State of Himachal Pradesh Vs. Union of India (UOI) and Ors., 2011

Case Note : Case concerning the attribution of the share of power generated in the Bhakra-Nangal and Beas Projects as per the scheme for apportionment of assets and liabilities between the successor States in the Punjab Reorganisation Act, 1966.The Court while dismissing the plaintiff's claim to 12% of the power generated held that since at the time of the execution of the Bhakra-Nangal Project and the Beas Project , Himachal Pradesh was not a full fledged State it didn't posses the rights and powers under Articles 162 and 246(3) of the Constitution over its land and water and it was the Union of India which had such rights and powers over its land and water by virtue of the provisions of Article 73 and Article 246(4) of the Constitution. However, the court granted the plaintiff relief by increasing its share of power generated from 2.5 % to 7.19%.

Citation: 2011(11)SCALE144

IN THE SUPREME COURT OF INDIA

Original Suit No. 2 of 1996 (Under Article 131 of the Constitution of India)

Decided On: 27.09.2011

Appellants: **State of Himachal Pradesh**
Vs.
Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges:
R.V. Raveendran and A.K. Patnaik, JJ.

Counsels:
For Appearing Parties: Mohan Jain, ASG, A.K. Ganguly, J.S. Attri, C.S. Vaidyanathan, Shyam Divan, R.S. Suri, L. Nageshwar Rao, Shambhu Prasad Singh, Sr. Advs., Naresh K. Sharma, Vivek Singh Attri, Deepak Jain, D.K. Thakur, S. Wasim A. Qadri, Yogita Yadav, Mudrika Bansal, Kartik Ashok, Vibhav Mishra, Subhash Kaushik, Saima Bakshi, A.K. Sharma, Aruneshwar Gupta, Manish Raghav, Nikhil Singh, Kripa Shankar Prasad, V. Khandelwal, Anil Hooda, Kamini Jaiswal, Ashok Kumar Singh, Sapam Biswajit Meitei, Santosh Krishna, Divya Jyoti and Jyoti Mendiratta, Advs.

Subject: Constitution

Subject: Power and Energy

Acts/Rules/Orders:
Punjab Reorganisation Act, 1966 - Sections 2, 5, 54(3), 78, 78(1), 79 and 80; Government of India Act, 1935 - Sections 38, 204 and 290A; Inter-State Water Disputes Act, 1956 - Section 11; Supreme Court Rules, 1966 - Order 23, Rule 6; Constitution of India - Articles 1, 3, 73, 73(1), 131, 143, 162, 246(3), 246(4), 262, 262(2), 294 and 363; States Merger (Chief Commissioners Provinces) Order, 1949; State of Himachal Pradesh (Transfer of Assets and Liabilities) Order, 1972; Constitution of India (7th Amendment) Act, 1956

Cases Referred:
U.P. Jal Nigam and Anr. v. Jaswant Singh and Anr. MANU/SC/5073/2006 : (2006) 11 SCC 464; State of Seraikella and Ors. v. Union of India and Anr. MANU/SC/0006/1951 : AIR

1951 SC 253; State of Orissa v. State of A.P. (2006) 9 SCC 591; State of Karnataka v. State of A.P. and Ors. MANU/SC/0297/2000 : (2000) 9 SCC 572; State of Haryana v. State of Punjab and Anr. MANU/SC/0026/2002 : (2002) 2 SCC 507 : (2004) 12 SCC 673; State of Orissa v. Government of India and Anr. MANU/SC/0144/2009 : (2009) 5 SCC 492; Babulal Parate v. State of Bombay and Anr. MANU/SC/0008/1959 : AIR 1960 SC 51; United Provinces v. Governor-General in Council MANU/FE/0002/1939 : AIR 1939 FC 58; Kuldip Nayar and Ors. v. Union of India and Ors. MANU/SC/3865/2006 : (2006) 7 SCC 1; In Re: Cauvery Water Disputes Tribunal 1993 Sup (1) SCC 96

Citing Reference:

JUDGMENT

A.K. Patnaik, J.

1. This dispute between the State of Himachal Pradesh (Plaintiff), on the one hand, and the Union of India (defendant No. 1), State of Punjab (defendant No. 2), State of Haryana (defendant No. 3), State of Rajasthan (defendant No. 4) and Union Territory of Chandigarh (defendant No. 5), on the other hand, under Article 131 of the Constitution of India relates to the power generated in the Bhakra-Nangal and Beas Projects.

The Case of the Plaintiff (State of Himachal Pradesh) in the plaint

2. The Bhakra dam across the river Satluj was proposed in the year 1944 in the Bilaspur State. The construction of Bhakra dam was to result in submergence of a large territory of the Bilaspur State but would benefit the Province of Punjab. Hence, the Raja of Bilaspur agreed to the proposal for construction of the Bhakra dam only on certain terms and conditions detailed in a draft agreement which was to be executed on behalf of the Raja of Bilaspur and the Province of Punjab. These terms and conditions included payment of royalties for generation of power from the water of the reservoir of the Bhakra dam. The formal agreement between the Raja of Bilaspur and the province of Punjab, however, could not be executed as the Bilaspur State ceded to the Dominion of India in 1948. When the Constitution of India was adopted in the year 1950, Bilaspur and Himachal Pradesh were specified as Part-C States in the First Schedule to the Constitution. In 1954, Bilaspur and Himachal Pradesh were united to form a new State of Himachal Pradesh under the Himachal Pradesh and Bilaspur (New States) Act, 1954. The new State of Himachal Pradesh, however, continued to be a Part-C State until it became a Union Territory by the Constitution (7th Amendment) Act, 1956. In 1966, Parliament enacted the Punjab Reorganisation Act, 1966 which bifurcated the erstwhile State of Punjab to two States, Punjab and Haryana, and transferred some of the territories of the erstwhile State of Punjab to the Union Territory of Himachal Pradesh. With effect from 25.01.1971, this Union Territory of Himachal Pradesh became a full fledged State by the State of Himachal Pradesh Act, 1970. The new State of Himachal Pradesh thus constitutes (i) the erstwhile Part-C State of Bilaspur; (ii) the erstwhile Part-C State of Himachal Pradesh and (iii) the transferred territories of State of Punjab.

3. The construction of Bhakra dam has brought about lot of benefits to the country and in particular the Defendants Nos. 2, 3, 4 and 5, but it has resulted in submergence of 27869 (twenty seven thousand eight hundred and sixty nine) acres of land in the erstwhile Bilaspur State out of the total 41600 (forty one thousand six hundred) acres. 3/4th of the reservoir of the Bhakra Dam is located in the erstwhile Part-C State of Bilaspur, now part of the State of

Himachal Pradesh. Such submergence and reservoir of water over large areas of land in the State of Himachal Pradesh have meant loss of cultivated and uncultivated land to a total extent of 103425 acres, trees and forests, towns, Government buildings, community buildings, wells, springs and paths, gardens, parks, road, bridges, telegraph lines, ferries and these in their turn have resulted in unemployment, loss of agricultural and trading activity, loss of revenue, etc. These losses must be compensated by the defendants Nos. 2, 3, 4 and 5.

4. The river Beas originates in District Kullu of Himachal Pradesh and the Beas Project is a multi-purpose scheme comprising two units: Unit-I and Unit-II. Unit-I was commenced in 1960's when Himachal Pradesh was a Union Territory and was being administered by the Government of India and this project involved diversion of water from river Beas at Pandoh in District Mandi of Himachal Pradesh to river Satluj at Dehar. As a result of the diversion of water from river Beas at Pandoh, a reservoir comprising an area of 323 (three hundred & twenty three) acres and a storage capacity of 33240 (thirty three thousand two hundred and forty) acre feet have been created. Unit-II of the project involved the construction of Pong Dam across river Beas at Pong and the construction of the Pong Dam has caused submergence of more than 65050 (sixty five thousand & fifty) acres of land in Kangra District including prime and fertile agricultural land. Consequently, a large number of families have been uprooted from their homes and fertile agricultural land which they were cultivating and these families need to be rehabilitated. Although Units-I and II of Beas Project are located in the State of Himachal Pradesh, benefits of the two units have accrued to Defendants Nos. 2, 3, 4 and 5.

5. The Plaintiff is therefore entitled to its due share of power generated in the Bhakra-Nangal and Beas Projects. Under the scheme for apportionment of assets and liabilities between the successor States in the Punjab Reorganisation Act, 1966 the assets and liabilities are to be transferred to the successor States in proportion to the population ratio distributed between the successor States/Union Territories. As 7.19% of the total population of the composite State of Punjab was transferred along with the territories transferred to the Plaintiff under the Punjab Reorganisation Act, 1966, the Plaintiff was entitled to 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects. This was also the recommendation of Shri K.S. Subrahmanyam, former Chairman of the Central Electrical Authority in his report dated 29.06.1979. Moreover, the Union of India has agreed in principle that the "mother State" which houses a hydro-electric power project by bearing the reservoir of water required for generation of hydro-electric power shall be entitled to at least 12% of total power generated from such project free of cost. Since Plaintiff is the mother State in which the reservoirs of the two hydro-electric power projects, Bhakra-Nangal and Beas Projects were located, plaintiff was entitled to supply of 12% of the total power generated in the two projects free of cost.

6. The legal right of the Plaintiff to its share of power generated in the Bhakra-Nangal and Beas Projects has been acknowledged by Section 78 of the Punjab Reorganisation Act, 1966 titled "Rights and Liabilities in regard to Bhakra- Nangal and Beas Projects". Sub-section 1 of Section 78 states that notwithstanding anything contained in the Punjab Reorganisation Act, 1966 but subject to Sections 79 and 80 thereof, all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal and Beas Projects shall on the appointed day (01.11.1966) be the rights and liabilities of the successor States in such proportion as may be fixed and subject to such adjustments as may be made by agreement entered into by the successor States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order

determine having regard to the purposes of the project. Accordingly, the Plaintiff filed its claims with respect to the Bhakra- Nangal and Beas Projects by letter dated 22.10.1969 before the Central Government and made several subsequent representations thereafter to the Central Government from time to time but the Central Government for one reason or the other did not take steps to determine finally the rights of the Plaintiff in respect of the Bhakra-Nangal and Beas Projects.

7. In the absence of the any such final determination by the Central Government, the power generated in the Bhakra-Nangal and Beas Projects presently is being shared by an ad hoc arrangement. After deducting the power consumed for auxiliary purposes and the transmission losses, the balance of the power generated in the two projects is presently apportioned on ad hoc basis is given as under:

Bhakra-Nangal		Beas	
Name of the State/U.T	Unit I (Dehar)	Unit II (Pong)	
Rajasthan	15.22%	20%	58.50%
The remaining is shared as under:	84.78%	80%	41.50%
Punjab	54.50%	60%	60%
Haryana	39.50%	40%	40%
H.P.	2.5%	15 MW	Nil
U.T. Chandigarh	3.5%	Nil	Nil

8. The cause of action for filing the suit arose when the Central Government ultimately failed to determine the lawful claim of the Plaintiff and intimated its decision in this regard by letter dated 11.04.1994 and when a joint meeting of all the parties under the aegis of the Principal Secretary of the Prime Minister held on 30.08.1995 failed to arrive at any agreement with tangible results. For failure on the part of the Central Government to determine the share of the plaintiff in the power generated in the two projects, the plaintiff has claimed compensation from the Central Government also.

9. The Plaintiff has accordingly claimed the following reliefs:

(a) A decree declaring that the Plaintiff State is entitled to a share of 12% of the net power generated (total power available after deduction of auxiliary consumption and transmission losses) in Bhakra-Nangal and Beas Projects free of cost from the date of commissioning of the projects and further a decree declaring that the Defendants are jointly and severally liable to compensate and reimburse the money value of the power to the Plaintiff State as per statements II and IV annexed to the plaint;

(b) A decree declaring that the Plaintiff State is entitled to 7.19% of the power generated in the Bhakra-Nangal and Beas Projects from the appointed day (01.11.1966) or from the date of commissioning of the projects, whichever is later, out of the share of the then composite State of Punjab on account of the transfer of population to the Plaintiff State under the Punjab Reorganisation Act, 1966 and a further decree declaring that the Defendants are jointly and severally liable to compensate or reimburse the Plaintiff State for the difference between 7.19% of its share out of the share of the then composite State of Punjab and the power

received by the Plaintiff State under the ad hoc and interim arrangement from the two projects with effect from the appointed day or the commissioning of the projects, whichever is later as per statements I and III annexed to the plaint;

(c) A decree for a sum of Rs. 2199.77 (two thousand one hundred ninety nine decimal seven) crores in favour of the Plaintiff and against the Defendants jointly and severally as compensation/reimbursement for their failure of supply to the Plaintiff 12% and 7.19% share of the power generated in the two projects, being the total of the statements I and IV;

(d) A decree for interest, pendente lite and future at the prevailing bank rates till the realization of amount in full;

(e) Costs of the suit;

(f) Other further reliefs as may be deemed fit and proper in the circumstances of the case.

Written Statement of Defendant No. 1 (Union of India)

10. The Bhakra-Nangal Project was completed in 1963 and the Beas Project was completed in 1977 and the suit filed by the Plaintiff in 1996 claiming damages from Defendant No. 1 was hopelessly barred by limitation.

11. By an agreement executed on 13.01.1959, the composite State of Punjab and the State of Rajasthan agreed for the construction of the Bhakra dam across the river Satluj as well as other ancillary works and the object of this Bhakra-Nangal Project was to generate hydro-electric power and to improve irrigation facilities for their respective States and also agreed to fund and derive benefits from the Bhakra-Nangal Project in the ratio of 84.78% and 15.22; respectively. Accordingly, the share of the power generated in the Bhakra-Nangal Project of the State of Rajasthan was 15.22% and the share of the power of composite State of Punjab was 84.78%. After the reorganisation of Punjab in 1966, the representatives of the successor States/Union Territories, namely Punjab, Haryana, Chandigarh and Himachal Pradesh agreed at a meeting held on 17.04.1967 in presence of the Secretary, Ministry of Irrigation and Power, Government of India that the share of power of the four successor States/Union Territories out of the share of power of the composite State of Punjab from the two projects would be as follows:

Punjab	54.5%
Haryana	39.5%
Chandigarh	3.5%
Himachal Pradesh	2.5%

This agreement was incorporated in the minutes of the meeting held on 17.04.1967 which were circulated by the letter dated 27.04.1967 of the Defendant No. 1 to all concerned. This agreement between the successor States/Union Territories dated 17.04.1967 constitutes a statutory agreement in terms of Section 78(1) of the Punjab Reorganisation Act, 1966 and will hold the field unless replaced by a consensual agreement between the successor States/Union Territories.

12. The Beas Project was also funded by the composite State of Punjab and the State of Rajasthan as would be clear from the notification dated 17.06.1970 of the Ministry of Irrigation and Power, Government of India and the benefits of power from the Beas Project were allocated between the composite State of Punjab and State of Rajasthan in proportion to the ratio of the costs borne by the two States. After the reorganisation of composite State of Punjab, the Government of India, Ministry of Energy, Department of Power by D.O. Letter dated 30.03.1978 has allowed supply of 15MW power to Himachal Pradesh from the Dehar Power Plant of the Beas Project on ad hoc basis.

13. The Plaintiff lodged its claim to 7.19% share of the total power generated from the Bhakra-Nangal and Beas Projects in its letter dated 22.10.1969 but by letter dated 22.03.1972, Ministry of Irrigation and Power, Government of India informed the Plaintiff that the allocation of power made at the meeting on 17.04.1967 of the representatives of the successor States/Union Territories of the composite State of Punjab will not be modified. The Subrahmanyam Report recommending 7.19% of the total share of power generated from Beas Project for the Plaintiff has not been accepted by the Defendant No. 1 and was not binding on defendant No. 1 and the other Defendants.

14. The formula of 12% free power to the mother State bearing hydro-electric power project is applicable only in respect of Central Sector Hydro Projects and is not applicable to the Bhakra-Nangal and Beas Projects and this has been clarified in the D.O. Letter dated 11.04.1994 of the Ministry of Power, Government of India to the Chief Minister of the Plaintiff State and has also been reiterated in the D.O. Letter dated 28.06.1995 of the Ministry.

15. Under Section 78 of the Punjab Reorganisation Act, 1966, the claims of the successor States/Union Territories to the power generated in the Bhakra-Nangal and Beas Projects can be settled either by agreement between the successor States/Union Territories or by the decision of the Central Government and not by the court. The dispute raised by the Plaintiff regarding distribution of electricity from hydro projects between the Plaintiff and Defendants No. 2, 3, 4 and 5 is an extremely sensitive issue and experience of controversy surrounding the Cauvery dispute between Tamil Nadu, Karnataka, Pondicherry and Kerala clearly demonstrates that there are grave risks which may give rise to agitation and eventual politicization with regard to river water system, irrigation and electricity and this is an important aspect which has to be borne in the background while dealing with the present dispute. The suit is not maintainable under Article 131 of the Constitution.

Written statement by Defendant No. 2 (State of Punjab)

16. The suit as filed by the Plaintiff is not maintainable under Article 131 of the Constitution and the Plaintiff has no cause of action to file the suit. In terms of Section 78(1) of the Punjab Reorganisation Act, 1966, the representatives of the successor States/Union Territories of the composite State of Punjab have at a meeting held on 17.04.1967 agreed to share the power of the composite State of Punjab from the two projects at the following percentages:

Punjab	54.5%
Haryana	39.5%
Chandigarh	3.5%
Himachal Pradesh	2.5%

This agreement dated 17.04.1967 has been entered into within the two years period specified in Section 78(1) of the Act and, therefore, the Central Government has no power to intervene in the matter.

17. The financial liabilities of Bhakra and Beas Projects are being shared by the States of Punjab and Haryana. The Central Government had taken a decision under Section 54(3) of the Punjab Reorganisation Act, 1966 that all liabilities towards the loans incurred prior to the Punjab Reorganisation Act, 1966 on the two projects are to be borne by the States of Punjab and Haryana. The decision of the Central Government in this regard has been conveyed to the concerned State Governments in the letter dated 12.03.1967 of the Government of India, Ministry of Finance, Department of Economic Affairs, New Delhi.

18. On 27.06.1961, the Lt. Governor, Himachal Pradesh, had written to the Chief Minister of Punjab that Himachal Pradesh should be given guaranteed preference in the allotment of power generated from the Power House to be set up at Salappar (Dehar) - Unit No. 1 of Beas Project. After finding out the anticipated firm demand of power from the Salappar (Dehar) Power House, the State of Punjab in its communication dated 10.08.1962 agreed to allot 15 M.W. power to Himachal Pradesh within one year of the commissioning of the two units of these projects.

19. The decision of the Union Cabinet taken on 12.02.1985 that 12% of power generated at Bhakra and Beas Projects will be supplied to the "Home State" is applicable to only Central Sector Hydro-Electric Power Projects financed by the State Government and is not applicable to Bhakra and Beas Projects, which are not Central Projects financed by the Central Government. Moreover, the Central Government's decision dated 12.02.1985 does not apply to the Central Sector Hydro-Electric Power Projects in respect of which sanction for investment had been granted prior to 12.02.1985 and sanction for investment in Bhakra and Beas Projects was much prior to 12.02.1985.

20. Population alone cannot be considered as the basis for sharing of power because the connected supply to the consumers in the successors States/Union Territories of the composite State of Punjab has to be maintained. Any increase, therefore, in the quota of power to Himachal Pradesh at the cost of the State of Punjab would mean further hardship to the consumers in the State of Punjab, which is already facing a serious power crisis.

21. Punjab being a down-stream riparian State of the rivers Satluj and Beas is entitled to utilize the water flowing from the two rivers and the Plaintiff was free to utilize the up-stream water in the two rivers in the manner it liked. But since it did not have the resources to do so, the States of Punjab, Haryana and Rajasthan have invested in the construction of the two projects. By the two projects, Himachal Pradesh has not lost anything in the process, except that the land located in the Himachal Pradesh has been acquired for the projects and more than adequate compensation has been paid to the owners of the land and reasonable arrangements have also been made for their resettlement. Moreover, the creation of big reservoir has provided Himachal Pradesh the facilities of fish, farming and increase in tourism potential.

Written statement by Defendant No. 3 (State of Haryana)

22. The suit is barred because of the provisions of Section 78 of the Punjab Reorganisation Act, 1966, under which the right to receive and utilize power from the Bhakra-Nangal and

Beas Projects can only be determined by the Central Government in case the successor States/Union Territories of the composite State of Punjab are unable to reach an agreement.

23. An agreement has in fact been arrived at by the successor States/Union Territories of the composite State of Punjab on 17.04.1967 at a meeting taken by the Secretary, Ministry of Irrigation and Power, Government of India, to share the power generated by the Bhakra-Nangal and Beas Projects at the following percentages and of the share of power of the composite Punjab State:

Punjab	54.5%
Haryana	39.5%
Chandigarh	3.5%
Himachal Pradesh	2.5%

Accordingly, only 2.5% of the total power generated in the two projects out of the share of the composite State of Punjab, has been made available to the successor State of Himachal Pradesh right from May, 1967. Since the agreement dated 17.04.1967 has been arrived at within two years of the appointed date mentioned in the Punjab Reorganisation Act, 1966, the Central Government ceased to have any power under Section 78 of the Punjab Reorganisation Act, 1966 to determine the dispute.

24. The concept of 12% free power from Hydro stations to the "Mother State" or "Home State" is applicable to only Central Sector Projects commissioned after 07.09.1990 subject to the condition mentioned in the letter dated 01.11.1990 of Department of Power, Government of India and is not applicable to jointly owned State Sector Projects such as Bhakra-Nangal and Beas Projects, commissioned much earlier than 07.09.1990.

25. The Bhakra Dam was conceived with the consent of the Raja of Bilaspur and all obligations towards the erstwhile State of Bilaspur were fulfilled by the project authorities. No legal agreement between the Raja of Bilaspur and the Province of Punjab in respect of Bhakra- Nangal Project for royalty/free power exists.

26. There is no provision in the Punjab Reorganisation Act, 1966 providing for sharing of power generated in the Bhakra-Nangal and Beas Projects on the basis of the transferred population ratio and therefore the claim of the plaintiff to 7.19% of the total power generated in the two projects is not legally tenable. The Bhakra-Nangal and Beas Projects were constructed pursuant to an agreement between the State of Punjab and the State of Rajasthan and the State of Himachal Pradesh which came to existence much later was entitled to power as per the provisions incorporated in the Punjab Reorganisation Act, 1966.

27. The Department of Power, Government of India, in its D.O. Letter dated 30.03.1978 to the Chairman, B.B.M.B. conveyed the decision of Government of India that the plaintiff be supplied 15 M.W. of power generated from Beas Power Plant and this supply was to be on ad hoc basis, at Bus Bar rates, pending final decision about its share of power which was to be examined separately. Subsequently, by letter dated 16.08.1983 of the Department of Power, Government of India, the Chairman, B.B.M.B. has been informed that the quantum of benefits from Bhakra-Nangal and Beas Projects presently allocated to Himachal Pradesh will remain unaltered until a final decision is taken.

Written statement of the Defendant No. 4 (State of Rajasthan)

28. Under an agreement made on 15.08.1948 between the then Governor General of India and the Raja of Bilaspur, the administration of Bilaspur State was transferred to the Dominion Government of India and in lieu thereof the Raja of Bilaspur received a compensation of Rs. 70,000/- annually as privy purse free of tax. By a notification dated 20.07.1949 the Governor General of India ordered that on and from 01.08.1949 the territory of State of Bilaspur, which had merged in the Dominion of India, would be administered as if it was Chief Commissioner's Province. On the commencement of the Constitution of India, the territory of Chief Commissioner's Province became a Part-C State and continued to be administered through the Chief Commissioner by the Government of India. Hence, it is absolutely irrelevant that about 3/4th of the total area of the reservoir of Bhakra Dam fell within the State of Bilaspur. With the construction of the Bhakra-Nangal Project, overall development took place in the area and as a result new infrastructural facilities were built in the project area such as new roads, new bridges, new township, new schools and colleges, fisheries, tourism, etc. and all these benefited the local populace of the then Part-C State of Bilaspur. It is, therefore, not correct that the then Part-C State of Bilaspur, which now formed as a part of Plaintiff-State, has only suffered on account of the submergence caused by the construction of the Bhakra Dam.

29. There was no agreement as such between the then State of Punjab and the Raja of Bilaspur with regard to the construction of the Dam and unless the draft agreement was finally approved, settled and signed by the parties, no rights could be claimed by the State of Bilaspur under the alleged draft agreement.

30. During the construction of the Bhakra-Nangal Project, the predecessor State or Union Territory of the Plaintiff never raised the grievances now put forth by the Plaintiff and the grievances now put forth in the plaint are only an after-thought and are imaginary. In fact, all persons affected by the construction of the Bhakra-Nangal Project have been compensated, a new township of Bilaspur has been constructed, proper compensation has been paid for acquisition of land and the beneficiary States have even provided for the rehabilitation of the oustees of the Bhakra- Nangal Project in Sirsa and Hissar Districts and rehabilitation of oustees of the Beas Project in Indira Gandhi Pariyojana.

31. The share of the State of Rajasthan in the power generated in the Bhakra-Nangal Project is 15.22% and Unit- I of Beas Project is 20% and Unit-II of Beas Project is 58.50% and these allocations of share are not interim or ad hoc but are final. The one-man Committee headed by Shri K.S. Subrahmanyam was not constituted after consultation with the State of Rajasthan and hence the recommendation of this Committee has no relevance so far as the State of Rajasthan is concerned. In any case, the report of Shri K. S. Subrahmanyam is not a legally admissible document. The claim of 12% of the total power generated in Bhakra-Nangal and Beas Projects on the basis of the Plaintiff being the "Mother State" is baseless. Both the projects, Bhakra- Nangal and Beas Projects, are the State Projects conceived planned, constructed, developed and operated and are being maintained by the participating States, namely the State of Rajasthan and the composite State of Punjab, and these two States as partners of the projects have been sharing power from the two projects on the basis of agreements executed between them.

32. The dispute raised in the suit relates to the share of water and generation of power from the use of water in inter-state rivers and this Court has no jurisdiction under Article 131 of the Constitution to decide the dispute.

33. This Court has no jurisdiction over the dispute which arises out of an agreement entered into or executed before the commencement of the Constitution by a Ruler of an Indian State by virtue of the bar under Article 363 of the Constitution.

Written statement of the Defendant No. 5 (Union Territory of Chandigarh)

34. The suit is hopelessly barred by time inasmuch as the Bhakra-Nangal Project was completed in 1963 and the Beas Project was completed in 1977 and the suit has been filed in the year 1996.

35. Under Section 78(1) of the Punjab Reorganisation Act, 1966, the rights and liabilities of the successor States/Union Territories of the composite State of Punjab in relation to the Bhakra-Nangal and Beas Projects are to be fixed by an agreement entered into by the successor States/Union Territories after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, by an order of the Central Government having regard to the purposes of the project. Hence this suit filed by the Plaintiff claiming rights in the power generated in the Bhakra-Nangal and Beas Projects is not maintainable under the provisions of the Punjab Reorganisation Act, 1966.

36. An agreement has in fact been arrived at in relation to Bhakra-Nangal Project by the representatives of the successor States/Union Territories of the composite State of Punjab at a meeting held on 17.04.1967 under the Chairmanship of the Secretary, Ministry of Irrigation and Power, Government of India, and as per this agreement the share of power of Himachal Pradesh from the Bhakra- Nangal and Beas Projects is 2.5% of the total share of the composite State of Punjab and this agreement is binding on all parties including the Plaintiff and the Plaintiff is estopped from seeking any relief including damages dehors the agreement.

37. In relation to the Beas Project, the Central Government has also allowed a supply of 15 MW power to Himachal Pradesh from Dehar Power Plant on ad hoc basis by letter dated 30.03.1978 of the Ministry of Energy, Department of Power, Government of India and this arrangement has been ratified by the Bhakra Beas Management Board at its 76th meeting held on 28.09.1978.

38. If there is no agreement between the successor States/Union Territories of the composite State of Punjab and if there is no final order of the Central Government determining the rights and liabilities of the successor States/Union Territories of the composite State of Punjab, the only legal proceeding which can be initiated is for directing the Central Government to pass a statutory order under Section 78(1) of the Punjab Reorganisation Act, 1966 and there is no scope for any legal proceedings for recovery of damages towards the share of electricity of the Plaintiff.

Issues:

39. After considering the pleadings of the parties, on 08.03.1999 this Court framed a large number of issues. Thereafter, the Plaintiff examined three witnesses, namely, Shri A.K. Go swami, the Chief Secretary of the State of Himachal Pradesh, Dr. Y.K. Murthy, Ex-Chief

Engineer- cum-Secretary (MPP & Power) to the Government of Himachal Pradesh, and Shri Prabodh Saxena, Deputy Commissioner to the Government of Himachal Pradesh. The Defendant No. 2 examined one witness, namely, Shri Romesh Chandra Bansal, Consultant of Punjab State Electricity Board on Inter State Disputes) and Defendant No. 3 examined one witness, namely, Shri Jia Lal Jain, Chief Accounts Officer in Haryana State Electricity Board. The parties have also produced a large number of documents, which have been marked as Exhibits.

40. At the hearing of the suit, the learned Counsel for the parties did not press all the issues framed by this Court on 08.03.1999 and confined their arguments to some of the issues. These issues are rearranged and renumbered as follows:

01. Whether the suit is not maintainable being barred by limitation, delay and laches? (Defendant Nos. 1 & 2)

02. Whether after the merger of the State of Bilaspur with the Dominion of India, plaintiff could still have any cause of action to file the present suit? (Defendant No. 4)

03. Whether the suit barred by reasons of Article 363 of the Constitution? (Defendant No. 4)

04. Whether the suit is not maintainable under Article 131 of the Constitution? (Defendant No. 4)

05. Whether the suit does not disclose any cause of action against the Defendant Nos. 3 and 4 and therefore liable to be rejected under Order XXIII Rule 6(a) of the Supreme Court Rules, 1966. (Defendant Nos. 3 and 4).

06. Whether the suit is not maintainable by virtue of the scheme of the Punjab Reorganisation Act, 1966 in general and provisions of Sections 78 to 80 of the said Act in particular? (Defendant Nos. 1 & 2)

07. Whether in the discussions held on 17th April, 1967, any agreement was reached between the party States as regards their share in power generated (rights to receive and to utilize the power generated) in the Bhakra Project? (Defendant Nos. 1, 2 & 3)

08. Whether the Plaintiff-State is entitled to 12% of the net power generated in Bhakra-Nangal & Beas Projects free of cost from the date of commissioning of the projects? (Plaintiff)

09. Whether the State of Himachal Pradesh is entitled to an allocation of 7.19% in addition to 12% free power as claimed above, of the total power generated in Bhakra-Nangal & Beas Projects from the date of commissioning of the Projects or the appointed date (01.11.1966)? (Plaintiff)

10. Whether the Plaintiff is entitled to a decree for a sum of Rs. 2199.77 crores against the Defendants jointly and severally, as compensation/reimbursement for their failure to supply to the Plaintiff 12% and 7.19% shares (on account of distress caused/surrender of rights to generate power and on account of transfer of population to the Plaintiff State respectively in the power generated in these projects upto the date of the filing of the present suit and such

further sums as may be determined, as entitlement of the Plaintiff for the period subsequent to the filing of the suit? (Plaintiff)

11. Whether the Plaintiff-State is entitled to the award of any interest on the amounts determined as its entitlement? (Plaintiff)

We may now deal with each of these issues separately.

Issue No. 1

41. Mr. Mohan Jain, learned Additional Solicitor General appearing for Defendant Nos. 1 and 5, submitted that the Bhakra-Nangal Project was completed in 1963 and the Beas Project was completed in 1977, whereas the suit has been filed in the year 1996 and, therefore, the suit is belated and barred by limitation. Mr. C.S. Vaidyanathan, learned senior counsel appearing for Defendant No. 4, cited the decision in *U.P. Jal Nigam and Anr. v. Jaswant Singh and Anr.* MANU/SC/5073/2006 : (2006) 11 SCC 464 in which this Court has held that a party would not be entitled to relief if he has not been vigilant in invoking the protection of his rights and has acquiesced with the changed situation. He submitted that in the present case, the Plaintiff-State has acquiesced in the Bhakra-Nangal and Beas Projects and the sharing of power from the two projects by Plaintiff and the Defendant Nos. 2 and 5 in certain proportions since several decades and has filed the suit only in the year 1996.

42. We are unable to accept the contention that the suit is barred by limitation. Article 131 of the Constitution does not prescribe any period of limitation within which a State or the Union of India has to file a dispute in this Court. No other provision of law has been brought to our notice prescribing the period within which a dispute under Article 131 of the Constitution can be instituted by a State against any other State or the Union of India. Moreover, as we will indicate hereinafter in this judgment, there has been no final allocation of share of power from the Bhakra-Nangal Project and the Beas Project to the Plaintiff-State as yet and whatever allocations of power from the two projects to the Plaintiff-State have been made are only adhoc or interim. Until a final decision was taken with regard to allocation of power to the Plaintiff-State from the two projects, the claim of the Plaintiff-State to appropriate allocation of power from the two projects was live and cannot be held to be stale or belated. Our answer to Issue No. 1, therefore, is that the suit was not barred by limitation, delay and laches.

Issue No. 2

43. The second Issue is whether after the merger of the State of Bilaspur with the Dominion of India, the Plaintiff could still have any cause of action to file the present suit. A copy of the Bilaspur Merger Agreement dated 15.08.1948 has been produced on behalf of Defendant No. 4 and marked as Ext. D-4/1-A. Article 1 of the Bilaspur Merger Agreement dated 15.08.1948 reads as follows:

The Raja of Bilaspur hereby cedes to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agrees to transfer the administration of the State to the Dominion Government on twelfth day of October, 1948 (hereinafter referred to as `the said day').

As from the said day the Dominion Government will be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit.

It is thus clear that by the Bilaspur Merger Agreement dated 15.08.1948 the Raja of Bilaspur ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on 12.10.1948. Thereafter, the Government of India, Ministry of Law, issued a notification dated 20.07.1949 (Ext. D-4/2-A) in exercise of its powers under Section 290 -A of the Government of India Act, 1935 making the States Merger (Chief Commissioners Provinces) Order, 1949, which came into force from 01.08.1949. Under this States Merger (Chief Commissioners Provinces) Order, 1949, Bilaspur was to be administered in all respects as if it was a Chief Commissioner's Province. Under the Constitution of India also initially Bilaspur continued to be administered as the Chief Commissioner's Province and was included in the First Schedule of the Constitution as a Part-C State. Under Article 294(b) all rights, liabilities and obligations of the Government of the Dominion of India, whether arising out of any contract or otherwise, became the rights, liabilities and obligations of the Government of India. These provisions of the Bilaspur Merger Agreement dated 15.08.1948 (Ext.D-4/1-A), the States Merger (Chief Commissioners Provinces) Order, 1949, the First Schedule of the Constitution and Article 294(b) of the Constitution make it clear that Bilaspur became the part of the Dominion of India and thereafter was administered as a Chief Commissioner's Province by the Government of India and all rights of the Raja of Bilaspur vested in the Government of India.

44. We, therefore, hold that the Plaintiff will not have any cause of action to make any claim on the basis of any right of Raja of Bilaspur prior to the merger of Bilaspur State with the Dominion of India. The pleadings in the plaint and the reliefs claimed therein, however, show that the Plaintiff's case is not founded only on the rights of Raja of Bilaspur prior to its merger with the Dominion of India. The Plaintiff's claim to the share of power generated in the Bhakra-Nangal and Beas Projects is also based on Section 78 of the Punjab Reorganisation Act, 1966 and the rights of the State of Himachal Pradesh under the Constitution. The claim of the Plaintiff-State to share of power from the Bhakra-Nangal and Beas Projects in the suit insofar as it is based on provisions of the Punjab Reorganisation Act, 1966 and the provisions of the Constitution are not affected by the merger of the State of Bilaspur with the Dominion of India. Issue No. 2 is answered accordingly.

Issue No. 3

45. Issue No. 3 relates to the bar of the suit under Article 363 of the Constitution. Mr. Vaidyanathan, learned Counsel for the Defendant No. 4 submitted that the suit was barred under the proviso to Article 131 of the Constitution and Article 363 of the Constitution. In support of this contention, he relied on *State of Seraikella and Ors. v. Union of India and Anr.* MANU/SC/0006/1951 : AIR 1951 SC 253. Mr. Nageshwar Rao, learned counsel for Defendant No. 3 also raised this contention and relied on *State of Orissa v. State of A.P.* (2006) 9 SCC 591.

46. Articles 131 and 363 of the Constitution are quoted herein below:

131. Original Jurisdiction of the Supreme Court - Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

(Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.)

363. **Bar to interference by courts in disputes arising out of certain treaties, agreements, etc. -**

(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article-

(a) "Indian State" means any territory recognized before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

47. The language of the proviso to Article 131 of the Constitution makes it clear that the jurisdiction of this Court under Article 131 shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute. Hence, there is a clear bar for this Court to exercise jurisdiction under Article 131 of the Constitution to decide a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or

executed before the commencement of the Constitution, continues in operation after such commencement. Clause (1) of Article 363 of the Constitution quoted above also states that notwithstanding anything in the Constitution, the Supreme Court shall have no jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which were entered into or executed before the commencement of the Constitution by any Ruler of an Indian State or to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument. These being the clear constitutional provisions, obviously this Court will have no jurisdiction under Article 131 of the Constitution to decide any dispute arising out of any agreement or covenant between the Raja of Bilaspur and the Government of the Dominion of India. The only agreement proved to have been executed by the Raja of Bilaspur and the Government of the Dominion of India before the commencement of the Constitution is the Bilaspur Merger Agreement (Ext. D-4/1A) and on a close examination of the provisions of the Bilaspur Merger Agreement dated 15.08.1948, we find that there are no provisions therein which have any relevance to the claim of the Plaintiff to the share of the Plaintiff to the power generated in the Bhakra- Nangal and Beas Projects. The draft agreement dated 07.07.1948, however, has provisions in clause 13 for allocation of power to the Bilaspur State, but this draft agreement is not proved to have been executed on behalf of the parties thereto and cannot constitute a basis for allocation of power to the Plaintiff-State. However, we have already held that the claim of the Plaintiff-State is based also on the Punjab Reorganisation Act, 1966 and the provisions of the Constitution and such claim is not barred under Article 363 of the Constitution. This issue is answered accordingly.

Issue No. 4

48. Issue No. 4 has been raised by the Defendant No. 4 (State of Rajasthan) and its case is that the suit is actually a dispute with regard to use of water in inter state rivers, namely, Satluj and Beas, and is barred under Article 262(2) of the Constitution. Mr. Vaidyanathan, learned counsel appearing for the Defendant No. 4, submitted that the case of the Plaintiff is that on account of the use of water of the two inter state rivers for generation of hydro-electric power in the Bhakra-Nangal and Beas Projects, the Plaintiff has lost its entitlement to beneficial use of the water. He cited decisions of this Court in Re: Cauvery Water Disputes Tribunal 1993 Supp (1) SCC 96 (II), *State of Karnataka v. State of A.P. and Ors.* MANU/SC/0297/2000 : (2000) 9 SCC 572, *State of Haryana v. State of Punjab and Anr.* MANU/SC/0026/2002 : (2002) 2 SCC 507 and *State of Orissa v. Government of India and Anr.* MANU/SC/0144/2009 : (2009) 5 SCC 492 in support of his submissions that a suit which is really a dispute relating to the use of water of an inter-state river is barred under Clause (2) of Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956.

49. Clause (2) of Article 262 of the Constitution provides that notwithstanding anything in the Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint relating to waters of inter state rivers or river valleys. Parliament has in fact made the Inter-State Water Disputes Act, 1956 and has also provided in Section 11 of this Act that neither the Supreme Court nor any other court shall have jurisdiction or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under the Act. In *State of Karnataka v.*

State of A.P. and Ors. (supra) a Constitution Bench of this Court held in Para 24 at pages 604, 605 and 606 that when a contention is raised that a suit filed under Article 131 of the Constitution is barred under Article 262(2) of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956, what is necessary to be found out is whether the assertions made in the plaint and the relief sought for, by any stretch of imagination, can be held to be a water dispute so as to oust the jurisdiction of this Court under Article 131 of the Constitution and on examining the assertions made in the plaint and the relief sought for by the Plaintiff-State, the Constitution Bench took the view that the suit in that case could not be held to be barred under Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956. This decision in *State of Karnataka v. State of Andhra Pradesh* was followed by this Court in *State of Haryana v. State of Punjab and Anr*. (supra) and it was held that the question of maintainability of the suit has to be decided upon the assertions made by the Plaintiffs and the relief sought for, and taking the totality of the same and not by spinning up one paragraph of the plaint and then deciding the matter. Applying this test to the present case, we find on a reading of the assertions made in the entire plaint as well as the reliefs claimed therein by the Plaintiff that the dispute does not relate to a dispute in relation to inter state river water or the use thereof, and actually relates to sharing of power generated in the Bhakra-Nangal and the Beas Projects and such a dispute was not barred under clause (2) of Article 262 of the Constitution read with Section 11 of the Inter- State Water Disputes Act, 1956.

Issue No. 5

50. Mr. Nageshwar Rao, learned counsel for Defendant No. 3 and Mr. Vaidyanathan, learned Counsel for Defendant No. 4 submitted that Article 131 of the Constitution is clear that this Court will have the original jurisdiction in a dispute between the parties mentioned therein "if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". They argued that unless the Plaintiff-State establishes its legal right to the share of power from the Bhakra-Nangal and Beas Projects, the suit of the Plaintiff is not maintainable under Article 131 of the Constitution. They submitted that Order XXIII Rule 6(a) of the Supreme Court Rules, 1966 states that a plaint shall be rejected where it does not disclose any cause of action and in this case since the plaint does not disclose a legal right in favour of the Plaintiff-State to its share of power from the Bhakra- Nangal and Beas Projects, the plaint is liable to be rejected. In support of this contention, Mr. Rao and Mr. Vaidyanathan relied on the decision of this Court in *State of Haryana v. State of Punjab and Anr*. MANU/SC/0524/2004 : (2004) 12 SCC 673.

51. At this stage, when oral and documentary evidence have already been led by the parties and arguments have been made by the learned Counsel for the parties and when we are going to finally decide the suit, it is not necessary for us to consider whether the plaint discloses a cause of action and is liable to be rejected under Order XXIII Rule 6(a) of the Supreme Court Rules, 1966. We have to however consider whether on the pleadings of the parties and on the evidence adduced by the parties, the Plaintiff-State has established a legal right to the utilization of power from the Bhakra-Nangal and Beas Projects. After examining the pleadings of the parties and the evidence adduced on behalf of the parties, we find that under the Bilaspur Merger Agreement dated 15.08.1948, the State of Bilaspur merged with the Dominion of India and was administered as the Chief Commissioner's Province and was included as a Part- C State is the First Schedule of the Constitution. In 1954 Bilaspur and Himachal Pradesh however, were united to form a new State of Himachal Pradesh under the Himachal Pradesh and Bilaspur (New States) Act, 1954. This new State of Himachal Pradesh

continued to be a Part-C State until it became a Union Territory by the Constitution (7th Amendment) Act, 1956. It is when Himachal Pradesh was a Union Territory that the State of Punjab and the State of Rajasthan entered into an agreement on 13.01.1959 (Ext.D- 1/3) to collaborate in the construction of a Dam across the river Sutlej at Bhakra and other ancillary works executed under the Bhakra-Nangal Project for the improvement of irrigation and generation of Hydro-electric power and as per the terms and conditions of this agreement, the power generated in Bhakra-Nangal Project was to be shared between Punjab and Rajasthan in the ratio of 84.78% and 15.22% respectively. The Plaintiff's case in the plaint is that the construction of the Bhakra Dam across the river Satluj has resulted in submergence of large areas of Himachal Pradesh and its rights have been affected by the construction of the Bhakra Dam. According to Mr. Ganguli, learned Counsel appearing for the Plaintiff, the legal rights of the Plaintiff which have been affected by the construction of the Bhakra-Nangal Project are the (a) natural right to the beneficial use of the water; (b) rights under the agreement executed with the Raja of Bilaspur and (c) constitutional rights of Himachal Pradesh over its water and land under Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution; (d) the statutory rights under Section 78 of the Punjab Reorganisation Act, 1966 and (e) the right to equal treatment in matter of utilization of power from the Bhakra- Nangal and Beas Projects.

52. We have already held while answering Issue No. 2 that after Bilaspur became part of the Dominion of India, the Plaintiff cannot make any claim to power on the basis of the rights of the Raja of Bilaspur prior to the merger of the Bilaspur State with the Dominion of India. So far as the rights of a State or Union Territory over its water and land are concerned, none of the constituent units of the Indian Union were sovereign and independent entities before the Constitution and after the commencement of the Constitution the constituent units have only such rights as are conferred on them by the provisions of the Constitution. As has been held by this Court in *Babulal Parate v. State of Bombay and Anr*. MANU/SC/0008/1959 : AIR 1960 SC 51 cited by Mr. Shyam Diwan, learned Counsel for the Defendant No. 2:

None of the constituent units of the Indian Union was sovereign and independent in the sense the American colonies or the Swiss Cantons were before they formed their federal unions. The Constituent Assembly of India, deriving its power from the sovereign people, was unfettered by any previous commitment in evolving a constitutional pattern suitable to the genius and requirements of the Indian people as a whole." (At Page 55 of AIR 1960)

In 1959, as we have noticed, Himachal Pradesh which included the erstwhile State of Bilaspur was a Union Territory and not a State. The executive and the legislative power over water and land in Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution vested in 1959 in the Union of India (Defendant No. 1). This will be clear from Article 73(1) of the Constitution, which provides that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and from Article 246(4) of the Constitution which states that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. In other words, in 1959 when the agreement was made between the States of Punjab and Rajasthan to construct the Bhakra Dam across the river Satluj which would have the effect of submerging large areas within Himachal Pradesh, it is the Union of India which had the right over the water and land in Himachal Pradesh and if the Union of India has, in exercise of its constitutional powers acquiesced in the construction of the Dam at Bhakra over river Satluj, the Plaintiff-State can have no cause of action to make a claim to power from the

Bhakra-Nangal Project on the basis of submergence of large areas of Himachal Pradesh on account of the construction of the Bhakra Dam.

53. We further find that in 1960-1961 when Himachal Pradesh was a Union Territory, the State of Punjab and the State of Rajasthan decided to collaborate and undertake the execution of Beas Project including all connected works in Punjab, Rajasthan and Himachal Pradesh. The Government of India, Ministry of Irrigation and Power, also adopted a resolution on 10.02.1961 (Ext.D-1/7) constituting the Beas Control Board for ensuring efficient, economical and early execution of the Beas Project (comprising Unit-I - Beas Satluj Link and Unit-II the Dam at Pong) and there were the representatives of the States of Punjab, Rajasthan and the Himachal Pradesh Administration and the Government of India in the Beas Control Board. Thus, the submergence of the large areas of Himachal Pradesh because of the construction of the Beas Project took place due to decisions to which the Government of India was a party and when Himachal Pradesh was a Union Territory and the Union of India had executive and legislative power over water and land in Himachal Pradesh by virtue of the constitutional provisions in Article 73(1) and Article 246(4) of the Constitution. The Plaintiff-State therefore cannot have any cause of action to make a claim to power from the Beas Project on the basis of submergence of large areas of Himachal Pradesh.

54. In our considered opinion, however, the Plaintiff had the statutory right under Section 78 of the Punjab Reorganisation Act, 1966 to the utilization of power and also the constitutional right to equal treatment vis-`-vis the other successor States of the composite State of Punjab and the Plaintiff has cause of action in the suit to make a claim to the utilization of power from the Bhakra-Nangal and Beas Projects on the basis of such statutory right and constitutional right and we shall advert to the statutory right and the constitutional right of the Plaintiff when we deal with the remaining issues. On a perusal of the Punjab Reorganisation Act, 1966, however, we find that the provisions of this Act deal with the rights of the successor States of the composite State of Punjab and it is by reference to the provisions of the Punjab Reorganisation Act, 1966 that the Plaintiff-State has claimed equal rights to power from the Bhakra-Nangal and Beas Projects. The Defendant No. 4 (State of Rajasthan) was never a part of composite State of Punjab and its rights and liabilities including its rights to utilization of power in the Bhakra- Nangal and Beas Projects are not affected by the Punjab Reorganisation Act, 1966. Hence, on the basis of the statutory right and the constitutional right of the Plaintiff to utilization of power from the Bhakra-Nangal and Beas Projects from out of the share of composite State of Punjab prior to the Punjab Reorganisation Act, 1966, the Plaintiff- State has no cause of action to file a suit against the State of Rajasthan. In other words, since the Plaintiff-State has no legal right to claim a share of power from the Bhakra-Nangal and Beas Projects from out of the share of power of the State of Rajasthan, the Plaintiff had no cause of action to file the suit against the State of Rajasthan (Defendant No. 4), but since the Plaintiff-State has a legal right to utilization of power out of the total share of power of the composite State of Punjab from the Bhakra-Nangal and Beas Projects as a successor State, the Plaintiff has cause of action to file the suit and to maintain the suit as against Defendant Nos. 2, 3 and 5. Moreover, as under Section 78(1) of the Punjab Reorganisation Act, 1966 the Central Government was required to determine by an order the rights of the Plaintiff to utilization of power from the Bhakra-Nangal and Beas Projects and the Central Government has not done so, the Plaintiff-State has cause of action to file the suit against the Defendant No. 1. Issue No. 5 is answered accordingly.

Issue Nos. 6

55. For deciding issue No. 6, a reference to Section 78 of the Punjab Reorganisation Act, 1966 is necessary.

78. Rights and liabilities in regard to Bhakra-Nangal and Beas Projects (1) Notwithstanding anything contained in this Act but subject to the provisions of Sections 79 and 80, all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States in such proportion as may be fixed, and subject to such adjustments as may be made, by agreement entered into by the said States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the Projects:

Provided that the order so made by the Central Government may be varied by any subsequent agreement entered into by the successor States after consultation with the Central Government.

(2) An agreement or order referred to in sub- section (1) shall, if there has been an extension or further development of either of the projects referred to in that Sub-section after the appointed day, provide also for the rights and liabilities of the successor States in relation to such extension or further development.

(3) The rights and liabilities referred to in sub- sections (1) and (2) shall include-

(a) the rights to receive and to utilise the water available for distribution as a result of the projects, and

(b) the rights to receive and to utilise the power generated as a result of the projects, but shall not include the rights and liabilities under any contract entered into before the appointed day by the Government of the existing State of Punjab with any person or authority other than Government.

(4) In this section and in Sections 79 and 80 -

(A) "Beas Project" means the works which are either under construction or are to be constructed as components of the Beas-Sutlej Link Project (Unit I) and Pong Dam Project on the Beas river (Unit II) including-

(i) Beas-Sutlej Link Project (Unit I) comprising-

(a)Pandoh Dam and works appurtenant thereto.

(b) Pandoh-Baggi Tunnel,

(c) Sundernagar-Hydel Channel,

(d) Sundernagar-Sutlej Tunnel,

(e) By-pass Tunnel,

(f) four generating units each of 165 M.W. capacity at Dehar Power House on the right side of Sutlej river,

(g) fifth generating unit of 120 M.W. capacity at Bhakra Right Bank Power House,

(h) transmission lines,

(i) Balancing Reservoir;

(ii) Pong Dam Project (Unit II) comprising-

(a) Pong Dam and works appurtenant thereto,

(b) Outlet Works,

(c) Penstock Tunnels,

(d) Power plant with four generating units of 60 M.W. each;

(iii) such other works as are ancillary to the works aforesaid and are of common interest to more than one State;

(B) "Bhakra-Nangal Project" means-

(i) Bhakra Dam, Reservoir and works appurtenant thereto;

(ii) Nangal Dam and Nangal-Hydel Channel;

(iii) Bhakra Main Line and canal system;

(iv) Bhakra Left Bank Power House, Ganguwal Power House and Kotla Power House, switchyards, sub- stations and transmission lines;

(v) Bhakra Right Bank Power House with four units of 120 M.W. each.

56. Mr. Shyam Diwan, leaned counsel appearing for the Defendant No. 2, submitted that Section 78(1) of the Punjab Reorganisation Act, 1966 starts with the non-obstante clause "Notwithstanding anything contained in this Act". He argued that considering these opening words in Section 78 of the Punjab Reorganisation Act, 1966, no other provisions of the Act should be looked into by the Court and the rights and liabilities of the successor State of the composite State of Punjab in regard to Bhakra-Nangal and Beas Projects have to be decided with reference to the provisions of Section 78 only. He submitted that Section 204(u) of the Government of India Act, 1935 was the provision corresponding to Article 131 of the Constitution and interpreting the said Section 204(u) of the Government of India Act, 1935 the Federal Court has held in *United Provinces v. Governor-General in Council* MANU/FE/0002/1939 : AIR 1939 FC 58 that the term `legal right' used in Section 204 means a right recognized by law and capable of being enforced by the power of a State. He submitted that under Section 78(1) of the Punjab Reorganisation Act, 1966, there is no right of the Plaintiff-State to the power generated in the Bhakra-Nangal and Beas Projects except what is agreed upon by the successor States or determined by the Central Government and

hence the right of the Plaintiff, if any, is not enforceable in Court. He finally submitted that even if this Court holds that the Plaintiff has a legal right to a share of power generated in the Bhakra-Nangal and Beas Projects, this Court can only direct the Central Government to determine the share of Himachal Pradesh and cannot itself determine the share of Himachal Pradesh. Mr. Mohan Jain, learned Additional Solicitor General, learned counsel appearing for Defendant No. 1, also made similar submissions.

57. We are not in a position to accept the submissions of learned Counsel appearing on behalf of the Defendant Nos. 1 and 2 that this Court has no jurisdiction under Article 131 of the Constitution to determine the share of the Plaintiff to the power generated in the Bhakra-Nangal and Beas Projects. Section 78(1) of the Punjab Reorganisation Act, 1966, it is true, provides that the rights and liabilities of the successor States of the composite State of Punjab will be fixed according to an agreement between the successor States. But, as we will discuss under Issue No. 7, there is no such final agreement between the successor States with regard to the share of power generated in the Bhakra- Nangal and Beas Projects and there is only a `tentative, ad hoc or interim arrangement' arrived at in the meeting held on 17.04.1967. We may add here that even when this suit was pending before this Court, an order was passed by this Court on 29.04.2010 directing the Union of India to make a final effort to bring all the parties to the dispute to the negotiating table and by acting as a meaningful mediator attempt to find a solution which is mutually acceptable to all the parties and the case was adjourned for three months to enable the parties to arrive at a mutually acceptable solution with the guidance of the Union Government, but an affidavit was filed in the Court on behalf of the Central Government stating that a Secretary level meeting was held with the stakeholder States but a settlement could not be arrived at, as the stakeholder States stuck to their respective claiMs. It is in these circumstances only that the Court has proceeded to hear and decide the suit.

58. We have also perused the decision of the Federal Court in *United Provinces v. Governor-General in Council* (supra) cited by Mr. Diwan and we find that Sulaiman and Varadachariar, JJ. have taken a view that the term `legal right' used in Section 204 of the Government of India Act, 1935 means a right recognized by law and capable of being enforced by the power of a State, but not necessarily in a Court of Law. Section 78(1) by its plain language states that all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States. This provision in Section 78 is enough to confer a legal right on Himachal Pradesh as a successor State in relation to Bhakra-Nangal and Beas Projects. Clause (b) of Sub-section (3) of Section 78 further provides that the rights and liabilities referred to in Sub-section (1) shall include the rights to receive and utilize the power generated as a result of the projects. This provision in Section 78 further confirms that the rights of the successor State such as the State of Himachal Pradesh includes the right to receive and utilize the power generated as a result of the Bhakra-Nangal and Beas Projects. The fact that the rights and liabilities of the successor States were to be fixed by an agreement to be entered into by the successor States after consultation with the Central Government does not affect the legal right of the State of Himachal Pradesh to receive and utilize the power generated as a result of Bhakra-Nangal and Beas Projects. Similarly, the fact that in the absence of any agreement within two years as stipulated in Sub-section (1) of Section 78 the Central Government was empowered to determine by an order the right and liabilities of the successor States does not affect the legal right of the State of Himachal Pradesh to receive and utilize the power generated as a result of the Bhakra- Nangal and Beas Projects. We have, therefore, no doubt in our mind that the Plaintiff had a legal right as a successor State of the composite State of

Punjab to receive and utilize the power generated in the Bhakra-Nangal and Beas Projects and this right was recognized by law and capable of being enforced by the power of the State.

59. Article 131 of the Constitution provides that this Court has original jurisdiction in any dispute between the parties mentioned therein if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. Hence, this Court has jurisdiction not only to decide any question on which the existence of a legal right depends but also to decide any dispute involving any question on which the extent of a legal right depends. We, therefore, have the jurisdiction to decide the extent to which Plaintiff-State would be entitled to receive and utilize the power generated in the Bhakra-Nangal and Beas Projects. In other words, the suit of the Plaintiff is not barred by the scheme of Sections 78 to 80 of the Punjab Reorganisation Act, 1966. Issue No. 6 is answered accordingly.

Issue No. 7

60. Mr. Mohan Jain, the Additional Solicitor General appearing for Defendant No. 1 and Mr. Shyam Diwan, learned Counsel for Defendant No. 2, submitted that Section 78 of the Punjab Reorganisation Act, 1966, provides that the rights and liabilities in regard to Bhakra-Nangal and Beas Projects of the successor States of the composite State of Punjab shall be in such proportion as may be fixed by an agreement entered into by the successor States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the Projects. They submitted that the rights and liabilities of the successor States in regard to Bhakra-Nangal Project have already been fixed by the agreement dated 17.04.1967.

61. Mr. A.K. Ganguli, learned Counsel for the Plaintiff, on the other hand, submitted that no agreement whatsoever in terms of Section 78(1) of the Punjab Reorganisation Act, 1966 has been arrived at between the parties and the agreement dated 17.04.1967 is only `tentative, ad hoc or provisional arrangement' pending final determination of rights and liabilities of the successor States of the composite State of Punjab. He submitted that the Plaintiff did not accept the tentative, adhoc or provisional arrangement made on 17.04.1967 and lodged its claim with the Central Government in its letter dated 27.10.1969 marked as Ext. P-12 claiming share to the extent of 7.19% of the total benefits from Bhakra-Nangal and Beas Projects, but the Central Government did not decide the claim of the Plaintiff- State and hence the Plaintiff had no option but to file the suit under Article 131 before this Court.

62. We have gone through the evidence and we find that by a letter dated 12.03.1967 of the Government of India, Ministry of Finance, Department of Economic Affairs, addressed to the Secretaries, Finance Department of the Government of Punjab and Haryana, marked as Ex.P-4, liability for the loan taken by the composite State of Punjab from the Central Government for Bhakra-Nangal and Beas Projects have been allocated `provisionally' among the successor States of Punjab and Haryana in the ratio of 53:47 (for Bhakra Loans) and 60:40 (for Beas Project) for the purpose of repayment of principal and payment of interest. In the said letter (Ex.P-4) it is clearly stated that the allocation is a `purely an ad hoc and temporary arrangement' and will be subject to re-adjustment later when the final allocation of the debt is made in terms of the provisions of Section 54(3) of the Punjab Reorganisation Act, 1966. The summary of discussions held in the room of the Secretary, Ministry of Irrigation and Power on 17.04.1967 regarding the formation of two separate Electricity Boards for Haryana and

Punjab and related matters have been circulated by a memorandum dated 27.04.1967 of the Government of India, Ministry of Irrigation and Power, marked as Ex.D-1/6. Para 3 of the summary discussions which records the alleged agreement between the successor States with regard to allocation of assets and liabilities in relation to the Bhakra-Nangal Project and the Beas Project is extracted hereinbelow:

Shri Nawab Singh stated that a decision on the tentative allocation of assets and liabilities of Punjab and Haryana had been taken earlier on the basis of 58%: 42%. Now the shares of the Union Territories of Himachal Pradesh and Chandigarh had to be decided. He further stated that at a meeting held in this regard recently an agreement had been reached on the allocation of a share of 3.5% to Chandigarh and 2.5% to Himachal Pradesh and the remaining, ratio of 58:42. On this basis, the shares of the four constituents would become as under:

Punjab	54.5%
Haryana	39.5%
Chandigarh	3.5%
Himachal Pradesh	2.5%

The above percentages were agreed to the Power Houses, sub-stations, Transmission Lines will, of course, be owned on the basis of location etc. as per distribution shown in Annexure-I. It was further decided that the depreciation accrued and loans raised for any particular fixed asset would be allocated along with the asset itself as per Annexure-I and that the distribution systems and other small lengths of transmission lines, sub- stations etc. not included in the list will go to the successor States on location basis.

It will be clear that the decision on the `tentative' allocation of asset and liabilities of Punjab and Haryana had been taken first and this was 58% for Punjab and 42% for Haryana and the shares of Chandigarh and Himachal Pradesh were determined at the meeting held on 17.04.1967 and the resultant allocation was 54% for Punjab, 39% for Haryana, 3.5% for Chandigarh and 2.5% for Himachal Pradesh. The record of the discussions for allocation of shares of the 4 constituent of the composite State of Punjab shows that the basis for distribution was location of the power houses, sub-stations, transmission lines etc. Along with the record of discussion, the list of fixed assets `tentatively' allocated to the Haryana Electricity Board, Punjab Electricity Board, Union Territory of Himachal Pradesh and Union Territory of Chandigarh were annexed. Similarly, the list showing `tentative' apportionment of financial assets and liabilities as agreed in the meeting held on 17.04.1967 was also annexed. It thus appears that allocation of rights and liabilities to the constituents of the composite State of Punjab which took place at the meeting held on 17.04.1967 was purely `tentative' and not final. This is confirmed in the letter dated 29.05.1967 of the Government of India, Ministry of Irrigation and Power, marked as Ex.P-7, addressed to the Secretaries to the Government of Punjab, Haryana and Rajasthan on the subject `Financial Arrangements for Bhakra and Beas Projects', in which it is reiterated that the allocation was purely on ad hoc and tentative basis and was to be without prejudice to the rights of Governments of Punjab and Haryana and was subject to re-adjustment later when final allocation of debt liability is made and the ratio in which capital and reserve expenditure in respect of the project is decided in terms of the provisions of Section 54(3) of Punjab Reorganisation Act, 1966. We also find from the evidence that by a letter dated 20.03.1978 addressed by the Ministry of Energy, Government of India to Shri Shanta Kumar, Chief Minister of Himachal Pradesh, 15 MW of power has been allotted on `ad hoc basis' to Himachal Pradesh pending a

final decision of the concerned States if Himachal Pradesh was agreeable to the proportionate cost of the project. In an another subsequent letter dated 16.08.1983 of the Government of India, Ministry of Energy (Department of Power) to the Chairman, Bhakra Beas Management Board, marked as Ex.P-48, it is expressly stated:

The quantum of benefits from Bhakra and Beas projects presently allocated to these two areas on an ad hoc basis will remain unaltered until a final decision is taken on the sharing of the rights and liabilities of all the successor states in the two projects.

The documentary evidence before the Court, therefore, clearly establishes that the allocation of power to Himachal Pradesh to the extent of 2.45% of the share of the power of the composite State of Punjab from both Bhakra and Beas Projects was `tentative and ad hoc' and not final. There is, in other words, no final agreement between the successor States of the composite State of Punjab with regard to the rights and liabilities of the successor States including the right to the power generated in the Bhakra and Beas Projects in terms of Section 78(1) of the Punjab Reorganisation Act, 1966. Issue No. 7 is answered accordingly.

Issue No. 8

63. Mr. Ganguli, learned counsel for the Plaintiff, submitted that the territorial integrity of Bilaspur State could not be affected by submergence on account of construction of Bhakra Dam without the consent of the Bilaspur State and the Raja of Bilaspur while giving such consent, incorporated in the draft agreement various conditions such as payment of royalty and transfer of power to Bilaspur as a consideration for construction of the Bhakra Dam. He submitted that as the Bilaspur State became part of Himachal Pradesh and the State of Himachal Pradesh as the Mother State bears the reservoir of Bhakra- Nangal Project, Himachal Pradesh is the Mother State vis-`- vis the Bhakra-Nangal Project. He submitted that similarly as Himachal Praesh bears the reservoir of the Beas Project, Himachal Pradesh is also the "Mother State" vis-`-vis the Beas Project. He submitted that the Union Government has taken a decision that the Mother State or the Home State where a hydro-electric power project is located, will be supplied 12% of the power generated by the power station free of cost and this will be evident from the letter dated 22.07.1985 of the Government of India, Ministry of Irrigation & Power (Department of Power) to the Chairman, H.P. State Electricity Board, which has been produced and marked as Ext. P-55. He submitted that the Himachal Pradesh Assembly accordingly adopted a resolution on 13.03.1984 making a demand to the Union of India to give to Himachal Pradesh 12% free power from Bhakra, Dehar and Pong power projects in lieu of use of water and land of Himachal Pradesh for generation of electricity and accordingly the Chief Minister of Himachal Pradesh addressed a letter on 18.06.1984 forwarding a copy of the resolution of the Himachal Pradesh Assembly claiming 12; free supply of power to Himachal Pradesh from Bhakra, Dehar and Pong power projects, but this claim of Himachal Pradesh has not been accepted by the Central Government. Mr. Ganguli referred to the letter dated 19.02.1968 of Shri Y.S. Parmar to Dr. K.L. Rao, Union Minister of Irrigation & Power, marked as Ext. P-8, to show how in the case of other projects, namely, the Periyar Project in the Madras State and the Muchkund Project in Orissa State benefits have been given to the State whose resources are affected on account of the construction of hydro-electric project. He also referred to the views of the Vice-Chairman of the Central Water and Power Commission in his communication dated 02.05.1968, marked as Ext. P-10, suggesting that the Himachal Pradesh should be made an active partner of the Hydro-Electric Project borne by it by paying to Himachal Pradesh the annual royalties based on actual utilization of the water, power rights. He argued that all these materials clearly

show that Himachal Pradesh is entitled to 12% free power from the Bhakra-Nangal and Beas Projects by virtue of it being the Mother State or the Home State and by virtue of loss of its land and water on account of the Bhakra and Beas Projects.

64. Mr. Shyam Diwan, learned counsel for the Defendant No. 2, submitted that this claim of the Plaintiff to 12% free power is based upon a notion that Himachal Pradesh has some pre-existing or natural rights over its land and water. He submitted that under Article 3 of the Constitution Parliament has power to form a new State, increase the area of any State, diminish the area of any State, alter the boundaries of any State and alter the name of any State and, therefore, States in India are not indestructible and the territorial integrity of the States can be destroyed by Parliament by law. He argued that the whole notion of Himachal Pradesh having any rights over its land and water apart from what is given by Parliament by law is thus alien to the Indian Constitution. He submitted that the State of Himachal Pradesh cannot have any right dehors the Punjab Reoganisation Act, 1966 made under Article 3 of the Constitution. In support of this submission, he relied on the decisions of this Court in *Babulal Parate v. State of Bombay and Anr.* (supra) and *Kuldip Nayar and Ors. v. Union of India and Ors.* MANU/SC/3865/2006 : (2006) 7 SCC 1.

65. We find that under the provisions of Article 3 of the Constitution, Parliament has the power to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, increase the area of any State, diminish the area of any State, alter the boundaries of any State and alter the name of any State, but under Article 3, Parliament cannot take away the powers of the State Executive or the State Legislature in respect of matters enumerated in List-II of the Seventh Schedule to the Constitution. This has been made clear in the speech of Dr. B.R. Ambedkar in the Constituent Assembly quoted in Para 52 of the decision of this Court in *Kuldip Nayar v. Union of India and Ors.* (supra). Relevant portion from the speech of Dr. B.R. Ambedkar is quoted hereinbelow:

... The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are coequal in this matter....

66. We have however held, while answering Issue No. 2, that pursuant to the Bilaspur Merger Agreement, the States Merger (Chief Commissioners Provinces) Order, 1949, inclusion of the Bilaspur State as a Part-C State in the First Schedule of the Constitution and Article 294(b) of the Constitution, the Raja of Bilaspur lost all rights first to the Dominion of India and thereafter to the Government of India and that the Plaintiff, therefore, could not have any cause of action to make any claim on the basis of any right of Raja of Bilaspur prior to the merger of the Bilaspur State with the Dominion of India. The Plaintiff, therefore, cannot claim any free power because of loss of land and water by the Raja of Bilaspur. We have also held while answering Issue No. 5 that in 1959 when the States of Punjab and Rajasthan agreed to construct the Bhakra Dam, Himachal Pradesh was a Union Territory and the executive and legislative power over water and land under Entries 17 and 18 of List- II of the Seventh Schedule to the Constitution vested in the Union of India and the Union of India in exercise of its constitutional powers acquiesced in the construction of the Dam at Bhakra over river Satluj. We have also held while answering to Issue No. 5 that in 1960-1961 when the Himachal Pradesh was a Union Territory, the States of Punjab and Rajasthan also decided to

collaborate and undertake the execution of the Beas Project and the Government of India, Ministry of Irrigation & Power, in fact, adopted a resolution on 10.02.1961 constituting the Beas Control Board for early execution of the Beas Project. Thus, at the time of the Bhakra-Nangal Project and the Beas Project were executed, Himachal Pradesh was not a full fledged State having the rights and powers under Articles 162 and 246(3) of the Constitution over its land and water under Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution and it was the Union of India which had such rights and powers over the land and water in Himachal Pradesh by virtue of the provisions of Article 73 and Article 246(4) of the Constitution.

67. The State Reorganisation Act, 1966 and, in particular Section 78 thereof, does not also provide for grant of 12; free power to the State of Himachal Pradesh. It only provides for the rights and liabilities of Himachal Pradesh as a successor State of the Composite State of Punjab and what would be such rights and liabilities of Himachal Pradesh as a successor State of the Composite State of Punjab will be discussed while answering the Issue No. 9.

68. The claim of the Plaintiff to 12% free power therefore is not based on any legal right of the Plaintiff, constitutional or statutory, but only on the decision of the Government of India referred to in the letter dated 22.07.1985 of the Government of India, Ministry of Irrigation & Power, (Department of Power) to the Chairman, H.P. State Electricity Board (Ext. P-55) which is extracted hereinbelow in extenso:

K. Padmabhaiah
Jt. Secretary

Government of India
Ministry of Irrigation & Power
(Department of Power)
(Sanchai aur Vidyut Mantralaya
New Delhi the 22nd July 1985

D.O. No. 53/3/79-DDH

Dear Shri Mahajan,

I am glad to inform you that the formula for sharing of power and benefits from Central Sector Hydro Electric Projects has been modified by the Cabinet on 12.02.1985. The revised formula is reproduced below for your information:

(a) 15% of the generation capacity should be kept as unallocated at the disposal of the Central Govt. to be distributed within the Region or outside, depending upon overall requirements.

(b) The "Home State", i.e. where the project is located will be supplied 12% of power from the energy generated by the power station, free of cost. The "energy generated" figures for the purpose will be calculated at the bus bar level, i.e. after discounting the auxiliary consumption but without taking into account the transmission line losses and

(c) The remaining power (73%) would be distributed between the States of region (including the Home State) on the basis of Central Assistance given to various States in the region

during the last five years and on the basis of consumption of electricity in the States in the region in the last five years, the two factors being given equal weightage.

2. This revised formula would be applicable in respect of those Central Sector Hydro Electric Projects in whose case sanction for investment decision is issued after 12.02.1985.

3. The Cabinet has also approved the concept of Joint ventures between the Union and one or more State Government for implementation of hydro-electric projects in such projects, the partner State/States would be entitled to the supply of quantity of power proportionate to their investment, at bus bar rates, after supply of 12; free power to the Home State. The Centre's share of power would be distributed from such projects as per the formula for Central Sector Hydro Electric Projects, i.e. 15% to be reserved with the Centre as unallocated share and the balance to be distributed between the States of the region on the basis of two factors enumerated in (c) of para (1) above.

With regards,

Yours faithfully,
Sd/-
(K. Padmanabhaiah)

Shri Kailash Chand Mahajan,
Chairman,
H.P. State Electricity Board,
Vidyut Bhawan

69. It will be crystal clear from the aforesaid letter dated 22.07.1985 that the formula of supply of 12% free power from the energy generated by a power station to the Home State is applicable to Central Sector Hydro-Electric Projects and with effect from 12.02.1985 the Union Cabinet has made this applicable to Joint Ventures between the Union and one or more State Governments for implementation of Hydro-Electric Projects and as per this formula after supply of 12% free power to the Home State, the remaining power is to be distributed to the partner States proportionate to their investment. This formula of making 12% free power from the energy generated by a power station is purely a policy- decision taken by the Government of India much after the Bhakra-Nangal Project and Beas Project were executed and in any case does not find place in any provision of law so as to confer a legal right on the Plaintiff to claim the same. Our answer to Issue No. 8 is that the Plaintiff-State is not entitled to 12% power generated from the Bhakra-Nangal and Beas Projects free of cost from the date of commissioning of the Projects.

Issue No. 9

70. The claim of the Plaintiff to allocation of 7.19% of the total power generated in Bhakra-Nangal and Beas Project from 01.01.1996 is based on the Punjab Reorganisation Act, 1966 and the State of Himachal Pradesh Act, 1970. We have already extracted Section 78 of the Punjab Reorganisation Act, 1966, while answering Issue No. 6. The other provisions of the Punjab Reorganisation Act, 1966, which are relevant for deciding this issue, are extracted herein below:

Section 2(b) "appointed day" means the 1st day of November, 1966;

....

....

(f) "existing State of Punjab" means the State of Punjab as existing immediately before the appointed day;

(i) "population ratio", in relation to the States of Haryana and Punjab and the union, means the ration of 37.38 to 54.84 to 7.78;

(m) "successor state", in relation to the existing State of Punjab means the State of Punjab or Haryana, and includes also the Union in relation to the Union rerritory of Chandigarh and the transferred territory;

(n) "transferred territory" means the territory which on the appointed day is transferred from the existing State of Punjab to the Union territory of Himachal Pradesh;

Section 5. Transfer of territory from Punjab to Himachal Pradesh. - (1) On and from the appointed day, there shall be added to the Union territory of Himachal Pradesh the territories in the existing State of Punjab comprised in-

(a) Simla, Kangra, Kulu and lahul and Spiti districts;

(b) Nalagarh tehsil of Ambala district;

(c) Lohara, Amb and Una kanungo circles of Una tehsil of Hoshiarpur district;

(d) the territories in Santokhgarh kanungo circle of Una tehsil of Hoshiarpur district specified in Part I of the Third Schedule;

(e) the territories in Una tehsil of Hoshiarpur district specified in part II of the Third Schedule; and (f) the territories of Dhar Kalan Kanungo circle of Pathankot tehsil of Gurdaspur district specified in Part III of the Third Schedule, and thereupon the said territories shall cease to form part of the existing State of Punjab.

(2) The territories referred to in Clause (b) of sub section (1) shall be included in, and form part of Simla district.

(3) The territories referred to in clauses (c), and (d) and (e) of Sub-section (1) shall be included in and form part of Kangra district, and

(i) the territories referred to in Clauses (c) and (d) shall form a separate tehsil known as Una tehsil in that district and in that tehsil the territories referred to in clause (d) shall form a seperate kanungo circle known as the Santokhgarh kanungo circle; and

(ii) the territories referred to in clause (e) shall form part of the Hamirpur tehsil in the said district.

(4) The territories referred to in Clause (f) of sub- section (1) shall be included in, and form part of the Bhattiyat tehsil of Chamba district in the Union territory of Himachal Pradesh and

in that tehsil, the villages Dalhousie and Balun shall be included in, and form part of Banikhet kanungo circle and the village Bakloh shall form part of Chowari kanungo circle.

71. The State of Himachal Pradesh Act, 1970 thereafter established the New State of Himachal Pradesh comprising the territories which were comprised in the existing Union Territory of Himachal Pradesh. In exercise of the powers conferred on the Central Government under Section 38 of the State of Himachal Pradesh Act, 1970, the Central Government has passed an order dated 07.07.1972 called `the State of Himachal Pradesh (Transfer of Assets and Liabilities) Order, 1972'. Para 7 of this Order, which is relevant and is extracted hereinbelow:

For the purposes of paragraphs 5 and 6 of this order the provisions of Section 2 of the Punjab Reorganisation Act, 1966 (31 of 1966), shall have effect as if: (i) for clause (i), the following clauses had been substituted namely:

(i) "Population ratio" in relation to the States of Haryana, Punjab and Himachal Pradesh and the Union means the ratio of 37.38 to 54.84 to 7.10 to 0.59%".

(ii) For clause (m), the following clause had been substituted namely:

(m) "Successor State" in relation to the existing State Punjab means the State of Punjab or the State of Haryana or the State of Himachal Pradesh and includes also the Union, in relation to the Union Territory of Chandigarh.

72. Mr. Ganguli, learned counsel for the Plaintiff, submitted that it will be clear from Clause (i) of para 7 of the State of Himachal Pradesh (Transfer of Assets and Liabilities) Order, 1972 that the population ratio in relation to the States of Haryana, Punjab and Himachal Pradesh and the Union Territory of Chandigarh is Haryana: 37.38%, Punjab: 54.84, Himachal Pradesh: 7.19% and Chandigarh: 0.59%. He argued that on the basis of such population ratio, the Plaintiff is, therefore, entitled to 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects as a successor State of the composite State of Punjab. He submitted that the allocation of only 2.5% of the power from Bhakra-Nangal and Beas Projects to the State of Himachal Pradesh as compared to the allocation of 54.5% to Punjab and 39.5; to Haryana and 3.5% to Chandigarh, is in violation of the right of the Plaintiff-State to equal treatment. He submitted that the Plaintiff has, therefore, sent by the letter dated 22.10.1969, produced and marked as Ext. P- 12, to the Joint Secretary, Government of India, Ministry of Home Affairs, New Delhi, claiming a share to the extent of 7.19% of the total benefits from the Bhakra-Nangal and Beas Projects on the basis of transfer of 7.19% of the population of the composite Punjab State to Himachal Pradesh along with the transferred territory, but the Central Government has not passed any order as yet granting the Plaintiff its share of 7.19% of the power generated from the Bhakra-Nangal and Beas Projects on the basis of the ratio of population transferred to the Plaintiff-State along with the transferred territory.

73. Mr. Mohan Jain, learned ASG appearing for the Defendant No. 1 and Mr. Shyam Diwan appearing for Defendant No. 2, on the other hand, submitted that since there was an agreement between the successor States arrived at in the meeting held on 17.04.1967 and this agreement was entered into within two years stipulated in Section 78(1) of the Punjab Reorgansiation Act, 1966 and was binding on the parties, the Plaintiff-State is not entitled to 7.19% of the share of power generated in Bhakra-Nangal and Beas Projects. They further submitted that Section 78(1) of the Punjab Reorgansiation Act, 1966 is clear that the rights

and liabilities of the successor State of the composite Punjab State in relation to Bhakra-Nangal and Beas Projects are to be settled by agreement within two years or by an order passed by the Central Government if no such agreement is entered into within two years and, therefore, this Court cannot consider the claim of the Plaintiff to a share of 7.19% of the power generated in the two Projects.

74. The language of Section 78(1) shows that the right of the successor States in relation to Bhakra-Nangal and Beas Projects are rights on account of their succession to the composite State of Punjab on the reorganization of the composite State of Punjab. The language of Section 78 further makes it clear that if no agreement is entered into between the States within two years of the appointed day, the Central Government was required to determine the rights and liabilities of the successor States "having regard to the purposes of the Projects". Hence, the purposes of the Bhakra-Nangal and Beas Projects will have to be kept in mind while deciding the share of the successor States. 75. The purposes of the Bhakra-Nangal Project, as evident from the agreement dated 13.01.1959 between the State of Punjab and the State of Rajasthan, were "improvement or irrigation and generation of Hydro- electric power". Clause 9(2) of the agreement dated 13.01.1959 (Ext. D-1/3) provides that the shares of the Punjab and Rajasthan in the stored water supplies was to be 84.78% and 15.22% respectively and Clause 32 of this agreement provides that each party shall contribute to the capital cost of the electrical portion of the project in proportion to the share of either party in the stored water supply. Thus, the capital cost contributed by the composite State of Punjab for construction of the Hydro- electric project of Bhakra-Nangal was 84.78% and this capital cost was borne by the composite State of Punjab as a whole including the transferred territory which formed part of the State of Himachal Pradesh. Similarly, we find on a reading of the record of decisions arrived at the inter-State Conference on development and utilization of the waters of the rivers Ravi and Beas held on 25.01.1955 marked as Ext. D-4/10 as well as the minutes of the 6th meeting of the Beas Central Board held on 13.12.1963 marked as Ex. D-4/15 that 85% of the capital cost of Unit-I and 32% of the capital cost of Unit- II of Beas Project were to be met by the composite State of Punjab as a whole including the transferred territory which formed part of the State of Himachal Pradesh.

76. The purposes of the Bhakra-Nangal and the Beas Projects, therefore, were to benefit the entire composite State of Punjab including the transferred territory which became part of Himachal Pradesh. If the ratio of the population of this transferred territory vis-`-vis the composite State of Punjab was 7.19% and the transferred territory as detailed in Section 5 of the Punjab Reorganisation Act, 1966 extracted above was not small, allocation of only 7.19% of the share of power of the composite State of Punjab generated in the Bhakra- Nangal and Beas Projects was only fair and equitable. The allocation of only 2.5% of the total share of the power of the composite State of Punjab generated in the two Projects to Himachal Pradesh has been made on the basis of actual consumption of power by the people in the transferred territory and the location of the sub-stations in the transferred territory. The summary of discussion held in the room of the Secretary, Ministry of Irrigation and Power, on 17.04.1967 (Ext. D-1/6) shows that the allocation of power to Punjab is 54.5% of the total power whereas the allocation of power to Haryana is 39.5% of the total power available to the composite State of Punjab. These allocations appear to have been done on the basis of the population ratio of Punjab and Haryana in the composite State, which were 54.84% and 37.38; respectively. Thus, while States of Punjab and Haryana have been allocated power on the basis of their population ratio, Himachal Pradesh has been allocated power on "as is where is basis".

77. Equal treatment warranted that the Plaintiff- State was allocated 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects (after excluding the power allocated to the Defendant No. 4 - State of Rajasthan) from the appointed day as defined in the Punjab Reorganisation Act, 1966, i.e. 01.11.1966.

Considering the fact that Chandigarh is the Capital of both Punjab and Haryana, these two States should meet the power requirements of the Union Territory of Chandigarh out of their share. We accordingly order that the entitlement of power of the constituents of the composite State of Punjab from the Bhakra-Nangal and Beas Projects will be at the following percentages:

Himachal Pradesh	7.19%
UT of Chandigarh	3.5%
Punjab	51.8%
Haryana	37.51%

Therefore, the entitlement of the Plaintiff out of the total production will be as under:

Project	Entitlement in total production	With effect from
(i) Bhakra-Nangal(7.19% of 84.78%)	6.095%	01.11.1966 (date of re-organisation)
(ii) Beas I (7.19% of 80%)	5.752%	From the date ofcommencement of Production
(iii) Beas II(7.19% of 41.5%)	2.984%	From the date ofcommencement of Production

From the above entitlement, what has been received by the Plaintiff in regard to Bhakra-Nangal and Beas I have to be deducted for the purpose of finding out the amount due to the Plaintiff-State from the States of Punjab and Haryana upto October, 2011.

Issue No. 10

78. On the basis of its entitlement to 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects, the Plaintiff has filed Statements I and III. These statements, however, are disputed by the Defendants in their written statements. The Defendant No. 1-Union of India will have to work out the details of the claim of the Plaintiff-State on the basis of the entitlements of the Plaintiff, Defendant No. 2 and Defendant No. 3 in the tables in Paragraph 77 above as well as all other rights and liabilities of the Plaintiff-State, the Defendant Nos. 2 and 3 in accordance with the provisions of the Punjab Reorganisation Act, 1966 and file a statement in this Court stating the amount due to the Plaintiff from Defendant Nos. 2 and 3 upto October, 2011.

Issue No. 11

79. Since the Defendant Nos. 2 and 3 have utilized power in excess of what was due to them under law, we also hold that the Plaintiff-State will be entitled to interest at the rate of 6% on the amounts determined by the Union of India to be due from Defendant Nos. 2 and 3.

80. Reliefs:

(i) The suit is decreed in part against Defendant Nos. 2 and 3 and dismissed against Defendant Nos. 1, 4 and 5.

(ii) It is hereby declared that the Plaintiff-State is entitled to 7.19% of the power of the composite State of Punjab from the Bhakra-Nangal Project with effect from 01.11.1966 and from Beas Project with effect from the dates of production in Unit I and Unit II.

(iii) It is ordered that Defendant No. 1 will work out the details of the claim of the Plaintiff-State on the basis of such entitlements of the Plaintiff, Defendant No. 2 and Defendant No. 3 in the tables in Paragraph 77 of this judgment as well as all other rights and liabilities of the Plaintiff-State, Defendant No. 2 and Defendant No. 3 in accordance with the provisions of the Punjab Reorganisation Act, 1966 and file a statement in this Court within six months from today stating the amounts due to the Plaintiff-State from Defendant Nos. 3 and 4.

(iv) On the amount found to be due to the Plaintiff- State for the period from 01.11.1966 in the case of Bhakra-Nangal Project and the amount found due to the Plaintiff-State for the period from the dates of production in the case of Beas Project, the Plaintiff-State would be entitled to 6% interest from Defendant Nos. 2 and 3 till date of payment.

(v) With effect from November 2011, the Plaintiff- State would be given its share of 7.19% as decreed in this judgment.

(vi) The Plaintiff-State will be entitled to a cost of Rs. 5 lakhs from Defendant No. 2 and a cost of Rs. 5 lakhs from Defendant No. 3.

The matter will be listed after six months along with the statements to be prepared and filed by the Defendant No. 1 as ordered for verification of the statements and for making the final decree.