of November every year through the Side Weir. The gates of the Head Regulator of Flood Flow canal of the Side Weir shall be closed on 1st of December or earlier, as the case may be, i.e., as soon as the total drawal of water equals to 8 TMC and the gates shall remain closed till 31st May of next year.”

Clause IV

“The Tribunal hereby permits the State of Andhra Pradesh to construct the Neradi Barrage across the river Vansadhara with ancillary structures. The Barrage will have a Right Head

Sluice of design capacity of 8000 cusecs for meeting the requirements of State of Andhra Pradesh. The Barrage will also have a Left Head Sluice for meeting the requirements of the State of Odisha below Neradi Barrage. The capacity of this Left Head Sluice will be intimated by the State of Odisha to State of the Andhra Pradesh within six months of the publication of this order in the official Gazette. The cost of Left Head Sluice shall be borne by the State of Odisha. If and when in future, irrigation is decided in Odisha State, the cost of the proposed Neradi Barrage shall be borne between the two States on ayacut basis. This is as per the agreed resolution dated 4th September, 1962 between the two States.”

Clause V

The Tribunal hereby permits the State of Andhra Pradesh to withdraw the water of Vansadhara river from Neradi Barrage during the first crop period i.e. from 1st of June to 30th of November every year. All flows thereafter shall be let down in the river for use by both the States as agreed upon.

Clause X(3)(ii)

“To ensure that total drawal of water through Head Regulator of Flood Flow Canal of Side Weir complex, during the months of June to November in any year shall not in any case exceed 8 TMC, constituting a part of 50% share of water of the State of Andhra Pradesh.”

3.25 After hearing the arguments of the Counsel appearing for the parties, we mention that part of the clarification sought here regarding distress sharing formula has already been decided under clarification No.3 hereinbefore. We, therefore, clarify the point raised by the Central Government as under:

3.25.1 It is stated that the Neradi Barrage will have a Right Head Sluice of design capacity of 8000 cusecs for meeting the requirements of the State of

Andhra Pradesh and a Left Head Sluice for meeting the requirements of the State of Odisha below Neradi Barrage. The capacity of this Left Head Sluice will be intimated by the State of Odisha to the State of Andhra Pradesh within six months of the publication of the Order of the Tribunal in the Official Gazette.

3.25.2 It is clarified that distress formula for Vansadhara river basin as specified under clarification No.3 hereinbefore is also applicable for drawal of water at the Neradi Barrage when the yield of the basin is less in a distress year or surplus in any year. We reiterate that since the inter-State agreement between the party States envisages sharing of water on 50:50 basis, necessarily the same principle would have to be followed in a year of distress. In that event also when there is shortage of water in a particular year, sharing of water would be proportionately reduced. When there is an increase in the water availability in the river, it would be so increased proportionately. The distress sharing formula as specified will be applicable for the total utilisation in the Vansadhara river basin by each State. The formula cannot be suggested for Neradi Barrage alone.

3.25.3 It is further clarified that even if the availability of water in the basin in any year is deficit, the quantum of 8 TMC of water may be permitted to be withdrawn by the State of Andhra Pradesh through the Side Weir at Katragada since it is only about 14% of its share of 57.5 TMC. Thus, quantum of 8 TMC of water will not change in the years when yield of the river Vansadhara at Gotta Barrage is less in any water year or more in any other water year, as long as the quantum of water spilling over the Side Weir does not exceed 8 TMC.

3.25.4 Hence, no modification in the Report of the Tribunal and the Final Order dated 13th September, 2017 is required.

Techno-economic Clearance by CWC for proposed Neradi Barrage and Side Weir

3.26 The Central Government sought the clarification regarding techno-economic clearance by CWC for proposed Neradi Barrage and the Side Weir. The clarification as referred in the Reference Petition on this subject is as follows:

Clarification No.6:

The Clause VII of the order of the Hon'ble Tribunal provides that the proposed Neradi barrage project as well as the proposed Side Weir project must get necessary clearances from Central Water Commission; Ministry of Water Resources, River Development & Ganga Rejuvenation; Ministry of Environment, Forest and Climate Change; Ministry of Tribal Affairs and other statutory bodies, as required. In this regard, it is submitted that as per the Guidelines issued by Ministry of Water Resources, River Development & Ganga Rejuvenation on 15th December, 2015, all new major and medium irrigation and multipurpose projects in an inter-State river basin are subject to techno-economic appraisal in CWC and then approval by the Advisory Committee on Irrigation, Flood Control and Multipurpose projects in the Ministry of Water Resources, River Development & Ganga Rejuvenation. After approval by the said Advisory Committee, the Ministry of Water Resources, River Development & Ganga Rejuvenation also accords investment clearance to such projects. Keeping in view the Guidelines issued by Ministry of Water Resources, River Development & Ganga Rejuvenation on 15th December, 2015, CWC has framed Guidelines for undertaking techno-economic appraisal of Detailed Projects Reports (DPR) major and medium irrigation and multipurpose projects got it approved from MoWR, RD&GR and these new guidelines became effective from January 1, 2017. From the aforesaid, following two things become

obvious (i) all new major and medium irrigation and multipurpose projects in Vansadhara river basin are subject to techno-economic appraisal in CWC and then approval by the Advisory Committee on Irrigation, Flood Control and Multipurpose projects in the Ministry of Water Resources, River Development & Ganga Rejuvenation (ii) that while CWC undertakes only techno-economic appraisal of the said projects and does not accord any clearance, it is the Advisory Committee on Irrigation, Flood Control and Multipurpose projects in the Ministry of Water Resources, River Development & Ganga Rejuvenation and not the Ministry of Water Resources, River Development & Ganga Rejuvenation as such which accords approval to the projects which have been techno-economically appraised in CWC. After approval by the said Advisory Committee, the Ministry of Water Resources, River Development & Ganga Rejuvenation does accords investment clearance to such projects. It is further submitted that mentioning only two projects in Clause VII of the order of the Tribunal could be interpreted by any party to mean that except the aforesaid two projects, no other project in Vansadhara basin is required to be techno-economically appraised in CWC and approved by the Advisory Committee on Irrigation, Flood Control and Multipurpose projects in the Ministry of Water Resources, River Development & Ganga Rejuvenation and Investment Clearance of the said Ministry to be obtained. Additionally, it is also submitted that as the Hon'ble Tribunal has ordered under Clause VII for obtaining clearance of CWC, the party States may insist for clearance of CWC for the aforesaid two projects over and above its techno-economic evaluation of the said two projects for which no procedure is framed in CWC. Hon'ble Tribunal may kindly consider addressing the above concerns by clarifying the Clause VII of the Order.

3.27 Mr. S. Wasim A Qadri, Senior Counsel for the Central Government submitted that mentioning only two projects in Clause VII of the order of the Tribunal could be interpreted by any party to mean that except the aforesaid two projects, no other project in Vansadhara basin is required to be techno-economically appraised in CWC and approved by the Advisory Committee on Irrigation, Flood Control and Multipurpose projects in the Ministry of Water Resources, River Development & Ganga Rejuvenation and Investment Clearance of the said Ministry to be obtained. He further submitted that as the Tribunal has ordered under Clause VII for obtaining clearance of CWC, the party States may insist for clearance of CWC for the aforesaid two projects over and above its techno-economic evaluation of the said two projects for which no procedure is framed in CWC. The Tribunal may consider addressing the above concerns by clarifying the Clause VII of the Order.

3.28 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that the requirement of clearance from the Central Water Commission as mandated under Clause VII is to be interpreted as techno-economic evaluation of the DPR as per the guidelines dated 15.12.2015 issued by the Union Ministry of Water Resources. Therefore, the Tribunal may clarify accordingly.

3.29 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the Tribunal in Para 10.6 at Page 262 of the Report (Vol.-II) held “we have been informed that there is a due process and guidelines in place for taking up irrigation projects like construction of a dam, barrage or a weir on inter-state river(s).” Therefore, no clarification is necessary.

3.30 Now, the relevant provision under Clause VII of the Final Order of this Tribunal is as under:

“The proposed Neradi Barrage project as well as the proposed Side Weir project must get necessary clearances from Central Water Commission; Ministry of Water Resources, River Development & Ganga Rejuvenation; Ministry of Environment, Forest and Climate Change; Ministry of Tribal Affairs and other statutory bodies, as required.”

3.31 After hearing the arguments of the Counsel appearing for the parties, we agree that the major and medium irrigation and multi-purpose projects in an inter-State river basin are techno-economically appraised by CWC and also examined by the Ministry of Water Resources, RD & GR; Ministry of Environment, Forest and Climate Change; Ministry of Tribal Affairs; Ministry of Agriculture & Farmers’ Welfare; and other statutory bodies, as required. After appraisal/clearance of the project by all such organisations/statutory bodies, the same is posed to the Advisory Committee on Irrigation, Flood Control and Multipurpose Projects for acceptance/approval of the project proposal. Thereafter, Ministry of Water Resources, RD & GR accords investment clearance to the project. We clarify the point raised by the Central Government as under:

3.31.1 It is clarified that CWC will only techno-economically appraise the said two projects as per the latest Guidelines issued by Ministry of Water Resources, RD&GR. Be it mentioned that only two projects viz. Neradi Barrage and Side Weir were referred to the Tribunal for adjudication. The Order dated 13th September, 2017 for getting necessary clearances from various organisations/ statutory bodies is in line with the aforesaid procedure laid down in the guidelines and it does not deviate from the extant procedure for appraisal/ clearance of a project. As such, all other projects, if there be any, in Vansadhara basin will also be governed by the said guidelines of the Ministry of Water Resources, RD&GR.

3.31.2 Clause VII of the Final Order dated 13th September, 2017 of the Tribunal stands deemed to be modified partly by words as “get necessary appraisal/ clearances from Central Water Commission,.....” instead of words “get necessary clearances from Central Water Commission,” in this clause at page 356 of the Report.

Techno-economic Appraisal of DPR in CWC

3.32 The Central Government sought the clarification regarding techno-economic appraisal of DPR in CWC. The clarification as referred in the Reference Petition on this subject is as follows:

Clarification No.7:

As per Clause IX of the Order of the Hon’ble Tribunal, Andhra Pradesh shall pay to Odisha all costs including compensation, charges and expenses incurred by Odisha for or in respect of the compulsory acquisition of lands, as provided in the Detailed Project Report of Neradi barrage, which are required to be acquired for Neradi barrage. In this regard, it is submitted that as per the Guidelines issued by Ministry of Water Resources, River Development & Ganga Rejuvenation on 15th December, 2015, all new major and medium irrigation and multipurpose projects in an inter-State river basin are subject to techno-economic appraisal in CWC and then approval by the Advisory Committee on Irrigation, Flood Control and Multipurpose projects in the Ministry of Water Resources, River Development & Ganga Rejuvenation. Keeping in view the Guidelines issued by Ministry of Water Resources, River Development & Ganga Rejuvenation on 15th December, 2015, CWC has framed Guidelines for undertaking techno-economic appraisal of Detailed Projects Reports (DPR) major and medium irrigation and multipurpose projects got it approved from MoWR, RD & GR and these new guidelines became effective from January 1,

2017. As result of techno economic appraisal of the DPR in CWC, different aspects of the project as contained in the DPR like hydrology, irrigation planning, annual benefits, project cost and annual project cost etc get modified. Though the aforesaid aspects get modified, there is no requirement to submit the modified DPR incorporating the various modifications resulting from techno-economic appraisal. The techno economic appraisal of the DPR in CWC may enhance or reduce the project cost as mentioned in the DPR due to various factors. Hon'ble Tribunal may kindly consider addressing the above concerns by clarifying the Clause IX of the Order.

3.33 Mr. S. Wasim A. Qadri, Senior Counsel for the Central Government submitted that after the techno-economic appraisal of the DPR in CWC, various aspects like hydrology, irrigation planning, annual benefits, project cost and annual project cost etc. get modified and there is no requirement to submit the modified DPR. However, the cost of the project may enhance or reduce due to various factors as mentioned above. Hon'ble Tribunal may kindly consider addressing the above concerns by clarifying the Clause IX of the Order.

3.34 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that the cost incurred by the State or the project proponent towards payment of compensation to landowners etc. is to be accounted and considered during techno-economic appraisal clearance. The Respondent Andhra Pradesh is expected to prepare fresh DPR which will have a protection wall and which will also specifically delineate the area of submergence not exceeding 106 acres of land in the territory of Respondent Odisha. This Tribunal may clarify accordingly.

3.35 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the clarification sought is unnecessary and do not flow from the decision of the Tribunal. In any event, Para 10.6 at Page 262 of the Report (Vol.-II) squarely covers the same.

3.36 Now, the relevant provisions of the Final Order of this Tribunal are as under:

Clause VIII

“The State of Odisha shall acquire 106 acres of land as per relevant provisions of the concerned Act in its territory, required for the Neradi Barrage Project and hand it over to the State of Andhra Pradesh within a period of one year from the date of publication of this order in the official Gazette.”

Clause IX

“Andhra Pradesh shall pay to Odisha all costs including compensation, charges and expenses incurred by Odisha for or in respect of the compulsory acquisition of lands, as provided in the Detailed Project Report of Neradi Barrage, which are required to be acquired for Neradi Barrage.”

3.37 After hearing the arguments of the Counsel appearing for the parties, we agree that the various parameters get modified as a result of the techno-economic appraisal of the DPR by CWC and other organisations and no modified DPR is required to be prepared based on the modified parameters. In fact, a Note is prepared which contains all the details and salient features of the project, as finalised by various appraising organisations/statutory bodies, for consideration by the Advisory Committee on Irrigation, Flood Control and Multipurpose Projects for acceptance/approval of the project. We, therefore, clarify as under:

3.37.1 All costs including compensation, charges and expenses incurred by Odisha for or in respect of the compulsory acquisition of the lands as provided in the DPR of Neradi Barrage, as mentioned in the Clause IX of the Order, imply that the lands and their costs would be as finalised by CWC after techno-economic appraisal of the project proposal.

3.37.2 As regards the contention of Odisha that the Respondent Andhra Pradesh is expected to prepare fresh DPR, which will have a protection wall and which will also specifically delineate the area of submergence not exceeding 106 acres of land in the territory of Respondent Odisha, we clarify that preparation or modification of the DPR shall be decided by CWC as per extant guidelines and this Tribunal is not giving any direction for preparation or modification of DPR. It is also made clear that the 106 acres of land in the territory of Odisha, which is required to be acquired by the State of Odisha, is for the purpose of construction of a protection wall, inspection path, catch drain, foot bridges etc. on left side of the river and it is not the extent of submergence area as pointed out by the State of Odisha. The Tribunal has clearly stated in its Report and Final Order that after construction of 3.8 km long protection wall, the backwater effect would be confined only to 3 km from protection wall. As such, the area of submergence would be within the river course between the high banks/protection wall.

3.37.3 Hence, no modification in the Report of the Tribunal and the Final Order dated 13th September, 2017 is required in this regard.

Authorisation of Supervisory Committee for having Control over Upstream Reservoirs

3.38 The Central Government sought the clarification regarding authorisation of Supervisory Committee for having control over filling in and release of water from upstream reservoirs. The clarification as referred in the Reference Petition on this subject is as follows:

Clarification No.8:

As per Clause X (1) of the order of the Hon'ble Tribunal, the Supervisory Committee is mandated to supervise the functioning of the Side Weir complex at Katragada and Neradi barrage when constructed and also for implementation of the order of the Tribunal. It is submitted that most of the projects of Odisha for utilising its 50% share of 115 TMC are likely to come up in the u/s of Neradi barrage. There could be few projects in the u/s of Neradi barrage which may envisage utilisation of water outside Vansadhara basin and in that eventuality fraction of quantum of water returning to the river and realisation of the same at Neradi barrage may not happen. While in normal year there may not be any difficulty before the Supervisory Committee for implementation of the order, in deficit years there could be temptation on the part of project authorities to store as much water as possible in upstream reservoirs posing difficulty before the Supervisory Committee for proper implementation of the order at Neradi barrage. Therefore, it is submitted that Supervisory Committee should be authorised to have control over filling and release of water from such u/s reservoirs as may affect the functioning of the Committee for implementation of the order at Neradi barrage. Hon'ble Tribunal may kindly consider addressing the above concerns by clarifying the Clause X (1) of the Order.

3.39 Mr. S. Wasim A. Qadri, Senior Counsel for the Central Government submitted that Supervisory Committee should be authorised to have control over filling in and release of water from such upstream reservoirs as may affect the functioning of the Committee for implementation of the order at Neradi Barrage. He requested the Tribunal to consider addressing the above concerns by clarifying the Clause X (1) of the Order.

3.40 Mr. Mohan V. Katarki, Senior Counsel for the State of Odisha followed by Mr. Jayant Bhushan, Senior Counsel submitted that the clarification sought by the Central Government does not fall within the scope of the Act because the clarification appears to be intended for enhancing the powers of the Supervisory Committee. It is submitted that even otherwise the prayer of the applicant Union cannot be considered for enlarging the powers of the Supervisory Committee over the upstream projects of the State of Odisha in Vansadhara basin, because there was no water dispute with regard to these projects. The Supervisory Committee is not intended to be a body for management of the basin. It is also not intended to act as an authority to divide the waters between the basin States. As such, no clarification is necessary.

3.41 Mr. C.S. Vaidyanathan, Senior Counsel for the State of Andhra Pradesh submitted that the clarification sought by the Central Government was not an issue before the Tribunal. The Clause X of the Order is very clear which meant only for supervising the functioning of the Side Weir Complex at Katragada and Neradi Barrage. As such, no clarification is necessary.

3.42 Now, the relevant provision under Clause X(1) of the Final Order of this Tribunal is as under:

“A Supervisory Committee consisting of four members – two from the Central Water Commission; one from the State of Andhra Pradesh; and one from the State of Odisha shall be constituted to supervise the functioning of the Side Weir complex at Katragada and Neradi Barrage when constructed and also for implementation of the order of the Tribunal.”

3.43 After hearing the arguments of the Counsel appearing for the parties, it is stated that as per the Final Order of the Tribunal, the role of the Supervisory Committee is to supervise only functioning of the Side Weir complex at Katragada and Neradi Barrage when constructed and also for implementation of the Order of the Tribunal. It is noted that the control of upstream reservoirs does not come under the purview the Supervisory Committee. However, to obviate any confusion, we clarify the point raised by the Central Government as under:

3.43.1 It is made clear that the Supervisory Committee has been constituted for specific purpose as mentioned in the Report and not intended to be a body for management of the basin. We do not find and see any difficulty by the Supervisory Committee in performing responsibilities mandated under Clause X(1) of the Tribunal’s Final Order.

3.43.2 As regards storing more water by the project authorities in upstream reservoirs in deficit years, it is made clear that for a water deficit year, the distress formula has already been specified under Clarification No.3, according to which the deficit water is to be shared proportionately by both the States equally.

3.43.3 Hence, no modification in the Report of the Tribunal and the Final Order dated 13th September, 2017 is required.

Attaching Layout Drawing of the Project

3.44 The Central Government sought the Clarification regarding attaching a complete layout drawing of the project with its Report and/or decision to make the Report and Decision fully comprehensible. The clarification as referred in the Reference Petition on this subject is as follows:

Clarification No.9:

Under para 9.1 of the report, the Hon'ble Tribunal has listed out the objections of the Odisha regarding construction of the Neradi barrage. More specifically under point (3) of the said para Hon'ble Tribunal has recorded as under:

“Project regarding the construction of the Neradi barrage would call for and require acquisition of land of more than 106 acres on the side of State of Odisha as is mentioned in some of the Minutes regarding the discussions”.

Under Para 9.16 of the report, the Hon'ble Tribunal has recorded its findings on the said objection which is as under:

“It is thus established that the entire embankment on the left side of the river stands on government land and when protection wall is constructed upon the same land, there is no requirement of acquisition of any land to that extent. If the existing embankment is used and utilised which has already been acquired/used for the purpose, construction of Flood Protection Wall on the said embankment and a catch drain behind the Protection Wall may require acquisition of land even less than 106 acres.

Therefore, no additional land over and above 106 acres as agreed upon by both the States is required or needs to be acquired by the State of Odisha for the said purpose. Thus this objection raised by the State of Odisha is also found to be baseless and without any merit. (para 9.16)”

It is respectfully submitted that no drawing showing submergence area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the Protection Wall is attached in the report or decision of the Hon’ble Tribunal and as result the decision and report to the extent is not fully comprehensible. Hon’ble Tribunal may kindly consider attaching a complete layout drawing of the project and drawing showing submergence as above with its report and/or decision to make the report and decision fully comprehensible.

3.45 It is pointed out that the Central Government has requested for attaching a complete layout drawing showing submergence area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the Protection Wall with the Report of this Tribunal.

3.46 It is stated that this clarification sought by the Central Government and the Question No.1 raised by the State of Odisha deal with a similar issue. The clarification regarding preparation of drawing showing area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the protection wall etc. has already been given under Question No.1 raised by the State of Odisha in Chapter 2 of this Report which shall stand answered in terms of the order passed by this Tribunal on 23rd September, 2019 but subject to the outcome of the SLP filed by the State of Odisha before the Hon’ble Supreme Court.

Conclusion:

3.47 In the Result, the Reference No.1 of 2017 of the State of Odisha and Reference No.2 of 2017 of the Central Government, as referred to the Tribunal under Section 5(3) of the Act, are disposed of accordingly as in Chapters 2 and 3 of this Further Report.

3.48 Accordingly, the Report with the Decision dated 13th September, 2017, under Section 5(2) of the Act, by the Tribunal, shall stand explained and/or clarified in the manner indicated in this Further Report. The list of the explanation, clarification and guidance as also the deemed modifications under Section 5(3) are enumerated in Schedule I and the Final Order and the Decision be deemed modified by adding Clause II(A), Clause II(B) and Clause X(A) and also adding sub-paragraphs after Clause X(3)(v) Clause X(3)(vii) and partially modifying Clause VII, Clause XI and Clause XII, as shall be read finally, are enumerated in Schedule II to this Further Report.

Before we part with the matter, we may record our appreciation. It is a great pleasure to acknowledge the able and helpful assistance of the Learned Senior Counsel appearing on behalf of the States of Odisha and Andhra Pradesh and the Central Government, being effectively supported and assisted by other Learned Counsel and the officers of the respective States and the Central Government. We appreciate the devotion and hard work on their part. The arguments of the Learned Senior Counsel and the material placed by them helped us immensely in preparing this Further Report and we acknowledge their able assistance.

The valuable help that we got from the Assessors was indeed immense and very valuable. They have worked hard and always extended their help in preparation of the report readily and unreservedly.

The personal staff, court masters and the officers and staff of the Registry have extended their full cooperation and support in accomplishing this work. Without the full cooperation and the assistance from all, it would not have been possible to prepare this Further Report.

We express our deep appreciation to all concerned and thank them all.

Pratibha Rani J.
MEMBER

B.N. Chaturvedi J.
MEMBER

Dr. Mukundakam Sharma J.
CHAIRMAN

New Delhi
21st June, 2021

SCHEDULE - I

Reference No. 1 of 2017

Reference No. 2 of 2017

Further Report: Explanations and Clarifications made and consequential Deemed Amendments

The Further Report, as given herein before in Chapters 2 & 3 having the effect of partial modification of the decision dated 13th September, 2017 by the Tribunal, the nature of explanation, clarification and guidance in the Report are enumerated below for the sake of convenience:

ODISHA

Clarification/explanation/modification of orders incorporated.

Para 2.14, Pages 42-43

Question-1:

The clarification and explanation relating to identification and preparation of a map delineating 106 acres of land (to be acquired by the State of Odisha) is as follows:

“We are of the view that the Tribunal has already passed the Order on this question/clarification sought by the State of Odisha on 23rd September, 2019 giving detailed reasons for coming to such conclusions. This Order stands and shall form part of this Further Report but would be subject to the outcome of the SLP filed before the Hon’ble Supreme Court by the State of Odisha wherein a challenge is made to the Order passed by this Tribunal on 23rd September, 2019, which is pending.

Therefore, the Question No.1 (raised by the State of Odisha) and Clarification No.9 (raised by the Central Government) shall stand answered in terms of the order passed by this Tribunal on 23rd September, 2019 but subject to the outcome of the SLP filed by the State of Odisha before the Hon'ble Supreme Court."

Para 2.19.1, Page 45

Question-2:

Sub Clause (3) of Clause X at pages 357-359 of the Final Order of the Tribunal regarding Secretariat of the Supervisory Committee is explained as follows by adding a clarification:

"It is for the Supervisory Committee to take a call as to in what manner and how its secretariat shall function and to be manned. It would also therefore decide the source from which its manpower is to be drawn. But the fact remains that the Secretariat of the Supervisory Committee is necessarily to be manned by both technical and non-technical persons with minimum strength just to carry out the functions assigned to the Committee. Posting of personnel drawn from non-party States for the Supervisory Committee will not be workable. As such, it could be appropriate that technical persons be drawn from CWC. In case CWC is not in a position to post all the technical persons, then such persons may be posted by both the States in equal strength. All the non-technical persons (Group 'C' and Group 'D') may be posted by both the States, viz. Andhra Pradesh and Odisha in equal strength."

Question-3:

Clause X at pages 357-360 of the Final Order of the Tribunal is explained and a Clause X(A) relating to appeal against the decision of the Supervisory Committee be inserted (by way of clarification given in para 2.25.2) as follows:

“Review Authority: The resolution/direction of the Supervisory Committee shall be reviewable on application of either of the party States and the decision of the Review Authority on the review petition, if any preferred, shall be final and binding on both the States. The Secretary of the Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti, Government of India would be the Single Member Review Authority. The Review Authority so constituted shall give opportunity of hearing to the Party States to the Review Petition, before taking any decision in the matter. The Review Authority may also, if necessary, call for the records and comments of the Supervisory Committee on the Review Petition. The decision shall be recorded in writing.”

Consequent upon the constitution of the Review Authority, the Clause XI of the Final Order of the Tribunal stands deemed to be partially modified by inserting the words “subject to the decision, if any, by the Review Authority” in this clause and the modified clause is as under:

“The recommendation of the Supervisory Committee, subject to decision, if any, by the Review Authority, shall be final and binding, and the State of Andhra Pradesh, on the basis of recommendation of the Supervisory Committee/Review

Authority, shall make the payment to the State of Odisha on account of the compensation for the damages, if any, caused by backwater of Neradi Barrage beyond its pool level.”

Para 2.30.1, Pages 54-55

Question-4:

Clause III and sub clauses (i), (ii), (iii), (iv) & (viii) of Clause X(3) of the Final Order of the Tribunal regarding automation of regulating system are clarified and explained as follows:

“The telemetry network is an automatic water level and flow measuring system, which records the desired flow parameters continuously and enables availability of the data for any desired time. We, therefore, recommend installation of a robust State of the art telemetry network at the Side Weir and Neradi Barrage for monitoring drawal of water from the Side Weir and regulation of flow from Neradi Barrage. The Supervisory Committee would be fully competent to get installed the telemetry network, operate the system systematically and according to technical requirement, and also to frame the necessary guidelines. Therefore, no guidelines in this regard are being issued by the Tribunal. As per Tribunal’s Final Order, all the expenses for conducting monitoring activity shall be borne by the State of Andhra Pradesh and therefore, the cost of the telemetry network including O&M costs shall also be borne by the State of Andhra Pradesh.”

Para 2.36.1, Pages 57-58

Question-5:

Clause X(3)(vi) of the Final Order of the Tribunal regarding engaging an agency for removal of the silt is explained as follows:

The Supervisory Committee is competent enough to get the said work and given task carried out and may devise its own method and manner of tackling the issue. The aggradation is a gradual process and the Supervisory Committee is and would always keep a close watch and get cleared the silt, as and when required. The decision for engaging a central agency or otherwise for removal of the silt would be considered and decided by the Supervisory Committee depending upon need based and the actual ground situation of silting in the river.

Para 2.42.1 & Para 2.42.3, Pages 60-61

Question-6:

Clause X(3)(vii) at page 359 of the Final Order of the Tribunal relating to plugging of Side Weir is explained by way of clarification as follows:

“The Order of the Tribunal is to totally plug the Side Weir and make it completely non-functional. This direction implies that all appropriate measures may be taken to ensure that no water flows through it at any level of water in the river. It is further clarified that the plugging of the Side Weir may be done at the location where the river bank has been cut and the weir has been constructed. Further, the plugging has to be done to the height upto the level of the original natural banks of the river.

By plugging the weir site, no water shall flow down the Side Weir and that there shall be no flow at all to go through the Side Weir. The members of the Supervisory Committee being technical persons and also possessing wide experience would definitely use their vast experience and expertise to implement and give effect to the Order of the Tribunal.”

A sub paragraph is inserted at page 359 after Clause X(3)(vii) relating to plugging of Side Weir in the Final Order of the Tribunal as below:

“The plugging of the Side Weir shall be done at the location where the river bank has been cut and the side weir has been constructed. The plugging may be done to the height upto the level of the original natural banks of the river.”

Para 2.47.3, Para 2.47.5 & Para 2.47.6, Pages 64-66

Question-7:

Clause X(3)(v) and Clause X(3)(vi) at pages 358-59 of the Final Order of the Tribunal relating to taking original ground levels adjacent to Neradi Barrage and Side Weir are explained and clarified as follows:

“Original profile of the river and lands adjacent to the proposed Neradi Barrage may be taken just before the start of the civil works of the proposed Neradi Barrage, which shall be the point of reference for silt deposited prior to and during construction and/or after commissioning of the barrage. It is further clarified that such profile in respect of Neradi Barrage shall be taken as per directions of the Supervisory Committee and there is no need of taking such profile at this stage.”

“Regarding taking original profile of the river and lands adjacent to the Side Weir at Katragada, it is clarified that since the Side Weir has already been operationalised in compliance to the interim order dated 17th December, 2013 of the Tribunal, the present profile of the river and lands adjacent to the Side Weir at Katragada may be taken as per directions of the Supervisory Committee (if in place by that time), otherwise, by carrying out survey by a joint survey team of the officers of the States of Odisha and Andhra Pradesh under the supervision and guidance of Central Water Commission (CWC). This shall be the point of reference for the purpose in respect of the Side Weir only. It is also clarified that our Order dated 13th September, 2017 under Clause X(3)(vi) shall be complied with by both the States.”

A sub paragraph is inserted at page 358 after Clause X(3)(v) relating to taking original ground levels adjacent to Neradi Barrage and Side Weir in the Final Order of the Tribunal as below:

“Original profile of the river and lands adjacent to the proposed Neradi Barrage may be taken just before the start of the civil works of the proposed Neradi Barrage. As the Side Weir at Katragada has been operationalised, the present profile of the river and lands adjacent to the Side Weir at Katragada may be taken as per directions of the Supervisory Committee (if in place by that time), otherwise, by carrying out survey by a joint survey team of the officers of the States of Odisha and Andhra Pradesh under the supervision and guidance of Central Water Commission (CWC).”

CENTRAL GOVERNMENT

Clarification/explanation/modification of orders incorporated.

Para 3.14.1 to Para 3.14.6, Pages 77-81

Clarification No.1:

Clarification No.2:

The extracts of the clarifications/guidance provided regarding percentage dependable yield; and assessment of yield in river Vansadhara and project-wise utilisation of respective shares of both the States are as below:

“It is made clear that the issue of percentage dependability of 115 TMC of available water was never raised by any of the parties at the time of adjudication of the dispute before it. There were no pleadings filed by either of the two States nor by the Central Government as is stated now. As a matter of fact neither any documentary nor any oral evidence was led by any of the parties including the Central Government in that regard. Therefore, the said issue did not fall for and arise for consideration of the Tribunal at any stage during the pendency of Reference under Section 5(2).”

“As regards assessment of the yield of Vansadhara basin, it is stated that as per Water Balance Study conducted by National Water Development Agency in 2017, the yield of the basin is 104.35 TMC at 75% dependability. We find that there is not much variation in the Study of NWDA and the yield estimated in 1962 as 115 TMC. It is also stated that the re-assessment of the yield in the river Vansadhara at Gotta Barrage using the yield series up to year 2005 was worked out to be 105 TMC at 75%

dependability by the Joint Working Group comprising of the officers of CWC and co-basin States of Andhra Pradesh and Odisha during the year 2006 as desired by the representative of the Odisha. Thus, the yield assessed through the studies carried out by the Joint Working Group comprising of the officers of CWC and co-basin States of Andhra Pradesh and Odisha during the year 2006 and the yield assessed by NWDA are more or less the same and also close to the agreed yield of 115 TMC.”

“We are of the view that no fresh assessment of the yield at certain dependability is necessary and make it clear that as agreed to by the States of Andhra Pradesh and Odisha during the meeting held on 30th September, 1962, the yield of the river Vansadhara at Gotta Barrage is 115 TMC and this shall be shared by both the States on 50:50 basis. When water availability in any year is less or more than 115 TMC, both the States will share the same proportionately on 50:50 basis.”

“The Central Government has submitted that mentioning yield of basin without specifying dependability is not a sound hydrologic practice in support of which the Central Government is relying upon the decision of CWDT, NWDT and KWDT - I & II where the aforesaid Tribunals determined the yield and apportioned the dependable flows. The disputes raised therein in the other Tribunals to which mention is made by the Central Government were with regard to equitable apportionment of waters available in the basin and its allocation to the existing, on-going and future projects. In the present case, such issue

was not at all involved and raised at any stage. What was alone involved was in respect of construction of Neradi barrage and the Side Weir and allied issues. The answer and the decision of the Tribunal has to be relatable always to the issues and the points under reference and therefore, fact situation and the decision of each Tribunal is dependent on the issues involved. From a bare perusal of the issues framed in the proceedings, which arose out of the pleadings of the parties, would make the position clear that as regards the yield or dependability there was no dispute rather both the States were ad idem in this regard. This is also the stand of the State of Odisha in their written submissions filed on 29.10.2018. Therefore, the issue of the yield or dependability was never a matter of dispute or of concern of this Tribunal. A reference to Clause II of the Final Order would also make it clear that the yield and shares of the two States were based on the agreement of both the States, which was duly recorded in the Report and Final Order. Therefore, the clarification sought for by the Central Government regarding the fresh assessment of the yield is found to be beyond the scope of reference under Section 5(3) of the Act.”

“As regards project-wise utilisation of respective shares of both the States, it is clarified that the reference made to this Tribunal was relating to Neradi Barrage and side weir at Katragada only and specifying project-wise utilisation of respective shares of both the States by the Tribunal was not pleaded and not requested and never argued and therefore, not called for. That

is more so, when no evidence either by way of documentary or oral evidence was led on the issue nor the issue was raised during the proceedings under Section 5(2) of the Act. As such, project-wise utilisation of respective shares of both the States was not an issue before the Tribunal. It is clarified that the Supervisory Committee has been ordered to be set up for implementation of the decision of the Tribunal including supervising the functioning of the Side Weir complex at Katragada and Neradi Barrage, when constructed. The project-wise utilisations in the upstream as well as downstream commitments/utilisations, if any, are to be and will be considered as and when necessary by the CWC at the time of techno-economic appraisal of a project as per applicable norms and prevailing guidelines.”

Para 3.19.1 & Para 3.19.2, Pages 84-85

Clarification No.3:

Clause II at page 354 of the Final Order of the Tribunal relating to period of water year and distress sharing formula is explained by way of clarification as follows:

“It is clarified that the yield of a river basin is never constant. It varies from year to year. Therefore, we hold that since the inter-State agreement between the party States envisages sharing of water on 50:50 basis, necessarily the same principle would have to be followed in a year of distress. In that event also when there is shortage of water in a particular year, sharing of water would be proportionately reduced. When there is an increase in

the water availability in the river, it would be so increased proportionately. The distress sharing formula for Vansadhara river basin as specified herein will be applicable for the total utilisation in the basin by each State. The formula cannot be suggested for Neradi Barrage alone. It is also clarified that the water year is from 1st June to 31st May of the next calendar year. The Order of the Tribunal for opening or closing of the gates has been made for the water year.”

Clause II(A) and Clause II(B) relating to distress sharing formula and water year respectively are inserted at page 354 after Clause II in the Final Order of the Tribunal as below:

“Since the inter-State agreement between the party States envisages sharing of water on 50:50 basis, the same principle shall be followed in a year of distress. In that event also when there is shortage of water in a particular year, sharing of water would be proportionately reduced. When there is an increase in the water availability in the river, it would be so increased proportionately. The distress sharing formula for Vansadhara river basin as specified herein will be applicable for the total utilisation in the basin by each State.”

“The water year is from 1st June to 31st May of the next calendar year.”

Clarification No.4:

Clarification No.5:

Clause III, Clause IV, Clause V at pages 354-355 and Clause X(3)(ii) at page 357-358 of the Final Order of the Tribunal relating to quantum of water to be withdrawn from Neradi Barrage when the yield is less than 115 TMC and quantum of 8 TMC of water to be withdrawn from Side Weir in deficit or surplus years are explained as follows:

“It is clarified that distress formula for Vansadhara river basin as specified under clarification No.3 hereinbefore is also applicable for drawal of water at the Neradi Barrage when the yield of the basin is less in a distress year or surplus in any year. We reiterate that since the inter-State agreement between the party States envisages sharing of water on 50:50 basis, necessarily the same principle would have to be followed in a year of distress. In that event also when there is shortage of water in a particular year, sharing of water would be proportionately reduced. When there is an increase in the water availability in the river, it would be so increased proportionately. The distress sharing formula as specified will be applicable for the total utilisation in the Vansadhara river basin by each State. The formula cannot be suggested for Neradi Barrage alone.”

“It is further clarified that even if the availability of water in the basin in any year is deficit, the quantum of 8 TMC of water may be permitted to be withdrawn by the State of Andhra Pradesh

through the Side Weir at Katragada since it is only about 14% of its share of 57.5 TMC. Thus, quantum of 8 TMC of water will not change in the years when yield of the river Vansadhara at Gotta Barrage is less in any water year or more in any other water year, as long as the quantum of water spilling over the Side Weir does not exceed 8 TMC.”

Para 3.31.1 & Para 3.31.2, Pages 95-96

Clarification No.6:

Clause VII at page 356 of the Final Order of the Tribunal relating to techno-economic clearance by CWC for proposed Neradi Barrage and the Side Weir is explained as follows:

“It is clarified that CWC will only techno-economically appraise the said two projects as per the latest Guidelines issued by Ministry of Water Resources, RD&GR. Be it mentioned that only two projects viz. Neradi Barrage and Side Weir were referred to the Tribunal for adjudication. The Order dated 13th September, 2017 for getting necessary clearances from various organisations/ statutory bodies is in line with the aforesaid procedure laid down in the guidelines and it does not deviate from the extant procedure for appraisal/ clearance of a project. As such, all other projects, if there be any, in Vansadhara basin will also be governed by the said guidelines of the Ministry of Water Resources, RD&GR.”

Clause VII of the Final Order dated 13th September, 2017 of the Tribunal stands deemed to be partially modified by words as “get necessary appraisal/

clearances from Central Water Commission,.....” instead of words “get necessary clearances from Central Water Commission,” in this clause at page 356 of the Report. Accordingly Clause VII shall be read as follows:

“The proposed Neradi Barrage project as well as the proposed Side Weir project must get necessary appraisal/clearances from Central Water Commission; Ministry of Water Resources, River Development & Ganga Rejuvenation; Ministry of Environment, Forest and Climate Change; Ministry of Tribal Affairs and other statutory bodies, as required.”

Para 3.37.1 & Para 3.37.2, Page 99

Clarification No.7:

Clause IX at page 356 of the Final Order of the Tribunal relating to techno-economic appraisal of DPR in CWC is explained as follows:

“All costs including compensation, charges and expenses incurred by Odisha for or in respect of the compulsory acquisition of the lands as provided in the DPR of Neradi Barrage, as mentioned in the Clause IX of the Order, imply that the lands and their costs would be as finalised by CWC after techno-economic appraisal of the project proposal.”

“As regards the contention of Odisha that the Respondent Andhra Pradesh is expected to prepare fresh DPR, which will have a protection wall and which will also specifically delineate the area of submergence not exceeding 106 acres of land in the territory of Respondent Odisha, we clarify that preparation or modification of the DPR shall be decided by CWC as per extant

guidelines and this Tribunal is not giving any direction for preparation or modification of DPR. It is also made clear that the 106 acres of land in the territory of Odisha, which is required to be acquired by the State of Odisha, is for the purpose of construction of a protection wall, inspection path, catch drain, foot bridges etc. on left side of the river and it is not the extent of submergence area as pointed out by the State of Odisha. The Tribunal has clearly stated in its Report and Final Order that after construction of 3.8 km long protection wall, the backwater effect would be confined only to 3 km from protection wall. As such, the area of submergence would be within the river course between the high banks/protection wall.”

Para 3.43.1 & Para 3.43.2, Page 102

Clarification No.8:

Clause X(1) at page 357 of the Final Order of the Tribunal relating to authorisation of Supervisory Committee for having control over filling and release of water from upstream reservoirs is explained as follows:

“It is made clear that the Supervisory Committee has been constituted for specific purpose as mentioned in the Report and not intended to be a body for management of the basin. We do not find and see any difficulty by the Supervisory Committee in performing responsibilities mandated under Clause X(1) of the Tribunal’s Final Order.”

“As regards storing more water by the project authorities in upstream reservoirs in deficit years, it is made clear that for a

water deficit year, the distress formula has already been specified under Clarification No.3, according to which the deficit water is to be shared proportionately by both the States equally.”

Para 3.46, Page 104

Clarification No.9:

The clarification relating to attaching a layout drawing of the project with the Tribunal’s Report and/or decision is as follows:

“It is stated that this clarification sought by the Central Government and the Question No.1 raised by the State of Odisha deal with a similar issue. The clarification regarding preparation of drawing showing area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the protection wall etc. has already been given under Question No.1 raised by the State of Odisha in Chapter 2 of this Report which shall stand answered in terms of the order passed by this Tribunal on 23rd September, 2019 but subject to the outcome of the SLP filed by the State of Odisha before the Hon’ble Supreme Court.”

SCHEDULE - II

Reference No. 1 of 2017

Reference No. 2 of 2017

Further Report : Final Order Deemed Modified : Enumerated :

Thus, after incorporation of deemed modifications as a result of Further Report under Section 5(3) of the Act, the Final Order and the Decision dated 13th September, 2017 of the Tribunal passed under Section 5(2) of the Act, shall be finally read as under :

FINAL ORDER AND DECISION

Clause I

The complaint filed by the State of Andhra Pradesh is held to be maintainable.

This order shall come into operation on the date of publication of the Decision of this Tribunal in the Official Gazette under section 6 of the Inter-State River Water Disputes Act, 1956.

Clause II

The Tribunal hereby declares that the yield of the river Vansadhara at Gotta Barrage is 115 TMC and this shall be shared by both the States on 50:50 basis. This was agreed to by the State of Andhra Pradesh and the State of Odisha during the meeting held on 30th September, 1962.

Clause II (A)

Since the inter-State agreement between the party States envisages sharing of water on 50:50 basis, the same principle shall be followed in a year of distress. In that event also when there is shortage of water in a particular year, sharing of water would be proportionately reduced. When there is an increase in the water availability in the river, it would be so increased

proportionately. The distress sharing formula for Vansadhara river basin as specified herein will be applicable for the total utilisation in the basin by each State.

Clause II (B)

The water year is from 1st June to 31st May of the next calendar year.

Clause III

The Tribunal hereby permits the State of Andhra Pradesh to construct the Side Weir along with ancillary structures as proposed. The State of Andhra Pradesh is permitted to withdraw water only upto 8 TMC from 1st of June to 30th of November every year through the Side Weir. The gates of the Head Regulator of Flood Flow canal of the Side Weir shall be closed on 1st of December or earlier, as the case may be, i.e., as soon as the total drawal of water equals to 8 TMC and the gates shall remain closed till 31st May of next year.

Clause IV

The Tribunal hereby permits the State of Andhra Pradesh to construct the Neradi Barrage across the river Vansadhara with ancillary structures. The Barrage will have a Right Head Sluice of design capacity of 8000 cusecs for meeting the requirements of State of Andhra Pradesh. The Barrage will also have a Left Head Sluice for meeting the requirements of the State of Odisha below Neradi Barrage. The capacity of this Left Head Sluice will be intimated by the State of Odisha to State of the Andhra Pradesh within six months of the publication of this order in the official Gazette. The cost of Left Head Sluice shall be borne by the State of Odisha. If and when in future, irrigation is decided in Odisha State, the cost of the proposed Neradi Barrage shall be borne between the two States on ayacut basis. This is as per the agreed resolution dated 4th September, 1962 between the two States.

Clause V

The Tribunal hereby permits the State of Andhra Pradesh to withdraw the water of Vansadhara river from Neradi Barrage during the first crop period i.e. from 1st of June to 30th of November every year. All flows thereafter shall be let down in the river for use by both the States as agreed upon.

Clause VI

Side Weir at Katragada shall be totally plugged and made completely non-functional immediately after the Neradi Barrage is commissioned.

Clause VII

The proposed Neradi Barrage project as well as the proposed Side Weir project must get necessary appraisal/clearances from Central Water Commission; Ministry of Water Resources, River Development & Ganga Rejuvenation; Ministry of Environment, Forest and Climate Change; Ministry of Tribal Affairs and other statutory bodies, as required.

Clause VIII

The State of Odisha shall acquire 106 acres of land as per relevant provisions of the concerned Act in its territory, required for the Neradi Barrage Project and hand it over to the State of Andhra Pradesh within a period of one year from the date of publication of this order in the official Gazette.

Clause IX

Andhra Pradesh shall pay to Odisha all costs including compensation, charges and expenses incurred by Odisha for or in respect of the compulsory acquisition of lands, as provided in the Detailed Project Report of Neradi Barrage, which are required to be acquired for Neradi Barrage.

Clause X

Setting up of Supervisory Committee

We make the following orders with regard to setting up of Inter-State Regulatory Body (Supervisory Committee) for implementing the decision of the Tribunal. The composition, functions and powers of the Supervisory Committee are as follows:

- (1)** A Supervisory Committee consisting of four members – two from the Central Water Commission; one from the State of Andhra Pradesh; and one from the State of Odisha shall be constituted to supervise the functioning of the Side Weir complex at Katragada and Neradi Barrage when constructed and also for implementation of the order of the Tribunal.
- (2)** The composition of the Committee shall be:
 - (i) Chief Engineer, CWC - Chairman
 - (ii) Representative of State of Andhra Pradesh - Member
 - (iii) Representative of State of Odisha - Member
 - (iv) Superintending Engineer/Director, CWC - Member Secretary
- (3)** The Committee shall have following functions and powers:
 - (i)** To supervise the operation of the gates, of the Head Regulator of Flood Flow Canal of Side Weir complex, including the closure of the same.
 - (ii)** To ensure that total drawal of water through Head Regulator of Flood Flow Canal of Side Weir complex, during the months of June to November in any year shall not in any case exceed 8 TMC,

constituting a part of 50% share of water of the State of Andhra Pradesh.

(iii) To ensure that the gates of the Head Regulator of the Flood Flow Canal of Side Weir complex, shall open on 1st June and close on 1st December or earlier as soon as the total drawal of water equals to 8 TMC every year and the gates shall so remain closed till 31st May of next year.

(iv) To maintain the record of the flow upstream of the Side Weir and also of the flow passing through the Head Regulator of Flood Flow Canal. When the Flood Flow Canal is operational, it may be ensured that the flow downstream of the Side Weir is equal to or more than 4000 cusecs.

(v) To make periodical survey, as it deems necessary, for assessing aggradation and degradation in the river near the Side Weir and take appropriate steps thereto so as to ensure that the bed level of the Side Weir at all times shall be as per its original design.

Original profile of the river and lands adjacent to the proposed Neradi Barrage may be taken just before the start of the civil works of the proposed Neradi Barrage. As the Side Weir at Katragada has been operationalised, the present profile of the river and lands adjacent to the Side Weir at Katragada may be taken as per directions of the Supervisory Committee (if in place by that time), otherwise, by carrying out survey by a joint survey team of the officers of the States of Odisha and Andhra Pradesh under the supervision and guidance of Central Water Commission.

(vi) To keep a close watch on the river behaviour and to ensure that if there be any silting or sedimentation in front of the Side Weir at Katragada or upstream near the Neradi Barrage, the same shall be got cleared, as and when required, through the State Government of Andhra Pradesh.

(vii) To ensure that the Side Weir is totally plugged and made completely non-functional immediately after commissioning of the Neradi Barrage.

The plugging of the Side Weir shall be done at the location where the river bank has been cut and the side weir has been constructed. The plugging may be done to the height upto the level of the original natural banks of the river.

(viii) To supervise the regulation of flows from Neradi Barrage so as to ensure:

(a) that the water from Vansadhara river at Neradi Barrage is withdrawn by the State of Andhra Pradesh and the State of Odisha during the period from 1st of June to 30th of November every year.

(b) that during the period from 1st December to 31st May every year, entire water reaching Neradi Barrage, flows down the river for use by both the States.

(ix) To visit the flood affected areas of Odisha, if any, impacted due to the backwater of Neradi Barrage beyond its pool level and make assessment for giving recommendations regarding compensation to be paid to the flood affected families/persons. For this purpose, the Committee may co-opt any member(s) as it deems fit.

- (4) The Committee shall select the place for its office which shall be provided by the State of Andhra Pradesh.
- (5) The expenses for the maintenance of office and all expenses for conducting the monitoring activity shall be borne by the State of Andhra Pradesh.

The Central Government and the party States shall nominate members of the Supervisory Committee at the earliest, in any case, not later than 3 months from the date of publication of this decision in the official Gazette. No decision of the Supervisory Committee shall be invalid merely because of non-appointment of any member by any State or by reason of absence of any member.

Clause X (A)

Review Authority

The resolution/direction of the Supervisory Committee shall be reviewable on application of either of the party States and the decision of the Review Authority on the review petition, if any preferred, shall be final and binding on both the States. The Secretary of the Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti, Government of India would be the Single Member Review Authority. The Review Authority so constituted shall give opportunity of hearing to the Party States to the Review Petition, before taking any decision in the matter. The Review Authority may also, if necessary, call for the records and comments of the Supervisory Committee on the Review Petition. The decision shall be recorded in writing.

Clause XI

The recommendation of the Supervisory Committee, subject to decision, if any, by the Review Authority, shall be final and binding, and the State of Andhra Pradesh, on the basis of

recommendation of the Supervisory Committee/Review committee, shall make the payment to the State of Odisha on account of the compensation for the damages, if any, caused by backwater of Neradi Barrage beyond its pool level.

Clause XII

The decision or directions as contained in this order shall be read in reference and context with the preceding discussions and the findings recorded on different issues alongwith the reasoning thereof. It is further provided that whatever directions and observations are made in the Further Report by way of clarification/guidance/modification and shown specifically in Schedule - I shall form part of the earlier Final Report.

Clause XIII

Nothing contained herein shall prevent the alteration, amendment or modification of all or any of the foregoing clauses by agreement between the parties or by legislation of the Parliament.

Clause XIV

Order as to costs of proceedings

The States of Andhra Pradesh and Odisha shall bear their own costs. The expenses and costs of the Tribunal shall be borne and paid by the two States in equal shares.

Pratibha Rani J.
MEMBER

B.N. Chaturvedi J.
MEMBER

Dr. Mukundakam Sharma J.
CHAIRMAN

New Delhi
21st June, 2021

Annexure I

BEFORE THE VANSADHARA WATER DISPUTES TRIBUNAL NEW DELHI

REFERENCE NO. 1 OF 2017

(Filed by the State of Odisha)

REFERENCE NO. 2 OF 2017

(Filed by the Government of India)

IN THE MATTER OF:

Water disputes between the States of Odisha and Andhra Pradesh regarding the Inter-State River Vansadhara and the river valley thereof

BETWEEN:

THE STATE OF ODISHA AND THE STATE OF ANDHRA PRADESH

05.04.2019: This matter was called on for hearing before the Tribunal today.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

HON'BLE MR.JUSTICE B.N. CHATURVEDI

HON'BLE MS.JUSTICE PRATIBHA RANI

CHAIRMAN

MEMBER

MEMBER

FOR STATE OF ODISHA:

1. Ms. Indira Jaising, Senior Advocate
2. Shri Mohan V. Katarki, Senior Advocate.
3. Shri Ranveer Singh, Advocate.
4. Ms. Disha Wadekar, Advocate
5. Shri R.S. Jena, Advocate-on-Record.

FOR STATE OF ANDHRA PRADESH

1. Shri C.S.Vaidyanathan, Senior Advocate
2. Shri G. Umapathy, Advocate
3. Shri Guntur Prabhakar, Advocate
4. Shri Y. Rajagopala Rao, Advocate-on-Record

For Govt. of India – MoWR:

1. Shri S. Wasim A Qadri, Senior Advocate
2. Shri Saeed Qadri, Advocate.

ORDER

Subsequent to the Report submitted by the Vansadhara Water Disputes Tribunal, two applications have been filed under Section 5(3) of the Inter State River Water Disputes Act, 1956 (hereinafter called as ‘the Act’) seeking for clarification/explanation and/or guidance in respect of the decision given in the Report and Final Order dated 13.9.2017. One of such applications was filed by the State of Odisha (Reference No.1/2017) incorporating therein preliminary submissions with regard to the legal issues pertaining to the scope of Section 5(3) of the Act and also the limit of the expression of “explanation” and “guidance” in the Act. Besides, they have also incorporated therein seven questions specifically for giving clarification/explanation and/or guidance. Question No.1 raised therein is to the following effect:

“With reference to clause VIII of the Final Order, explain and/or clarify – whether the State of Andhra Pradesh should identify and submit a map to the Supervisory Committee delineating 106 acres of land (to be acquired by the State of Odisha) for its approval?”

So far as that question is concerned, it is their prayer that the State of Andhra Pradesh shall identify and submit a map to the Supervisory Committee delineating 106 acres of land (to be acquired by the State of Odisha) for its approval which is necessary because in the last DPR (1986) of Neradi Barrage which is without a protection wall of 3.5 km it was indicated of submergence of 1326.07 acres. It is stated that this is more required in view of the fact that there is no Detailed

Project Report on the Neradi with a protection wall of 3.5 km. Another question which is raised by the State of Odisha is question No.7 which reads as follows:

“With reference to the functions of the Supervisory Committee (Clause X(vi), clarify and/or explain whether it is necessary to take the original bank levels, ground contour levels of the river bed and lands adjacent to the river at an interval of 300 mtrs from Kashinagar to Gunupur (before the start of the civil works of the proposed Neradi Barrage and the Side Weir) and have it deposited with the CWC with copies to the States?”

During the course of the submissions by learned senior counsel appearing for the State of Odisha it was submitted that the Supervisory Committee has been entrusted in the Report with the task of removal of the silt and payment of damages due to the flooding etc. and therefore, it may be necessary to have the original profile of the river and the lands adjacent to it.

It may also be stated that another application is filed by the Union of India (Reference No.2 of 2017) seeking nine clarifications out of which clarification No.9 deals with a similar issue as raised by the State of Odisha as Question No.1. In support of the said question framed by the Union of India, it is submitted that no drawing showing submergence area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the protection wall is attached in the Report or decision of the Tribunal due to which the decision and report to the extent is not fully comprehensible. To the aforesaid extent the clarification sought for by the Union of India is similar in nature as that of Question No.1 raised by the State of Odisha.

It may be stated herein that in the reply filed by the State of Andhra Pradesh in response to the aforesaid clarification sought for by

the State of Odisha and the Union of India, it is stated that it is necessary to undertake a detailed survey and investigation of the said area so as to identify and prepare a map showing the protection wall, inspection path, catch drain and foot bridges on the left side of the river upstream of the proposed Neradi barrage. In their reply, the State of Andhra Pradesh has also stated that the State of Odisha is required to furnish the following details so as to enable all the parties to conduct a joint survey by the officials of both the States under the supervision of the Central Water Commission (CWC):

- a) The extent of land already acquired by State of Odisha in the stretch from the proposed Neradi barrage on the left side of the river upto Badigam village on the upstream side where the flood banks have been formed.
- b) The alignment of proposed protection wall and its length along the alignment.
- c) The alignment of the inspection path along the left bank of the river in this stretch.
- d) The alignment of catch drain and its length.
- e) The location of the foot bridges as required by State of Odisha.
- f) The area of land beyond the river margin on the left side of the proposed Neradi barrage for accommodating Guide Bunds, Approach road and Abutment etc., including the left side Sluice required by the State of Odisha.
- g) The area of the land already acquired by State of Odisha for the embankment constructed on the left side of the river downstream of the proposed barrage up to outfall regulator of the catch drain including the area of outfall regulator.

So far as clarification under Question No.7 sought for by the State of Odisha is concerned, it is the specific case of the State of Andhra Pradesh that the aforesaid submission and clarification sought for in respect of Question No.7 is wholly misplaced and therefore no

clarification is necessary. They have based the aforesaid submission on the basis of certain statements as mentioned in paragraph 12 of their reply. In view of the aforesaid position taken by the two States, it would be necessary to consider the said contention raised in Question No.7 in detail and an indepth study and consideration is to be made as to whether or not such a clarification is at all necessary and if such clarification is found to be justified, to what extent such a clarification is required to be given particularly with regard to conducting a survey for having the base profile of the river and the lands adjacent to it. The request of the State of Odisha is also to send the decision of the Tribunal to the Supervisory Committee to take a call on that matter. Therefore, this issue and clarification sought for requires further discussion and submission which we can hear at a later stage.

So far as other issues and clarifications/questions raised by the State of Odisha and the Union of India are concerned, we have concluded the arguments of the State of Odisha and the Union of India and while we were hearing the submissions of the State of Andhra Pradesh, we found that so far as the request with regard to the survey and preparation of a map of the area of 106 acres is concerned, there is a uniform position and stand of the two States and the Union of India that such an exercise could be undertaken at this stage only. We, upon consideration of the materials on record, are of the considered opinion that this exercise should be done at this stage so as to enable us to identify the 106 acres of land and then carry out survey and then prepare a map which can be attached with our further report that would be submitted by us on conclusion of hearing on the two applications (Reference Nos.1 and 2 of 2017).

It may be stated herein that the counsel appearing for the State of Andhra Pradesh during the course of arguments has spelt out some of the modalities that may be required to be followed during the course of joint survey for identifying the 106 acres of land to be acquired for construction of Neradi barrage. In the aforesaid modalities, it is suggested that Total Station survey is simple and has been adopted by this Tribunal for joint surveys under the guidance of the CWC in its order dated 3.5.2013 and that it would be just and fair to order for such a survey using Total Station. The State of Odisha during the course of arguments suggested that the aforesaid survey should be conducted through satellite imagery of NRSA. The two learned Assessors who are associated with us have suggested that the process suggested by the State of Odisha may not be very accurate and is also very expensive.

Upon considering the entire facts and circumstances of the case, we are of the considered opinion that the aforesaid exercise should be carried out through a topographical survey adhering to the accepted norms using Total Station. Consequently, we order that such a survey should be made at this stage for identification of 106 acres of the land and for preparation of a map in that regard. So far as clarification sought for by the State of Odisha under question No.7 is concerned, consideration of the same is deferred and the same would be considered and decided after hearing further arguments of the learned counsel appearing for the parties. Therefore the following directions are issued:

1. Survey Team

Since interstate issue is involved in carrying out survey of 106 acres of land to be acquired in Odisha under proposed Neradi Barrage Project, a joint survey team of the officers of the States of

Odisha and Andhra Pradesh shall be constituted. Both the teams shall be led by an officer not below the rank of Superintending Engineer. Besides this, both the States shall have four officers well versed with topographical survey. The joint team may plan the activities as per site conditions and can divide the activities/teams for whole or any part of work, as per mutual consent.

2. Supervision of Survey Work

The joint survey work shall be controlled, supervised and guided by Superintending Engineer, Planning Circle, CWC, Faridabad. An Executive Engineer may be deputed by him to oversee/guide the joint team in the survey work but he will take all instructions from the Superintending Engineer.

3. Survey Methodology

The survey of the land should cover the area starting from 0.5 km downstream of the proposed Neradi barrage and upto 3.8 km upstream from barrage, along the protection wall and 0.2 km beyond. Further, the details of the area(s) to be surveyed shall be identified by the Governments of Andhra Pradesh and Odisha under supervision and advice of CWC. Topographical Survey may be carried out as per the accepted norms using Total Station. The survey team shall mutually carry out all the checks and adjustments daily before starting the work. The team will carry out topographical survey as per the “Guidelines for preparation of Detailed Project Reports of Irrigation and Multipurpose Projects” of Central Water Commission. Scales of survey and contour interval may be decided as per the said guidelines. The modalities for carrying out the survey work shall be decided by CWC and such

exercise of survey work and preparation of the concerned map would be done under its control, supervision and guidance.

4. Preparation of Map

After obtaining field survey data, the joint team will prepare a contour map. The areas of various works to be taken up by the Government of Andhra Pradesh such as protection wall, catch drain behind protection wall, foot bridges, inspection path, out fall structure etc. may be shown/marked in the map and total area to be acquired may also be worked out.

5. Time Frame

Total time expected for survey is 12 to 15 days (5 days for Deployment, reconnaissance, double levelling & establishment of TBM and 7 to 10 days for topographical survey).

6. Miscellaneous

All local assistance and support in carrying out the survey work shall be provided by the Government of Odisha. While carrying out the entire exercise, the steps regarding the modalities submitted by the State of Andhra Pradesh referred to above may be considered and used if thought fit.

7. Cost of the work

Entire cost of the survey work shall be borne by Andhra Pradesh.

It is made clear that each technical team of the two States would be headed by a competent and able officer not below the rank of Superintending Engineer and the CWC under whose supervision and control the entire exercise is to be done would be represented by a Superintending Engineer as stated hereinbefore.

The exercise of the survey and preparation of the map will commence from 20th May, 2019 positively, if necessary on day to day basis and may be completed within four weeks. After completion of the aforesaid exercise, a report shall be submitted by the CWC to the Tribunal along with the attachment regarding the survey carried out and the map prepared on or before 1st July, 2019 with copies to the representatives of both the States and the Union of India.

Re-notify the proceeding on 9th July, 2019, at 11 A.M.

Sd/-

.....J.
(DR. MUKUNDAKAM SHARMA)
CHAIRMAN

Sd/-

.....J.
(JUSTICE B.N. CHATURVEDI)
MEMBER

Sd/-

.....J.
(JUSTICE PRATIBHA RANI)
MEMBER

Annexure II

BEFORE THE VANSADHARA WATER DISPUTES TRIBUNAL NEW DELHI

I.A.No.1 of 2019

(Filed by State of Odisha to clarify/modify/recall order dated 5.4.2019)

IN

REFERENCE NO. 1 OF 2017

(Filed by the State of Odisha)

REFERENCE NO. 2 OF 2017

(Filed by the Government of India)

IN THE MATTER OF:

Water disputes between the States of Odisha and Andhra Pradesh regarding the Inter-State River Vansadhara and the river valley thereof

CORAM:

**HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR.JUSTICE B.N. CHATURVEDI
HON'BLE MS.JUSTICE PRATIBHA RANI**

**CHAIRMAN
MEMBER
MEMBER**

FOR STATE OF ODISHA:

1. Mr. Jayant Bhushan, Senior Advocate
2. Mr. Arun Kathpalia, Senior Advocate.
3. Mr. R.S. Jena, Advocate.
4. Mr. Pawan Bhushan, Advocate
5. Mr. Tushar Bhushan, Advocate
6. Mr. Amartya Bhushan, Advocate
7. Mr. Ketan Paul, Advocate
8. Mr. Bani Brar, Advocate

FOR STATE OF ANDHRA PRADESH

1. Shri C.S. Vaidyanathan, Senior Advocate
2. Shri Y. Rajagopala Rao, Advocate-on-Record

For Govt. of India – MoWR:

1. Brig. (Retd.) Dinkar Adeeb, Advocate

ORDER

Justice Dr. Mukundakam Sharma:

1. This Order would dispose of the application, being I.A.No.1 of 2019, filed by the State of Odisha seeking for modification/clarification/recall of the order dated 5th April, 2019 passed by this Tribunal. The brief background facts for filing the present application are given hereunder:

2. The Union of India has referred the 'water dispute' between the State of Odisha and the State of Andhra Pradesh relating to use and management of the water of the river Vansadhara and the river valley thereof to the Vansadhara Water Disputes Tribunal (hereinafter referred to as 'the Tribunal') for effective adjudication of the said dispute. This reference was made under Sub-section (1) of Section 5 of the Inter State River Water Disputes Act, 1956 (hereinafter referred to as 'the Act'). The Tribunal, after receipt of the pleadings of the States of Odisha and Andhra Pradesh and after making a detailed enquiry and investigation and upon receiving evidence adduced by the parties and also after hearing the learned counsel appearing for the parties, rendered its Report and Award on 13th September, 2017 and forwarded the same to the Union of India on the same day, namely, 13th September, 2017 under Section 5(2) of the Act. Copies of the said Report were also furnished to both the States as also to the Union of India.

3. After submission of the said Report, the State of Odisha and the Union of India filed two separate applications under Section 5(3) of the

Act which were registered as Reference Nos.1 and 2 of 2017 respectively. By filing the said applications, the State of Odisha and the Union of India sought for clarification/explanation and/or guidance in respect of the decision and findings recorded in the said Report.

4. After hearing the submissions of the learned counsel for the State of Odisha and the Union of India on the said two applications, registered as Reference Nos. 1 and 2 of 2017 respectively, the proceeding was directed to be listed again for hearing the arguments of the counsel for the State of Andhra Pradesh. It may be stated herein that the State of Odisha in its application (Reference No.1 of 2017) has incorporated seven questions and one of those seven questions, being Question No.1, was framed in the following manner:

“With reference to Clause VIII of the Final Order, explain and/or clarify – whether the State of Andhra Pradesh should identify and submit a map to the Supervisory Committee delineating 106 acres of land (to be acquired by the State of Odisha) for its approval?”

Similarly, the Union of India in its application (Reference No.2 of 2017), has framed nine questions seeking for explanation and guidance of this Tribunal and one of the said questions, being Clarification No.9, was framed in the following manner:

“Clarification No.9

Under Para 9.1 of the report, the Hon’ble Tribunal has listed out the objections of the Odisha regarding construction of the Neradi Barrage. More specifically under point (3) of the said para, Hon’ble Tribunal has recorded as under:

“Project regarding the construction of the Neradi Barrage would call for and require acquisition of land of more than 106 acres on the side of State of Odisha as is mentioned in some of the Minutes regarding the discussions.”

It is further stated in the said question framed as follows:

“Under Para 9.16 of the report, the Hon’ble Tribunal has recorded its findings on the said objection which is as under:

“It is thus established that the entire embankment on the left side of the river stands on government land and when protection wall is constructed upon the same land, there is no requirement of acquisition of any land to that extent. If the existing embankment is used and utilised which has already been acquired/used for the purpose, construction of Flood Protection Wall on the said embankment and a catch drain behind the Protection Wall may require acquisition of land even less than 106 acres. Therefore, no additional land over and above 106 acres as agreed upon by both the States is required or needs to be acquired by the State of Odisha for the said purpose. Thus this objection raised by the State of Odisha is also found to be baseless and without any merit (para 9.16).”

It is respectfully submitted that no drawing showing submergence area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the Protection Wall is attached in the report or decision of the Hon’ble Tribunal and as result the decision and report to the extent is not fully comprehensible. Hon’ble Tribunal may kindly consider attaching a complete layout drawing of the project and drawing showing submergence as above with its report and/or decision to make the report and decision fully comprehensible.”

In the context of the aforesaid questions being Question No.1 in Reference No.1 of 2017 and Clarification No.9 in Reference No.2 of 2017, the points raised were almost identical which relate to the issue of identification and submission of a map to the Supervisory Committee in respect of 106 acres of land which is to be acquired by the State of Odisha in accordance with the terms of agreement arrived at by both the States.

5. So far as the aforesaid questions are concerned, it is the specific case of the State of Odisha in Reference No.1 of 2017 that the State of Andhra Pradesh is required to identify and submit the map to the Supervisory Committee identifying and delineating with exactitude 106 acres of land to be acquired by the State of Odisha. In the application itself the State of Odisha has made its submissions that identification and submission of map to the Supervisory Committee delineating 106 acres of land has become necessary because in the last DPR (1986) of Neradi Barrage which is without a protection wall of 3.5 km has indicated a submergence of 1326.07 acres and that there is no Detailed Project Report on the Neradi with a protection wall of 3.5 km.

6. There is yet another question framed by the State of Odisha in the said application (Reference No.1/2017), being Question No.7, which is extracted below:

“Question-7: *With reference to the functions of the Supervisory Committee (Clause X(vi), clarify and/or explain whether it is necessary to take the original bank levels, ground contour levels of the river bed and lands adjacent to the river at an interval of 300 mtrs. from Kashinagar to Gunupur (before the start of the civil works of the proposed Neradi Barrage and the Side Weir) and have it deposited with the CWC with copies to the States?”*

The submissions of the State of Odisha in relation to Question No.7 are extracted below:

“Submissions of Odisha Question-7: *The Supervisory Committee has been entrusted with the task of removal of the Silt and payment of damages due to the flooding etc. Therefore, it is necessary to have the original profile of the river and the lands adjacent to it. Hence, the above clarification is sought.”*

7. It may be stated herein that the said application (Reference No.1 of 2017) is supported by an affidavit filed by Shri Gopal Prasad Roy who

describes himself as a Chief Engineer, Project Planning, Formulation and Investigation of the State of Odisha. In his affidavit, he has clearly stated that he has been authorized by the State of Odisha to file the accompanying application before the Tribunal and that the contents of the application are correct to the best of his knowledge and that nothing material has been concealed. Therefore, the aforesaid questions which are part of the Reference Application were framed with the knowledge and consent of the State of Odisha and cannot be said to be only as submissions out of imagination of the then learned counsel appearing for the State of Odisha and that also was without specific instructions from the State.

8. These questions were framed particularly in view of the findings recorded by the Tribunal in its Report and Final Order dated 13th September, 2017 wherein in paragraph 9.16 the Tribunal has recorded its finding as follows:

“It is thus established that the entire embankment on the left side of the river stands on government land and when protection wall is constructed upon the same land, there is no requirement of acquisition of any land to that extent. If the existing embankment is used and utilised which has already been acquired/used for the purpose, construction of Flood Protection Wall on the said embankment and a catch drain behind the Protection Wall may require acquisition of land even less than 106 acres. Therefore, no additional land over and above 106 acres as agreed upon by both the States is required or needs to be acquired by the State of Odisha for the said purpose. Thus this objection raised by the State of Odisha is also found to be baseless and without any merit.”

9. It is in respect of these findings that the Union of India has submitted by filing Reference No.2 of 2017 that no drawing showing submergence area of 106 acres, embankment on the left side of the river, protection wall and catch drain behind the protection wall is

attached in the report or the decision of the Tribunal and as a result the decision and Report to the extent is not fully comprehensible to the Union of India. In that view of the matter, the Union of India has made a prayer and request that the Tribunal may consider attaching a complete layout drawing of the project and a drawing showing submergence as above with its report and decision so as to make the same fully comprehensible.

10. Being faced with the aforesaid issues raised both by the State of Odisha and the Union of India, the State of Andhra Pradesh filed its reply in respect of the clarification under Question No.1 sought by the State of Odisha as follows:

It is stated that in order to identify and prepare a map showing the protection wall, inspection path, catch drain and foot bridges on the left side of the river upstream of the proposed Neradi barrage, it is necessary to undertake a detailed survey and investigation of the said area. As the land of 106 acres required is in the territory of Odisha, it is for the State of Odisha to furnish the following preliminary details so as to conduct a joint survey by the officials of both the States under the supervision of CWC:

- a. The extent of land already acquired by State of Odisha in the stretch from the proposed Neradi barrage on the left side of the river upto Badigam village on the upstream side where the flood banks have been formed.*
- b. The alignment of proposed protection wall and its length along the alignment.*
- c. The alignment of the inspection path along the left bank of the river in this stretch.*
- d. The alignment of catch drain and its length.*
- e. The location of the foot bridges as required by State of Odisha.*
- f. The area of land beyond the river margin on the left side of the proposed Neradi barrage for accommodating Guide Bunds, Approach road and Abutment etc., including the left side Sluice required by the State of Odisha.*

g. The area of the land already acquired by State of Odisha for the embankment constructed on the left side of the river downstream of the proposed barrage up to outfall regulator of the catch drain including the area of outfall regulator.”

Similarly, in the reply filed by the State of Andhra Pradesh in respect of the clarification under Question No.7 sought by the State of Odisha, it is stated as follows:

“12. The Submission of Odisha is wholly misplaced. It is submitted that the sedimentation is a natural phenomenon in any river, which depends on the quantum of flow of water. In any event, the sediment carried with the flow eventually settles down even without the construction of the barrage or Side Weir. The submission of State of Andhra Pradesh to that effect along with the documentary evidences produced – particularly several graphs for different years and different chainages across the river (OW-2/10) – has been extensively dealt with at para 9.19.14 and 11.10.3 of the Report of the Hon’ble Tribunal. In view of the above, no clarification is necessary.”

The reply filed by the State of Andhra Pradesh in respect of the Clarification No.9 sought by the Union of India is as under:

“It is submitted that for preparation of map showing the area of 106 acres, details are required to be furnished by the State of Odisha. The details sought for have already been referred to in the response of Andhra Pradesh to the clarification (1) sought by State of Odisha. As such no clarification is necessary.”

The Tribunal was under the process of hearing arguments on Reference No.1 of 2017 filed by the State of Odisha and Reference No.2 of 2017 filed by the Union of India including Questions Nos.1 and 7 of Reference No.1 of 2017 and Clarification No.9 in Reference No. 2 of 2017 and has already heard the learned counsel appearing for the State of Odisha as also the Union of India and only the learned counsel appearing for the

State of Andhra Pradesh is required to be heard further as his arguments remained inconclusive.

11. So far as the clarification under Question No.7 sought by the State of Odisha in its application is concerned, it is the specific case of the State of Andhra Pradesh that the aforesaid clarification/guidance sought by the State of Odisha in respect of the said question is wholly misplaced and therefore no clarification is necessary. It is suffice to say that the said question would require a detailed and in-depth study and therefore the same would be answered only when both the Reference Applications filed by the State of Odisha and the Union of India are taken up for disposal. We are also of the considered opinion that the said Question No.7 may not be directly relevant for the purpose of deciding the present application as it is concerned mainly with the issue of identification and preparation of a map in respect of 106 acres of land which is directly the subject matter under Question No.1 of the Reference filed by the State of Odisha and Clarification No.9 of the Reference filed by the Union of India.

12. While hearing the argument on the two Reference applications seeking for clarification and/or guidance, the issue with regard to identification and preparation of a map delineating 106 acres of the land to be acquired by the State of Odisha was also heard and the same was argued by the learned counsel for the State of Odisha and the Central Government and also by learned counsel for the State of Andhra Pradesh partly. Consequent to the aforesaid hearing of the counsel appearing for all the three parties, an order was passed by this Tribunal on 5th April, 2019 to the following effect:

“So far as other issues and clarifications/questions raised by the State of Odisha and the Union of India are concerned, we

have concluded the arguments of the State of Odisha and the Union of India and while we were hearing the submissions of the State of Andhra Pradesh, we found that so far as the request with regard to the survey and preparation of a map of the area of 106 acres is concerned, there is a uniform position and stand of the two States and the Union of India that such an exercise could be undertaken at this stage only. We, upon consideration of the materials on record, are of the considered opinion that this exercise should be done at this stage so as to enable us to identify the 106 acres of land and then carry out survey and then prepare a map which can be attached with our further report that would be submitted by us on conclusion of hearing on the two applications (Reference Nos.1 and 2 of 2017).

It may be stated herein that the counsel appearing for the State of Andhra Pradesh during the course of arguments has spelt out some of the modalities that may be required to be followed during the course of joint survey for identifying the 106 acres of land to be acquired for construction of Neradi barrage. In the aforesaid modalities, it is suggested that Total Station survey is simple and has been adopted by this Tribunal for joint surveys under the guidance of the CWC in its order dated 3.5.2013 and that it would be just and fair to order for such a survey using Total Station. The State of Odisha during the course of arguments suggested that the aforesaid survey should be conducted through satellite imagery of NRSA. The two learned Assessors who are associated with us have suggested that the process suggested by the State of Odisha may not be very accurate and is also very expensive.

Upon considering the entire facts and circumstances of the case, we are of the considered opinion that the aforesaid exercise should be carried out through a topographical survey adhering to the accepted norms using Total Station. Consequently, we order that such a survey should be made at this stage for identification of 106 acres of the land and for preparation of a map in that regard.

xxx xxxx xxxx”

13. The identification and preparation of the map of the area of 106 acres was a matter directly connected with Question No.1 framed by the State of Odisha in Reference No.1 of 2017 and with Question No.9 framed by the Union of India in Reference No.2 of 2017 and, therefore, it cannot be said that there was any objection of the State of Odisha in carrying out such identification and preparation of the map. The said position is also made clear by the affidavit sworn in and filed by the Chief Engineer of the State of Odisha who was authorized by the State to file the application with the aforesaid Question No.1. Therefore, identification of the land of 106 acres and preparation of the map of area of 106 acres was agreed to by all the three parties and it cannot be said that it was so made by the counsel appearing for the State of Odisha without proper instructions from the State. There was total agreement amongst the parties that such a survey has to be made in order to enable the Tribunal to answer/clarify the said two questions effectively. The only difference was regarding the manner and method of the survey to be conducted which would in any case be a joint survey. The issue was whether it should be conducted by using Total Station method or by and through satellite imagery of NRSA. The said difference was also clearly recorded in the order of the Tribunal passed on 5th April, 2019. The order clearly reflects the position that the State of Andhra Pradesh was of the view that the joint survey should be through Total Station method which is simple and cost effective which had been adopted by the Tribunal earlier under the guidance of the Central Water Commission as per its order dated 3.5.2013 than the one suggested by the learned counsel for the State of Odisha that the survey should be conducted through satellite imagery of NRSA. Besides, the specific stand of the State of Odisha is that the agreement between the two States was for acquisition of only 106 acres of land but as of now much more

area would be required for construction of the proposed Neradi Barrage. In respect of the said submission the State of Odisha has referred to the findings recorded by the CWPRS, Pune in its Report of 2015 wherein it was stated that the estimated backwater stretch due to the construction of the proposed Neradi Barrage is likely to go to the extent upto 9-10 km upstream of the barrage. So far as that Report is concerned, the Tribunal has already taken notice of the said observation while preparing its Report and has clearly stated in its Report, which is extracted hereinbefore, that only 106 acres of land would be required for the purpose and could be acquired. In that view of the matter, the apprehension of the State of Odisha that more than 106 acres of land would have to be acquired by the State of Odisha if this project is allowed to be carried out is misplaced and misconstrued which is specifically recorded in the Report of Tribunal dated 13th September, 2017.

14. In this view of the matter and considering the entire facts and circumstances of the case, the Tribunal passed an order on 5th April, 2019 with the assistance of Assessors directing that the exercise of the survey for identification and preparation of the map for 106 acres of land should be carried out through a topographical survey adhering to the accepted norms using Total Station method. The said survey, when carried out and done as ordered, would also make it clear, explicit and distinct as to whether 106 acres of land would only be required to be acquired or more land may be required for the purpose afore-stated. Therefore, this survey is necessary and required to test the veracity of the apprehension expressed by the State of Odisha.

15. The State of Odisha has now filed the present application – I.A.No.1 of 2019 on 8th July, 2019 praying for clarification/modification/recall of the order dated 5th April, 2019.

16. Shri Jayant Bhushan, the learned senior counsel appearing for the State of Odisha, drew our attention to the contents of the application and on the basis thereof submitted that the uniform position of the parties as recorded in the order dated 5th April, 2019 is actually not the stated position of the State of Odisha. It was submitted by him that the erstwhile counsel for the State of Odisha was not given any instructions by the State of Odisha to agree for a joint survey and if such a statement was made by such counsel, the same was unauthorized and could not have been acted upon. In support of his submissions, reliance is placed upon the communications from the State of Andhra Pradesh to State of Odisha dated 2.12.2017 and 12.3.2018 and also on those from the State of Odisha to the State of Andhra Pradesh dated 22.12.2017 and 7.4.2018 including those between the Chief Ministers of the two States. Referring to those communications, the learned counsel submitted that the State of Odisha has been consistently stating that the question of conducting a survey at this stage would not and could not arise. It was also submitted that recording of the common position in the order dated 5th April, 2019 appeared to have occurred due to a communication gap between the State of Odisha and its counsel. He also submitted that acquisition of land would be necessary of a larger area than 106 acres as more land is likely to be submerged.

17. In reply to the aforesaid submissions of the learned counsel for the State of Odisha, Shri C.S.Vaidyanathan, the learned senior counsel appearing for the State of Andhra Pradesh submitted that when the Tribunal ordered on 5th April, 2019 for a joint survey and preparation of

the map, the same was an agreed position by the counsel for all the parties based upon and in the light of the position with regard to which Question No.1 and Clarification No.9 were framed. He further submitted that no additional land over and above 106 acres as agreed upon by both the States would be required to be acquired and that it was an agreed stand that the joint survey was to be carried out to ascertain location of the said 106 acres of land under the supervision and guidance of the Central Water Commission. The learned counsel further submitted that this exercise of identifying and preparation of the map for 106 acres of land should be done at this stage so as to enable the Tribunal to attach the same with its Further Report which is to be submitted on conclusion of the hearing and disposal of the two Applications, being Reference Nos.1 and 2 of 2017. The learned counsel for the State of Andhra Pradesh also submitted that the State of Odisha is not permitting the officials of the State of Andhra Pradesh to enter into the territory of the State of Odisha for conducting the joint survey by saying that there was no order or direction to that extent in the Report dated 13th September, 2017 of the Tribunal.

18. Having heard the learned counsel appearing for the parties and upon careful consideration of the pleadings in the main Reference and also in respect of the aforesaid Reference Nos.1 and 2 of 2017, it is observed that in the inter-State meeting held on 8th April, 1988 it was the agreed position by both the States that 106 acres of land in Odisha territory for construction of Neradi Barrage would be acquired by the State of Odisha. The relevant para of the said meeting is reproduced below:

“1.3. With a view to limit the extent of land required for acquisition in Orissa territory to within 106 acres, the Government of Andhra Pradesh have formulated a proposal

to construct a flood protection wall 3.5 kms. long upstream of the Neradi barrage in Orissa territory. A catch drain is also proposed for draining the water behind the protection wall. This proposal was forwarded by the Government of Andhra Pradesh both to CWC and the Government of Orissa in Feb. '87."

In the same meeting it was also recorded that the effect of the afflux due to Neradi barrage will be upto 3 km of protection wall. The relevant para is as below:

"2.2. The Afflux due to Neradi Barrage as computed by Andhra Pradesh was considered and it was agreed that the effect of this afflux beyond 3 kms. of protection wall upstream of the Barrage was within permissible limit."

In its Report dated 13th September, 2017, the Tribunal recorded in para 9.15 and 9.16 in respect of acquiring 106 acres of land in Odisha as follows:

"9.15 The next objection of the State of Odisha is that it has agreed to the concept of construction of the Neradi Barrage only on the ground that not more than 106 acres of land of Odisha would be acquired and since in view of the revised situation more land would be required to be acquired construction should not be permitted. That agreement was entered into in the years 1961 and 1962 and both the States are bound by the said terms and conditions of their agreement. After the flash flood that happened in the year 1980 which had tremendous effect on the neighbouring areas, therefore, subsequent to the said agreement it was also agreed between the two States that the barrage would be designed for a peak flood of 6 lakh cusecs."

"9.16 It is thus established that the entire embankment on the left side of the river stands on government land and when protection wall is constructed upon the same land, there is no requirement of acquisition of any land to that extent. If the existing embankment is used and utilised which has already been acquired/used for the purpose, construction of Flood Protection Wall on the said

embankment and a catch drain behind the Protection Wall may require acquisition of land even less than 106 acres. Therefore, no additional land over and above 106 acres as agreed upon by both the States is required or needs to be acquired by the State of Odisha for the said purpose. Thus this objection raised by the State of Odisha is also found to be baseless and without any merit.”

19. During the course of the argument on the present application (I.A.No.1/2019), the learned counsel for the State of Andhra Pradesh produced before us a Brief Note, with a copy to the counsel appearing for the State of Odisha, containing the details of 106 acres of land required in Odisha territory. The same was also submitted to the Central Water Commission and Odisha Government for the purpose of TAC Note for consideration of Neradi Barrage Project by the Advisory Committee for consideration of techno-economic viability of Major, Medium irrigation, Flood Control and Multipurpose Project proposals in its 41st Meeting, which is as follows:

Sr. No.	Component	Area required in Odisha
1.	For Catch Drain	16.00 acres
2.	For Inspection Path	3.00 acres
3.	For Walkway	1.00 acre
4.	For Masonry Protection Wall	4.50 acres
5.	For River Margin	67.00 acres
6.	For Barrage, Guide Bunds and Approach Road	11.50 acres
	Total	103.00 acres
	Say	106.00 acres

20. It is the specific case of the State of Andhra Pradesh that the purpose of the joint survey is for identification of the aforesaid 106 acres of land to be acquired in Odisha territory and preparation of a map thereof for various structures, as cited above.

21. So far as the issue of backwater effect due to construction of the proposed Neradi barrage is concerned, the same stands finally adjudicated by this Tribunal and discussed in its Report dated 13th September, 2017 from paragraph 9.17.46 to 9.17.56 and in paragraph 9.18 and again summarised in paragraphs 11.5.1 to 11.5.7 and in view of that there cannot be a review of the same by this Tribunal for which it has no such jurisdiction due to the fact that this Tribunal, at the present moment and as provided in the Statute, is concerned only with regard to giving a clarification and guidance in respect of some of the decisions recorded in the Report dated 13th September, 2017. In the Report of the Tribunal also it is categorically recorded and which is extracted hereinbefore that it is the specific case of the State of Andhra Pradesh that acquisition of 106 acres of land by the State of Odisha as agreed upon earlier is sufficient and the said statement was recorded in view of the specific stand taken by the learned senior counsel for the State of Andhra Pradesh but, in order to make the position clear, it is felt that the contents of paragraph 9.15.12 be extracted and is accordingly extracted herein below:

“9.15.12With the agreement on construction of a Protection Wall over the embankments already existing at the site, with a catch drain to drain out water from the waterlogged area behind the Protection Wall, it is estimated that not more than 106 acres would be required to be acquired by the State of Odisha. During the course of arguments, the counsel of Andhra Pradesh has categorically stated that they are not seeking for any further acquisition of land by the State of Odisha beyond 106 acres and it is asserted that acquisition of 106 acres of land by Odisha Government as originally agreed upon is sufficient and more than enough for the purpose.”

22. We also observe that 106 acres of land required to be acquired by the State of Odisha is for the purpose of construction of a protection

wall, inspection path, catch drain, foot bridges etc. on the left side of the river and it is not the extent of submergence area as is pointed out by the State of Odisha. The Tribunal has clearly stated in its Report and final Order that after construction of 3.8 km long protection wall, the backwater effect would be confined only to 3 km from protection wall. As such, the area of submergence would be within the river between the high banks/protection wall. As regards the contention of the State of Odisha stating their apprehension that the backwater effect on construction of the barrage would be upto Gunupur town, it was recorded in the Report dated 13th September, 2017 in the following manner:

“9.17.56 The contention of the State of Odisha indicating their apprehension that once the Barrage is constructed, the backwater effect would go up to Gunupur town was held to be only a speculative apprehension. It is pointed out that Gunupur town is located 15 km upstream of the Barrage and, therefore, any damage to this town due to the construction of the barrage is totally baseless.”

“9.18 Even assuming that there is submergence of land due to flood waters caused during an unprecedented high flood the duration of the same would be for a very restricted period which in our estimation may not cause much of a damage either to the standing crops or to the habitation necessitating acquiring of further land beyond 106 acres which theory is also supported by the State of Andhra Pradesh. However, if and when a heavy damage is caused by backwater of Neradi Barrage due to high flood beyond the pool level at any point of time causing submergence of land beyond 106 acres of land which is acquired, we feel that the committee constituted by us would examine and consider whether any reasonable compensation would be required to be paid in that regard and if they come to the considered opinion and conclusion that the inhabitants of Odisha and their standing crops are, in any manner, damaged or affected and there is irreparable loss and damage to their crops and structures, the affected persons may raise their

claims for the losses suffered upon which they shall be given reasonable compensation as assessed by the committee, the money for which will be provided by the State of Andhra Pradesh. This condition is apart from the other conditions which are being laid down hereinafter for allowing construction of the Neradi Barrage and its proper maintenance.” [

23. We also observe at this stage that the aforesaid conclusions arrived at by the Tribunal would make it crystal clear that in the event of submergence of land due to unprecedented high flood waters, which could happen only very rarely and would last only for a couple of days, adequate provision has been made for payment of compensation to the State of Odisha and the people being affected on account of such high flood water for the damages, if any, caused by backwater of Neradi Barrage beyond its pool level. It was enumerated in Clause XI of the Final Order to the Supervisory Committee by the Tribunal. These findings and conclusions cannot be subject matter of the present application and in any case, cannot be subject matter of readjudication.

24. At this stage, it is also made clear that the Union of India has not filed any application dated 17.5.2019 as stated by the State of Odisha in its application (I.A.No.1/2019). But, it must be clarified that pursuant to the order dated 3rd April, 2019 of this Tribunal, the Union of India has filed on 28.5.2019 “Response on behalf of U.O.I.” and “Explanatory Note on the Clarifications sought by Union of India in its application dated 12.12.2017”. The said issue raised by the Union of India is regarding the yield of the water in the Vansadhara River basin which should and could be decided at the appropriate stage while disposing of the applications filed and registered as Reference Nos.1 and 2 of 2017. The said issue does not arise for our consideration at this stage and is a subject matter to be addressed at the time of disposal of the said two applications. The

aforesaid issue was also neither argued nor are we required to give any answer to the same at this stage in view of the aforesaid position and would be dealt with while disposing of those two References.

25. This Tribunal would also like to make observations in respect of the stand of the State of Odisha in this application that the cross-sections based on the joint survey on Vansadhara as per our Order dated 3.5.2013 were prepared and submitted to CWPRS for mathematical modelling which are sufficient to draw the contours and formulate a project report and that in the absence of such a Detailed Project Report which is to be apprised to the Central Water Commission for examining the techno-economic viability, the State of Odisha cannot even analyse whether the proposed project adheres to the inter-State agreements. It was also submitted by the learned senior counsel appearing for the State of Odisha that it is incumbent upon the State of Andhra Pradesh to provide the basis and details relating to the calculation of 106 acres of land. Shri C.S. Vaidyanathan, learned Senior Counsel appearing for the State of Andhra Pradesh, submitted during the course of his submissions that the State of Odisha by filing this application has tried to reopen the issues already decided and set at rest being part of the Report and hence the said course is not open and not permitted.

26. In respect of the aforesaid submissions of both the States, we hold that the purpose of the joint survey as per our Order dated 3.5.2013 was for taking cross-sections of the river Vansadhara as per the requirement for carrying out model studies by CWPRS. The direction of the Tribunal in its Order 5th April, 2019 for carrying out joint survey at this stage for identification of 106 acres of land was totally for a different purpose as it was found to be necessary for preparation of map as sought for by the State of Odisha and also by the Union of India

as well as agreed to by the State of Andhra Pradesh. The preparation of the map, after conducting the survey of the area as ordered, would also be helpful while preparing the updated Detailed Project Report of the project by the Government Andhra Pradesh for techno-economic appraisal. We may also observe that the reference and observation of the State of Odisha in their application that the letters sent by the State of Andhra Pradesh dated 12.3.2018 and 2.4.2018 prove that the real intent behind these surveys proposed by the State of Andhra Pradesh is to conduct pre-construction surveys is misplaced because of the aforesaid reasons.

27. We also hold that the question of survey with regard to 106 acres of land may not be taken strictly as of now as a pre-construction activity as such relating to Neradi Barrage, in the sense that it is only the preceding activity for preparation of a map in compliance of the order passed by this Tribunal on 5th April, 2019 after hearing the counsel appearing for the parties and after taking into consideration the various factors connected with the issues, one of which was the agreement of counsel appearing for the parties to conduct joint survey for the aforesaid purpose. We may also point out at this stage that conducting the survey of 106 acres of area is only for preparation of a map delineating protection wall, catch drain behind protection wall, foot bridges, inspection path, outfall structure etc. Since the whole exercise is being done under the supervision of the Central Water Commission, the contentions and the entire submissions of the counsel for the State of Odisha are found to be totally baseless and devoid of true facts and merit.

28. At this stage, it would also be necessary to point out that in the present application (I.A.No.1/2019) the State of Odisha has stated that

the Hon'ble Supreme Court while hearing their SLP on 2.7.2019 allowed them to withdraw the SLP to urge all aspects for clarification before the Tribunal. In this regard, it is mentioned that the aforesaid statement is not the clear reflection of the contents of the order of the Hon'ble Supreme Court which reads as follows:

"During the course of the hearing, it is stated on behalf of the petitioner that the petitioner will withdraw the Special Leave Petition since it intends to move the Tribunal with an application for clarification."

It is clear therefrom that the Hon'ble Supreme Court merely recorded the statement of the counsel for the State of Odisha while passing the above-quoted order and did not grant any liberty to the State of Odisha for urging all the aspects for clarification.

29. At this stage, we are also required to deal with other aspect of the matter which was urged in the application and also stated before us that the State of Odisha would be severely prejudiced by any physical survey because this kind of survey may lead to a law and order situation and issue in the area and may increase unrest among the people in the area. It was also stated that the Gunupur area has been a naxal affected area since 1970s and the naxal activity has reduced after great efforts of the State and that no such survey should be carried out which might lead to stiff resistance of the people in the area. This submission is baseless as it is the duty of the State of Odisha to maintain law and order situation if there be any cause for it. The Tribunal carried out inspection of the area on several occasions. Despite that, it did not observe any kind of deterioration of law order situation in the area. In this connection, reference may also be made to the decision of the Hon'ble Supreme Court in *M/s Prakash Jha Productions & Anr. versus*

Union of India & Ors., (2011) 8 SCC 372 = 2011 (10) SCR 496,. wherein it was held as under:

“23. It is for the State to maintain law and order situation in the State and, therefore, the State shall maintain it effectively and potentially.”

30. Having gone through the entire facts and circumstances of the case, we are of the considered opinion that preparation of the map of the area after identification of 106 acres of land required for various structures on it would be required to be attached with our Further Report to be submitted on conclusion of the hearing and decision on Reference Nos.1 and 2 of 2017. We are also of the considered opinion that conducting the joint survey through topographical survey adhering to the accepted norms using Total Station method would be required for preparation of the map. We, therefore, reiterate the directions issued by us in our order dated 5th April, 2019 which should now be carried out immediately and that exercise of survey and preparation of the map should commence immediately after the monsoon is over i.e. by the end of October, 2019 positively and completed within a period of six weeks under the active and direct supervision of the Central Water Commission. The said authority of the Central Water Commission, after completion of the exercise, shall submit a report to the Tribunal along with attachment of the survey carried out and a map prepared on or before 30th December, 2019, with copies to the representatives of both the States and the Union of India. The governments of both the States of Odisha and Andhra Pradesh are also directed to extend full cooperation on their part as required in identifying and preparing the

map of 106 acres of land in terms of this order. The proceeding shall be listed for further directions on 10th January, 2020 at 11 A.M.

31. The I.A.No.1 of 2019 is, accordingly, dismissed.

Sd/-

.....J.

(DR. MUKUNDKAM SHARMA)
CHAIRMAN

Sd/-

.....J.

(JUSTICE B.N. CHATURVEDI)
MEMBER

Sd/-

.....J.

(JUSTICE PRATIBHA RANI)
MEMBER

New Delhi,
23rd September, 2019