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**GOVERNMENT OF INDIA
NARMADA WATER DISPUTES TRIBUNAL**

**FURTHER REPORT
OF
THE NARMADA WATER DISPUTES TRIBUNAL**

VOLUME II

**NEW DELHI
1979**

GOVERNMENT OF INDIA

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FURTHER REPORT

OF

THE NARMADA WATER DISPUTES TRIBUNAL

—Opinion of Shri A. K. Sinha
Member of the Tribunal

IN THE MATTER OF WATER DISPUTES REGARDING
THE INTER-STATE RIVER NARMADA AND THE RIVER VALLEY THEREOF

BETWEEN

1. The State of Gujarat
2. The State of Madhya Pradesh
3. The State of Maharashtra
4. The State of Rajasthan

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THE NARMADA WATER DISPUTES TRIBUNAL
- OPINION OF SHRI A. K. SINHA
MEMBER OF THE TRIBUNAL**

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PART I

I regret, I could not agree with the views taken by Learned Chairman on certain points raised in the grounds of respective references of Union of India, States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan.

Before I take up those points for consideration, I should record briefly that the Narmada Water Disputes Tribunal was constituted for adjudication of water disputes between the above four States concerning Narmada River. The Tribunal, after investigation, forwarded its Report and decision on 16th of August, 1978. As I dissented from the majority view on certain issues I recorded my separate opinion in Chapter IV of the Report and decision under Section 5(2) of the Inter-State Water Disputes Act, 1956, (hereinafter referred to as the Act). But in view of Section 5(4) of the Act this Tribunal submitted the Report and its decision according to the opinion of the majority.

Thereafter, Reference on matters contained in the above decision, Nos. 1, 2, 3, 4 and 5 of 1978 of Union of India, States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan respectively were put in under Section 5(3) of the Act on 16th November, 1978. According to the usual procedure of this Tribunal, all the parties put in their replies, Rejoinders, Sur-Rejoinders, etc. and hearing followed details of which have been set out in Chapter-I of the Further Report under Section 5(3) of the Act and it is not necessary to restate them over again.

One of the points taken by the State of Madhya Pradesh in its reference requires determination of scope and effect of Section 5(3) of the Act. At the very outset I should state that, I agree substantially with the view taken by Learned Chairman on this aspect of the matter but I wish to record a few words of my own which would be necessary for expressing my own opinion on the above points.

Briefly speaking, the State of Madhya Pradesh has contended that Section 5 of the Act is of the widest amplitude and Section 5(3) is enabling provisions and not a limiting one. The field covered by Section 5(3) for 'further consideration' must cover the entire field under Section 5(1) and (2). Section 5(3) in substance lays down that the Report and the decision in Section 5(2) is not final. It is pointed out that

this Tribunal held inter-alia on certain preliminary issues that "there is nothing in the scheme or language of the Act which precludes the Tribunal from applying principle underlying the Order 14(2) of C.P.C." (Report, Vol. III, pages 9-10). Elsewhere in the judgment, Tribunal held that "it is a statutory judicial Tribunal on which the adjudicating power is conferred by the Statute and which has been investigated with the State's inherent judicial power" (Report, Vol. III, pages 27-28 and 32)¹. Therefore, this Tribunal has jurisdiction under Section 5(3) to re-examine and reconsider its earlier decision under Section 5(2) on all aspects and on all issues and to modify the decision accordingly. On an exhaustive analysis of several other sections and Section 5(3), Madhya Pradesh has urged that Section 5(3) must be understood in its widest amplitude in order to do justice².

All such contentions were opposed by States of Gujarat, Maharashtra and Rajasthan. According to them, once a report and decision have been forwarded to the Central Government under Section 5(2) of the Act, they become final except where "(I) anything contained in such report or decision requires explanation, (II) or that guidance is needed upon any point not originally referred to the Tribunal" as provided under Section 5(3) of the Act. In substance it is said that it has no power to review or reconsider or alter its earlier decision.

The whole question then, it seems, will turn on the interpretation of Section 5(3) of the Act. It is convenient at this stage to set out Section 5 Sub-Sections 1, 2 and 3 which provide—

- “5. (1) When a Tribunal has been constituted under Section 4, the Central Government shall, subject to the prohibition contained in Section 8, refer the water dispute and any matter appearing to be connected with, or relevant to, the water dispute to the Tribunal for adjudication.
- (2) The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it.

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(3) If, upon consideration of the decision of the Tribunal, the Central Government or any State Government is of opinion that anything therein contained requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, the Central Government or the State Government, as the case may be, may, within three months from the date of the decision, again refer the matter to the Tribunal for further consideration; and on such reference, the Tribunal may forward to the Central Government a further report giving such explanation or guidance as it deems fit and in such a case, the decision of the Tribunal shall be deemed to be modified accordingly."

On a plain reading of the above provision, it seems fairly clear that a right is created in favour of the Central Government or State Government concerned to refer the matter to the same Tribunal for further consideration of its earlier decision on matters referred to it under Sub-Section 2 of Section 5 of the Act only for two purposes viz., (I) anything contained in such decision requires explanation, or (II) that guidance is needed upon any point not originally referred to the Tribunal. Upon such reference the Tribunal may forward to the Central Government a further Report giving such explanation or guidance as it deems fit and in such a case, the decision of the Tribunal shall be deemed to be modified accordingly. The Tribunal's further consideration or further report, it is clear, is limited to 'giving such explanation' or 'guidance' as it deems fit.

It is not disputed before us that Tribunal's power conferred under Section 5(3) for further consideration and forwarding a further report is a duty coupled with discretion. But this discretion, as contended by Madhya Pradesh, is judicial or in any case a quasi-judicial discretion and must be guided by relevant consideration and not in any arbitrary, vague or fanciful manner. This point needs no elaboration. The question is not whether in the present case the Tribunal should exercise its power at all but whether the power conferred enables the Tribunal, to reopen and re-examine the Tribunal's earlier decision under Section 5(2) of the Act on the reference made under Section 5(3) of the Act and make fresh decision or order. This being the precise question, observation of this Tribunal in its decision on preliminary issues relied on by Madhya Pradesh are not relevant. Madhya Pradesh has, however, urged that the Tribunal must of necessity for further consideration and giving explanation or guidance as it deems fit is required to

reconsider further its entire decision rendered under Section 5(2) for determination of real questions in controversy raised in the grounds of reference. I am unable to accept such an extreme contention of the State of Madhya Pradesh. If, as contended by the State of Madhya Pradesh, the Tribunal has power to reopen or re-examine the entire decision under Section 5(2), that would really convert a reference into an appeal or at any rate review or revision.

It is well established that there can be no appeal as of right unless created by statute. Under such statutory provision, again, appeal may be both on facts and law or limited to law only but to some superior court or authority which will reconsider the decision of the lower court or authority both on facts and law or on point of law only as the case may be. In either case they will be regulated by the provision of particular statute as there is no inherent appellate jurisdiction in the court. In England appeals from High Court to the court of appeal are authorised by the Judicature Act, 1925 and appeals to the House of Lords lie under the Appellate Jurisdiction Act, 1878 and the Administration of Justice Act, 1969 (See Administrative Law by H.W.R. Wade, 4th Ed. p. 37).

The same principle has been followed in India from the earliest time in a long line of cases and it is well settled that right of appeal cannot be assumed in every matter which comes under the consideration of a court; but such rights must be given by a statute or by some authority equivalent to a statute and there also by express words and not by any implication under a statute [See, for instance, *Minakshi v. Subramanya* 14 I.A. 160; *Rangoon Botatoung Co. Ltd. v. Collector, Rangoon* 39 I.A. 197 at p. 200 and *Narayan v. Secretary of State* (1896) 20 Bom. 803].

This point does not require any further elucidation. The right of appeal in civil courts and power and jurisdiction of court over appeals are expressly provided in the Code of Civil Procedure, 1908.

The same principle applies to the case of Reference, Review and Revision. Substantive law relating to these matters are provided under Sections 113 to 115 and the procedural aspects of such Reference, Review are embodied in Orders 46 and 47 of the same Code. So far as Revision is concerned the power and jurisdiction and procedure are also defined in Section 115 of the Code. It is clear that apart from this statutory provision, there is no inherent jurisdiction of court to interfere with any decision or order under Reference, Review or Revision.

Now, so far as Tribunals are concerned, they are entirely statutory creation and one must look into the

statute for necessary information as to the powers and jurisdiction and other matters which may require determination in a given case. In one of the earliest English Decisions, *The Queen v. The Commissioners For Special Purposes of the Income Tax*, (1888) 21 Q.B.D. p. 313 at page 319, it was held that as regards tribunals, no right of appeal exists unless conferred by statute. Same law applies to the statutory tribunals in India. It is not necessary in the present case to cite the supporting decisions, for even on extremely liberal interpretation, Section 5(3) of the Act cannot be construed as one conferring any right of appeal.

As regards Review or Revision, the points have been set at rest in quite a number of decisions of the Supreme Court. In a comparatively recent decision in *Patel Narshi Thakershi and Others vs. Pradyuman-shinghji Arjunsinghji* (AIR 1970 SC page 1273) cited by Gujarat and Rajasthan, the Supreme Court has held *inter alia* that the jurisdiction or power to review can neither be assumed or imported in the absence of any specific provision therefor, nor can be exercised contrary to the conditions laid down in this behalf. See also other decisions of the Supreme Court cited by Gujarat [*Devkinandan Prashar vs. The Agra District Co-operative Bank and others* (1973) 3 SCC 303 = AIR (1972) SC 2497 ; *M/s. Mehar Singh Nanakchand vs. M/s. Naunihal Thakar Dass* AIR (1972) SC 2533]. The same rule applies to see if the concerned tribunal has power to interfere with its original decisions or Order in Revision. Clearly, it has no such power in the absence of any specific provision in the statute which creates such tribunals. In *Kamaraja Nadar v. Kunju Thevar* (1959) SCR 583 at 595 cited by Rajasthan, Supreme Court has held that election petition is not a suit and the Election Tribunal does not possess common law power. It follows that a tribunal has no inherent power to act *ex debito justitiae* for the ends of justice or to prevent abuse of the process of the court as exercised by civil courts under Section 151 of the Code of Civil Procedure.

Madhya Pradesh has contended that having regard to conspectus of Section 5 and Sub-sections 1, 2 and 3 and Section 12 of the Act, the attempt in construing Section 5(3) must always be to advance the remedy and hence the Tribunal should be slow to adopt the narrow construction. Any interpretation which limits the jurisdiction under Section 5(3) would advance the mischief and suppress the remedy. In support of its contention, it has relied for ascertaining the exact meaning of the word 'consider' or 'consideration' on the *Blak's Law Dictionary*, revised 4th Ed. 1968, p. 378 and 380 and sought to impress upon us that when a matter is referred to the Tribunal for further consideration under Section 5(3), the Tribunal would be

required to examine carefully the whole issue for judicial determination of the matters submitted to it concerning its earlier decision. In *Blak's Law Dictionary*, it appears, the word 'consideration' is defined, as a technical term indicating that a tribunal has heard and judicially determined matters submitted to it. It is difficult to see how this meaning could advance the argument of the State of Madhya Pradesh. There is no dispute that this Tribunal, in the process of giving explanation or guidance, will judicially determine matters submitted to it but that does not mean that the Tribunal would be required to reopen or reconsider its earlier decision.

Madhya Pradesh has further contended that this Tribunal applying the principle enunciated in an English decision in *Anisminic Ltd. v. Foreign Compensation Commission*, 1969(2) A.C. 147 held *inter alia* on preliminary issues that "the Authority of the Tribunal to decide the preliminary question of jurisdiction extends not merely the subject matter of determination but also to the validity of the notification constituting the Tribunal." (Report, Vol. III, pp. 42-45). It is said that the principles in *Anisminic* case were laid down with reference to an ouster clause. In the present Act Section 5(3) far from ousting jurisdiction, confers continuing jurisdiction on the Tribunal to further consider the matter. It is, therefore, not competent for the Tribunal to decline the jurisdiction to further consider its decision which is vested in it under Section 5(3) of the Act.

The *Anisminic* case is no doubt now a leading decision on jurisdictional errors by a Tribunal in the course of its proceedings. What happened in this case was, the Foreign Compensation Commission rejected a claim for compensation for a property already sold to a foreign buyer on the erroneous view that under the statutory order in council the successor in title should have been of British Nationality at the relevant date. House of Lords, by a majority, held that "this error destroyed Commission's jurisdiction and rendered their decision a nullity since on a true view of the law, they had no jurisdiction to take successor in title's nationality into account." For a Tribunal must not only have jurisdiction to enter on the enquiry but must retain it 'unimpaired until it has discharged its task'. Lord Pearce explained this principle and observed *inter alia* (p. 195)—

"Lack of jurisdiction may arise in many ways. There may be an absence of these formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an enquiry. Or the tribunal may at

the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity."

Clearly, this decision is no authority for the proposition that the jurisdiction of the Tribunal in an inquiry under particular provision must also continue to be identical or the Tribunal would possess same powers in a different inquiry under another provision of the same Act. The Tribunal's jurisdiction or power can only be determined with reference to that particular provision or provisions under which inquiry is to be made by the Tribunal.

Therefore, for a proper and correct approach to the question in controversy in the present case the meaning and effect of the words 'explanation' and 'guidance' are required to be ascertained. The word 'explanation' or 'guidance' has not been defined in the statute. In the absence of such statutory meaning, these words have got to be literally construed in their ordinary and natural sense. If the meaning of the words are plain then the court or the tribunal can disregard the consequence. Without being more exhaustive and to cut the matter short, I may usefully refer to a passage from Craies' On Statute Law, 6th Ed., Chapter 5, p.66 where on an analysis of a long line of English decisions it is stated *inter alia* as follows (without foot notes) :—

"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. "The tribunal that has to construe an Act of a legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand these words it is natural to inquire what is the subject-matter with respect to which they are used and the object in view." In *Barnes v. Jarvis* Lord Goddard C.J. said : "A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered." If the words of the statute are themselves precise and unambiguous, then no more can be necessary than

to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law-giver".

"Where the language of an Act is clear and explicit we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

The same rule of interpretation in construing words in a statute has been applied in India. In *Jugal Kishore Saraf v. Raw Cotton Co. Ltd* (AIR 1955 S.C., p. 376 at p. 381), the Supreme Court has laid down such rule of interpretation as follows :—

"The cardinal rule of construction of statutes is, to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if not such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the Present case a literal construction of the rule leads to no apparent absurdity and, therefore, there can be no compelling reason for departing from that golden rule of construction."

The State of Maharashtra has relied on Murray's Oxford English Dictionary, Vol. III, p. 435 to show that the word 'explanation' in substance means act or process of explaining. It is contended, from such dictionary meaning, that the scope of the word 'explanation' in the Section cannot be equated with or equivalent to adjudication, appeal, review or revision. It only means to clarify or to make plain or understandable what is already to be found in the decision set out in the report under Section 5(2).

In aid of its contention, the State of Maharashtra has also relied, by way of analogy on Section 36(A) of Industrial Disputes Act, 1947 under which appropriate Government in case of doubt or difficulty is empowered to send back the award to Labour Tribunal for interpretation of award. The Supreme Court in *Kirloskar Oil Engines Limited, Kirkee, Poona v. the Workmen and Others* (1962) Supplement I SCR 494 on interpretation of this provision *inter alia* held that "36(A) of Industrial Disputes Act, 1947 intended to empower a tribunal to clarify the position of the award passed by it where a difficulty or doubt arose about their interpretation, and not to review or modify

own order. Any question of about the propriety, correctness or validity of any provision of the award would be outside the purview of the enquiry contemplated by that section”.

The State of Maharashtra has also referred to Short Oxford English Dictionary 3rd Ed., p. 842 to show that ordinary dictionary meaning, of the word guidance is (1) the action of guiding; directing agencies; leadership, direction and (2) something which guides or leads. The argument is that scope of reference even under the second category is not adjudication of the facts as found by the Tribunal and its decision on the matters referred to it only requires some direction of the Tribunal on some incidental or connected issues which may have some bearing on the Tribunal's decision on the matters referred to it.

On the meaning and effect of the word 'guidance', Gujarat has contended that even if such reference to the Tribunal upon matters on which guidance is needed necessitates fresh adjudication such adjudication must be confined only to such point and has to be in consonance with the decision under Section 5(2).

It appears that although in some of the earlier English decision, it was held that ordinary dictionaries gave somewhat delusive guides in the construction of statutory terms [Midland Ry v. Robinson (1890) 15 App. Cas. 19, 34] for consideration of true meaning of the word and judicial opinion on the point would probably be a safer guide, later decisions will show that reference to the better dictionary meaning does afford by definition or illustration some guide to the use of a term in a statute. In Camden (Marguis) v. A.R.C. (1914) 1 K.B. 641, it was *inter-alia* observed—

“It is for the court to interpret the statute as best it may. In so doing the court may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries.”

In any case in absence of opinion of the Judges on this point, reference to authoritative dictionaries would be quite helpful to ascertain plain meaning of the words or to understand them in their ordinary sense in constructing a particular statute.

As regards reference to a different statute on different lines, that is, statute not being in *pari materia*, or judicial decision involving interpretation of meaning and effect of word used in certain provision of

such statute, they may not be strictly relevant. In Inland Revenue Commission Vs Forrest (1890) 15 App Case 334 at p. 353 Lord Macnaghten while discussing phraseology of two Revenue Acts observed, “The two differ widely in their scope, and even when they deal with same subject, their wording is not the same”. In Geerad's Settled Estate (1893) 3 ch 252 the Court of appeal held that the settled Lands Act formed a Code applicable to the subject matter with which they dealt and a decision on Land Clause Act 1845 was not applicable for their interpretation as that Act dealt with a different subject matter. In the case of Dr. S. B. Gupta Vs University of Delhi (1959) S.C.R. p. 1236 at 1247, the Supreme Court, while interpreting certain provision of Delhi University Act, 1922, declined to consider Industrial Disputes Act which is an Act on different line. It is not necessary to multiply cases for it is fairly settled that in the interpretation of statute courts decline to consider other statutes proceeding on different lines and including different provisions or judicial decisions thereon.

Even so, following the above rules and principles, it seems clear that the words 'explanation' or 'guidance' used in provision of Section 5(3) must be understood literally in their natural meaning. No doubt or difficulty should arise as, clearly, they do not create any conflict or confusion in their natural meanings. In the present context, the word 'explanation' in substance will literally mean clarification in its ordinary and natural sense, that is, making the meaning clear in case where the decision suffers from ambiguity, inconsistency or obscurity.

The meaning of the word 'guidance' also does create any difficulty. From a fair reading of the provisions the plain and natural meaning of the word will only mean some direction which guides or leads. These meanings find support in some of the authoritative dictionaries cited in his case.

This being so, what is the legal effect of the expression 'explanation' used in the provision of section 5(3) of the Act? Plainly, the Tribunal does not go beyond clarifying the matters referred to it only to remove doubts or difficulties or apparent ambiguities, obscurity or inconsistencies. It is significant to note in this connection that the Tribunal has not been given any power to set aside, alter or modify those in case of Review or Revision its earlier decision on or after giving such explanation. The decision of the Tribunal shall be deemed to be modified accordingly. In other words, such explanation will be read as modification of the original decision of the Tribunal.

As regards second clause namely, that "guidance is needed upon any point not originally referred to the Tribunal" it is quite clear that guidance relates to matters not originally referred to the Tribunal and not to matters involved in the decision of the Tribunal. It is to be noticed that the reference is made by the Central Government for adjudication of water dispute by tribunal on the request of the State Government in the prescribed manner under Section 3(a), (b) and (c) of the Act. The precise matters, it appears, for which reference may be made, are necessarily required to be stated in the prescribed form. Now, cases may be visualized where after the Tribunal's Report and decision under Section 5(2) some matters not referred to in the original reference, may crop up and need some direction of the Tribunal. In such contingencies some fresh adjudication may be necessary, but that must be confined only to such point of reference and no more. Such adjudication as contended by Gujarat,

I think rightly, has to be in consonance with the decision already given under Section 5(2) of the Act.

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

I will now proceed to consider the points mentioned above raised in the grounds of respective reference of the Union of India and other States in the next Part II.

PART II

Point No. 9 : Reference 1 of 1978

The Union of India states as follows :—

“9. In Clause XIV(15), page 809, Honourable Tribunal have directed that the planning of the projects shall be carried out by the States, save to the extent prescribed in the orders of the Tribunal. In their report, the Honourable Tribunal have given their views on the appropriate intensity of irrigation, extent of command area, water requirements etc. The Honourable Tribunal may kindly give explanation and guidance that within the apportioned quantum of water use, the respective States may effect such modification in these planning aspects, as they consider to be in their interests.”

It appears from the above statement, the Union of India has asked both for explanation and guidance for such modification of the planning aspects of the respective States within the apportioned quantum of water use as they consider to be their interest. The Union of India has referred to Final Order of the Tribunal Clause XIV, Sub-clause 15 (Vol. II, page 809 of the Report). Sub-clause (15) provides :—

“The construction of the works and the planning of the Projects will be carried out by each State through its own agencies and in the manner such State deems proper without any interference by the Authority or the other States, save and except to the extent as prescribed in the Orders of the Tribunal.”

It is difficult to see how from the order or direction quoted the question of explanation or guidance or for alteration of the planning aspects of the concerned States can arise. The Tribunal, it appears, has not given any direction or order for use of the apportioned quantum of water by the respective States according to the plan and projects for the purpose of irrigation or power generation. The provision of Sub-clause 15 of Clause XIV referred to by the Union of India was given solely for the purpose of construction of works and planning of the projects through independent agencies of respective States while defining the power and jurisdiction of the Narmada Control Authority appointed under the Order of the Tribunal and that also without giving any particulars of these projects.

There is nothing to show that by the decision or order of the Tribunal the plans and projects cannot be altered in future in the best interest of the party States.

It appears, however, that State of Madhya Pradesh has also sought similar clarification for alteration of their planning in future if necessary within the apportioned quantum of water (page 7 of its reply). State of Gujarat and Rajasthan also have submitted that the Tribunal may give suitable directions to be made applicable to all the party States uniformly.

Maharashtra has, however, submitted that modifications which do not affect irrigation or power interest of State or States may be allowed to be made within the sanctioned quantum of water duly approved by the Authority (Page 9 of its reply). But Maharashtra has also stated that diversion of water to unspecified area would result in loss of power (page 89 of its reply).

Firstly, it is already noticed that no Order or directions were given by the Tribunal in its original decision for use of apportioned quantum of water by the respective parties in terms of their proposed plans or projects placed before the Tribunal. These plans, projects or schemes were adduced in evidence by the party States for the purpose of establishing their respective needs of Narmada water. Therefore, the question of granting liberty to the party States to alter or change their proposed plans and projects cannot arise.

Secondly, such order cannot be given without first determining the extent of the area, suitability of irrigation, water use, etc. that may be in contemplation of the party States.

Thirdly, the State of Maharashtra has raised objection on the ground that diversion of water to unspecified area would result in loss of power. The total power generation on the proposed plans placed before the Tribunal is the subject matter of the decision already made by the Tribunal. So, whether or not such diversion of water would result in loss of power must first be determined, for in any case, if it does, that will result, in my view, upsetting the decision of the Tribunal on this aspect of the matter.

Even so, I should take notice of the fact that all the three party States viz. Madhya Pradesh, Gujarat

and Rajasthan agree that some kind of direction, as proposed by the Union of India should be made and the State of Maharashtra also agrees provided it is made clear that such direction would not affect irrigation or power interest of any State or States. It is, therefore, desirable to clarify the position and some direction, as asked for, may be given but with proper safeguards. Accordingly, the following paragraph should be added under Clause III of the Tribunal's Report at page 762 :—

"III. Each party State will be at liberty to make such changes in the pattern of water use and in the areas of benefit within or outside the Narmada Basin in its territory as it may be considered in the best interest of the State provided such changes do not affect irrigation or power interest of any of the party State or States concerned."

I order accordingly.

Point No. 5 Gujarat's Reference No. 2 of 1978

Gujarat has asked for modification of Sub-clause 5 of the Clause V of the Final Order as under by inserting the following paragraph as Sub-clause 6 there :—

"6. During the years in which Madhya Pradesh and/or Maharashtra cannot utilise the Narmada waters upto their allocated shares, and, therefore, flows of the Narmada reaching Navagam are in excess of shares allocated to Gujarat and Rajasthan, it will be open to Gujarat and Rajasthan to utilise such surplus waters for irrigation without any prescriptive rights. No adjustments on that account shall be made in the following water year of such use in excess of the authorised use."

Madhya Pradesh and Maharashtra have opposed such submission of Gujarat. Madhya Pradesh has submitted that in view of Sub-clause (5), Gujarat's contention is fallacious (page 34 of its reply).

The ground taken by Maharashtra, mainly is that "water should not be deemed to be surplus until full entitlement for maximum power generation on the River Bed Power House has been accorded priority." (page 29 of its reply).

Rajasthan did not raise any objection.

Sub-clause (5) of Clause IV of the Final Order of the Tribunal provides *inter alia*—

"(5) It may be mentioned that in many years there will be surplus water in the filling

period after meeting the storage requirements and withdrawals during the period. This will flow down to sea. Only a portion of it will be utilisable for generating power at Sardar Sarovar river-bed power-house and the rest will go waste. It is desirable that water which would go waste without even generating power at the last river-bed power house should be allowed to be utilised by the party States to the extent they can. Gujarat is, therefore, directed that whenever water starts going waste to sea, without generating power, Gujarat shall inform the Narmada Control Authority (hereinafter referred to as the Authority), with copies to designated representatives of all the concerned States, and Gujarat shall also inform them when such flows cease. During the period of such flows, the Party States may utilise them as they like, and such utilisation by the party States will not count towards allotment of supplies to them, but use of such water will not establish any prescriptive rights."

From the reading of the above provision, it is not clear whether surplus water in the filling period after meeting the storage requirement and withdrawals during the period would also include allocated water in favour of Madhya Pradesh which cannot be utilised for the purpose of irrigation. In any case, on the basic principle or policy of priority being given to irrigation over power generation and adopted by this Tribunal, in the adjudication of present water dispute, it is necessary and desirable that such surplus water out of the allocated shares which cannot be utilised by Madhya Pradesh or Maharashtra during particular year or years for irrigation should be allowed to be utilised by Gujarat and Rajasthan for irrigation without any prescriptive rights. It cannot be disputed that in India food deficit problem is a serious impediment in the way of its progress and prosperity. So, if the surplus water which cannot be utilised by Madhya Pradesh for irrigation can be applied by Gujarat and Rajasthan to irrigation that will no doubt help to a great extent in ameliorating the socio-economic condition of the country. Considering the matter from all these aspects the above order needs clarification. Accordingly, a further paragraph as Sub-clause (6) of Clause IV should be added as follow :—

"Notwithstanding anything contained in Sub-clause 5 above, it is made clear that during the years in which Madhya Pradesh or Maharashtra cannot utilise the Narmada waters upto their allocated shares for the purpose

of irrigation and, therefore, flows of the Narmada reaching Sardar Sarovar are in excess of shares allocated to Gujarat and Rajasthan, it will be open to Gujarat and Rajasthan to utilise such surplus water for irrigation without any prescriptive rights. No adjustment on that account shall be made in the following water year of such use in excess of authorised use."

I order accordingly.

Point No. 16 : Gujarat's Reference No. 2 of 1978

Gujarat's case briefly is that this Tribunal has concluded that Madhya Pradesh State should provide a carry-over capacity of 5.48 MAF in the Narmadasagar on a finding that the aggregate carry-over capacity provided for in Madhya Pradesh projects at and above Narmadasagar comes to 3.45 MAF and accordingly directed the Madhya Pradesh State to increase the carry-over capacity to 5.48 MAF or adjust pattern of its water use. In determining the reservoir level of Sardar Sarovar full utilisation of 75% dependable flow downstream, provision of carry-over capacity in the upstream projects in Madhya Pradesh State is of paramount importance.

In the premises to ensure the provision of adequate carry-over capacity in the upstream projects in Madhya Pradesh, it is of vital importance that upstream project reports should be carefully examined by the Narmada Control Authority.

It is further submitted that the Tribunal has already directed for submission of project reports of Sardar Sarovar, Narmadasagar, Omkareshwar and Maheshwar Projects to the Authority which has again been directed to point out to the States concerned, the CWC and the Planning Commission any features of the said projects which may conflict with the implementation of the Orders of the Tribunal. The Tribunal has further directed that any substantial increase in the cost of dams, power houses and canal headworks of those projects should be reported to the Authority for taking appropriate action in the matter. Gujarat has, therefore, prayed that Project Reports of all the major projects on the Narmada should be examined by the Authority. (Pages 76 and 77 of Written Submission of Gujarat and pages 79 and 80 of Gujarat's Reference No. 2, CMP No. 1943 of 1978).

Madhya Pradesh opposes the prayers of Gujarat. In substance, it is submitted that there is already a carry-over storage of 7.02 MAF provided for at and above Narmadasagar and thus there is no necessity to increase the carry-over capacity or to adjust the pattern of its water use. (pp 53-54 of its reply).

Maharashtra and Rajasthan did not offer any comment on this point.

Regarding carry-over capacity, the Tribunal has *inter alia* observed—

"On this basis a carry-over capacity of 2.81 MAF is required at Sardar Sarovar and 5.48 MAF in the reservoirs of Madhya Pradesh. From Statement 11.8 it is noticed that for the representative year 1958-59 of 75 per cent dependability, there is an aggregate carry-over capacity of only 3.454 MAF in Madhya Pradesh at and above Narmadasagar. Madhya Pradesh has not provided any carry-over capacity in its projects below Narmadasagar. Madhya Pradesh should increase the carry-over capacity in its reservoirs to an aggregate of 5.48 MAF or adjust the pattern of its water use." (Report, Vol. II, page 491).

The Final Order regarding powers, functions and duties of the Authority, provides *inter alia*—

"Madhya Pradesh or Gujarat, as the case may be, shall submit to the Authority the Sardar Sarovar Project Report, the Narmadasagar Project Report, the Omkareshwar Project Report and the Maheshwar Project Report. The Authority shall point out to the States concerned, the Central Water Commission and Planning Commission any features of these projects which may conflict with the implementation of Orders of the Tribunal. Any subsequent changes in the salient features or substantial increase in cost in respect of dams, power houses and canal headworks shall be reported to the Authority for taking appropriate action in the matter." (Report, Vol. II, Sub-clause 8(3)(i), page 801).

From the decision quoted above, it is clear that all the upstream projects of Madhya Pradesh, were considered in assessing the carry-over capacity. It is one of the most important factor in determining full reservoir level of Sardar Sarovar Project and for full utilisation of 75 per cent dependable flow downstream. It may be that there is already, as contended by State of Madhya Pradesh, a carry-over capacity of 7.02 MAF provided for at and above the Narmadasagar. But upstream projects at different times, covering no doubt a long period are likely to come up separately and variation or changes in the planning of these projects in future cannot be

ruled out particularly in view of the order for such changes made by the Tribunal. All these major projects will have some bearing on the operation of Narmadasagar Project whenever they would come up. It is, therefore, necessary and desirable that the Project Reports of all these upstream major projects ought to be placed before the Narmada Control Authority for examination to see that these projects as planned do not conflict with the implementation of the Orders of the Tribunal.

Moreover, the Narmada Control Authority has been constituted by the Tribunal with various powers and duties to give effect to or implement the Orders of the Tribunal. So, there is no reason why the other Project Reports of the upstream major projects covered by a Master Plan along with Narmadasagar Project of Madhya Pradesh should not be examined and scrutinised by the Authority whenever they come up. It would be somewhat anomalous or inconsistent with decision of the Tribunal if the Authority is confined only to the examination of four major projects mentioned in the above Order. This is also necessary to avoid complication or any difficulty in future. In my view, it is only fair and proper that the State of Madhya Pradesh should be directed to submit to the Narmada Control Authority the Project Reports of all the other upstream major projects of Madhya Pradesh at the appropriate time.

Accordingly, Clause 8(3)(i) of the Final Order shall stand modified as under :—

“Madhya Pradesh or Gujarat, as the case may be, shall submit to the Authority the Sardar Sarovar Project Report and projects reports of all major projects envisaged upstream of Sardar Sarovar Project at the appropriate time. The Authority shall point out to the States concerned, the Central Water Commission and Planning Commission any features of these projects which may conflict with the implementation of Orders of the Tribunal. Any subsequent changes in the salient features or substantial increase in cost in respect of dams, power houses and canal headworks of all the projects shall be reported to the Authority for taking suitable action in the matter.”

Point No. 16 : Reference of State of Madhya Pradesh No. 3 of 1978.

The case of Madhya Pradesh briefly is that the Tribunal has allocated 57 per cent of the power generated at Sardar Sarovar Power House to Madhya Pradesh, 27 per cent to Maharashtra and 16 per cent to

Gujarat. These shares in power generation have been given in lieu of the power that could have been generated by the Harinphal and Jalsindhi Projects. But due to submergence owing to the proposed construction of Sardar Sarovar Dam under Sardar Sarovar Project, Harinphal and Jalsindhi Projects will not survive. The construction of these projects would have given employment opportunities to the people of Madhya Pradesh.

But the Tribunal has directed in Sub-clause (vi), page 766 as follows :—

“The power houses and appurtenant works including the machinery and all installations as well as transmission lines in Gujarat State will be constructed, maintained and operated by Gujarat State or an authority nominated by the State.” (Reference No. 3 of 1978 of MP/1199, p. 132).

In view of the said Order and in the circumstances stated above, it is necessary that construction, maintenance and operation of the power houses of Sardar Sarovar Dam should be entrusted to Madhya Pradesh and Maharashtra. As these two States are major beneficiaries, an organisation should be set up, and the representatives from the Electricity Boards of Madhya Pradesh and Maharashtra should be included and Madhya Pradesh should head the organisation.

Further case of Madhya Pradesh is that a control board on the lines of Inter-State Control Board set up for other projects in the country is necessary for supervision of the construction, maintenance and operation of the Sardar Sarovar Dam and power houses and Madhya Pradesh should be fully associated with such board as head of the organisation.

Madhya Pradesh prays—

- “(a) that the construction, maintenance and operation of the Sardar Sarovar Dam and the river bed and canal power house, shall be supervised by a Control Board in which the four States are represented, and
- (b) that the representative of Madhya Pradesh shall head the organisation managing the construction, maintenance and operation of the Power Houses.” (Reference No. 3 of 1978 of MP/1199, pp. 129-133).

Accordingly, Clause 8(2)(vi) of the Final Order and Decision of the Tribunal should be modified.

Maharashtra supports Madhya Pradesh. Maharashtra's case briefly is that while these two States have

to contribute 84 per cent of the cost of the power complex of Sardar Sarovar Project, they have no active role in the control of the construction, maintenance or operation of the power complex. Maharashtra has set up several circumstances in the form of questions under Sub-heads (a) to (h) and asked both for explanation and guidance of the Tribunal on these matters by providing legitimate safeguards and machinery to ensure proper construction, maintenance and operation of the Sardar Sarovar Dam and its power houses for effective implementation of the Decision and Order of the Tribunal. Maharashtra repeated similar points in its reply to the Reference of the State of Madhya Pradesh. (Pages 50 to 52).

Gujarat has opposed the contentions of both Madhya Pradesh and Maharashtra. Shortly put, Gujarat's submission is that the construction, operation and maintenance of the Dam and the power houses, which has to be done within the State of Gujarat, must necessarily be in charge of Gujarat State and not in charge of organisation headed by the representative of Madhya Pradesh. The Tribunal has constituted Narmada Control Authority which will ensure that the work of the project is carried out in consonance with the Order of this Tribunal. No Inter-State Control Board is necessary for supervision of construction, operation and maintenance of Sardar Sarovar Dam and power houses. In the case of Narmadasagar Dam, where a part of the cost which has to be borne by the Sardar Sarovar Project, no Inter-State Control Board is envisaged for supervision of construction, maintenance and operation. Gujarat, therefore, contends that submission of Madhya Pradesh should be rejected. (Reply of Gujarat to Reference No. 3 of 1978 pp 78—80).

Rajasthan did not offer any comment.

On 24th April, 1979, tentative Draft in respect of the constitution of Construction Boards for Sardar Sarovar, Narmadasagar and Navagam Main Canal were circulated by Learned Chairman.

The Union of India suggested some modification of these Drafts (CMP No. 23 of 1979).

The State of Gujarat submitted that the Tribunal had no jurisdiction "to give any direction for the setting up or establishment of any Board to be in over all charge of the construction of Units I and III of the Sardar Sarovar Project or the Navagam Main Canal. Under the Original Reference No. 1 of 1969, Tribunal gave its decision in August, 1978 under Section 5(2) of the Inter-State Water Disputes Act, 1956. Gujarat extensively quoted the relevant Orders and the decision of the Tribunal under Section

5(2) and submitted that the Tribunal has no jurisdiction to constitute any such Board for Sardar Sarovar Project or Navagam Main Canal. Gujarat, however, without prejudice to its contention offered comments on different clauses of the tentative Drafts suggesting some modification.

Madhya Pradesh reiterated its case made in its Reference No. 3 of 1978 and submitted that in view of the fact that Madhya Pradesh and Maharashtra are the major beneficiaries in sharing power generation of Sardar Sarovar Project, it cannot be considered as a project of Gujarat alone but a joint project and, therefore, Construction Board for this project ought to be set up.

As regards Narmadasagar Project, Madhya Pradesh has submitted that it is not a joint project of Madhya Pradesh and Gujarat. There is, therefore, no necessity to constitute a Construction Board for Narmadasagar Project as proposed in the Draft. Accordingly, Madhya Pradesh proposed some modifications of the draft for Sardar Sarovar Construction Board. Madhya Pradesh did not comment on the Draft regarding Narmadasagar Construction Board.

Madhya Pradesh also did not offer any comment on the Construction Board of Navagam Main Canal. (Comments of Madhya Pradesh, MP/1205, pp 5—12 and 12—23).

Thereafter, alternative tentative Draft only for the Constitution of Sardar Sarovar Construction Advisory Committee was circulated upon which according to the direction of the Tribunal Union of India and all the party States put in their respective comments.

The Union of India filed its comments suggesting some modifications of this alternative draft of Sardar Sarovar Construction Advisory Committee and submitted, as regards the Construction of similar construction committee for Narmadasagar and Navagam Main Canal, *inter alia* as follows :—

"3. As regards the constitution of similar Construction Committee for Narmadasagar and Navagam Main Canal, the Union of India submits that as the matter involves interests of one or more States, the Hon'ble Tribunal may like to take a decision in the light of submissions made by them. In case, however, the Tribunal finally decides to recommend the Construction Advisory Committees for Narmadasagar and Navagam Main Canal or either of them, it may be on the lines of the Sardar Sarovar Construction Advisory Committee with suitable modifications regarding composition depending on the States involved."

Gujarat opposed the setting up of Advisory Committee on Sardar Sarovar Project and reiterated its similar objection taken against the proposed Construction Board earlier. Without prejudice, however, to its objections, Gujarat made certain comments and suggested some modification of the alternative Draft. (Comments of Gujarat CMP No. 37 of 1979, pp. 1—4 and Annexure A).

The State of Madhya Pradesh pleaded for establishing a Construction Board for Sardar Sarovar Project and not an Advisory Committee as suggested which according to it would not be able to achieve the purpose for which it was proposed to be created. In particular, Madhya Pradesh suggested among other things that a Control Board on the lines of the Betwa River Board should be set up "for the efficient, economical and early construction of the Sardar Sarovar Project, Units I and III". Without prejudice to this contention, Madhya Pradesh offered its comments on the alternative Draft of Sardar Sarovar Advisory Committee and suggested some modifications. (Comments of Madhya Pradesh, MP/1207).

Maharashtra State has insisted on constitution of a control board for the purpose of 'ensuring efficient, economical and early execution of the Sardar Sarovar Project' which cannot be fulfilled by an Advisory Committee as suggested. Maharashtra, therefore, did not give para-wise comments on the Draft Advisory Committee, but referred to a Draft Constitution of a control board as suggested in its Statement 'A' of Annexure, CMP-26 of 1979.

The State of Rajasthan, in substance, has submitted that in case Advisory Committee, as proposed for Sardar Sarovar Project, is to be constituted, a similar Advisory Committee should also be constituted for Narmadasagar as well as for construction of Navagam Main Canal. Rajasthan has suggested also some modifications regarding the constitution and power of these three Committees. (CMP 28 of 1979).

From the rival contentions of the parties, it appears, that there is a serious dispute over the proposed Constitution of a Board or Advisory Committee. As the matter stands, the question that may be considered is whether an Advisory Committee over the construction, operation and maintenance of Sardar Sarovar Project as proposed should be constituted, and if so, on what terms.

It appears that in course of adjudication proceedings under Section 5(2) of the Act, Issue No. 14 was framed as under :—

"What machinery, if any, should be set up to make available and regulate the allocation

of water to the States concerned or otherwise to implement the decision of the Tribunal

and Issue No. 21 is as under :—

"To what reliefs and directions, if any, are the parties entitled?"

It is undisputed that during the hearing of the Original Reference, there were proposals regarding machinery and submissions were made with reference to Issue No. 14 by the party States. Madhya Pradesh, in its Statement 132, Clause X proposed as under :

" Clause X—Limitation On The Jurisdiction of The Board. The actual construction work and the planning of its projects will be carried out by each State through its own agencies and in such manner as it chooses without any interference by the Board, save and except to the extent strictly necessary to carry out the direction of the Tribunal."

The Tribunal, after consideration of all matters in its Final Order and Decision (pp 794—810 Clause XIV) provided for setting up of machinery for implementing the Decision of the Tribunal. It is clear that the Tribunal established Narmada Control Authority for the purpose of securing compliance with the Decision, Order and Directions of the Tribunal and also a Review Committee mainly to review any order or decision by the Narmada Control Authority, if disputed.

Sub-clause 15 of the above Order is as under :

"Sub-Clause 15—Construction Outside Jurisdiction of Authority.—The construction of the works and the planning of the projects will be carried out by each State through its own agencies and in the manner such State deems proper without any interference by the Authority or the other States, save and except to the extent as prescribed in the Orders of the Tribunal."

Sub-Clause 16 reads :

"Nothing contained in this Order shall prevent the alteration, amendment or modification of all or any of the foregoing clauses by agreement between all the States concerned."

It is, therefore, clear that the Tribunal fully investigated the matter under specific Issue No. 14 (residuary Issue No. 21 was there) and after consideration of all aspects, determined that the construction of the works and planning of the respective

projects of each State will be carried out through its own agencies without any interference by the Narmada Control Authority or other States save and except to the extent as prescribed in the Orders of the Tribunal. In other words, this Order can only be modified or altered by agreement between all the States concerned as provided in Sub-clause 16. These matters are finally decided under Section 5(2) and the issues cannot be reopened. If such a course is adopted, then that would mean reopening of the case and retrial of the issue which is not permissible under the Act. It need not be over emphasised that on the legal position determined by the Tribunal on interpretation of Section 5(3) of the Act the Tribunal has no power to review or alter and reconsider or modify its decision under Section 5(2) of the Act. If such a Committee as proposed is constituted at this stage, it would be wholly inconsistent with and result in alteration or modification of the Tribunal's Original Decision and Order. It is clear that creation of a new authority as proposed in the Final Order and Decision under Section 5(2) of the Act would be outside the scope of the Tribunal's jurisdiction under Section 5(3) of the Act.

In my view, Constitution of such a Committee at this stage cannot by any means mean "giving an explanation". Clearly, Decision and the Final Order on this aspect do not suffer from any ambiguity or inconsistency and therefore, there cannot be any scope for clarification. Setting up of a Committee with supervisory or advisory jurisdiction for the first time over a project cannot be made by way of explanation of the matter. It is a substantive Order which would no doubt affect the former Decision and Order of the Tribunal.

Next, such a course, if adopted, cannot come either within the scope of guidance of the matter not originally referred to can and must mean only those As already discussed by me earlier, the matter not originally referred to can and must mean only those matters which were not referred to in the form of request by State Government under any of the Sub-clauses (a), (b) and (c) of Section 3 of the Act. It is quite clear that question of setting up of machinery by Constitution of Authority, Board or Committee was already a subject matter of decision before the Tribunal under specific issues, as already noticed in the course of adjudication proceedings under Section 5(2) of the Act. The Tribunal fully investigated the matter and after considering the relevant matters and arguments and suggestions of the parties at length took the decision and passed its Final Order as enumerated above. In my opinion, therefore, it is beyond the competence of the Tribunal to constitute and appoint an Advisory

Committee at this stage over Sardar Sarovar Project, as proposed.

On merits also, State of Madhya Pradesh or Maharashtra has no case. The basis on which both States asked for setting up of a committee for supervision or advice on the construction aspect of Units I and III of Sardar Sarovar Project, may apply also to the construction part of Narmadasagar Project.

The Tribunal has held *inter-alia* as under :—

"Without regulated releases from Narmadasagar, Sardar Sarovar FRL + 455 will not be able to utilise its allotted share of water as a good deal of flood flows would spill down to sea instead of being stored at Narmadasagar for regulated releases." (Report, Vol. II, Page 657, Para 15.6.4)

Since water stored at Narmadasagar for utilisation at Sardar Sarovar Dam will be released from Narmadasagar, the cost of Narmadasagar to the extent of 17.63 per cent has been directed to be charged to Unit I—Dam and appurtenant works of Sardar Sarovar Dam. Accordingly, the Tribunal has directed that "Sardar Sarovar should credit to Narmadasagar each year 17.63 per cent of the expenditure in the financial year commencing from the year of taking up of the construction of Narmadasagar Dam."

From all these, it is clear that State of Gujarat and also Rajasthan which has to bear the above cost in certain proportion along with Gujarat may demand for constitution of a similar committee for efficient, economical and early execution of Narmadasagar Project for protection of interests both of Gujarat and Rajasthan. In fact, both Gujarat and Rajasthan have prayed for constitution of such advisory committee for Narmadasagar in the event such an Advisory Committee on Sardar Sarovar Project is constituted. It cannot be disputed that both Gujarat and Rajasthan would very much depend on the early construction and smooth operation of Narmadasagar Dam. But this is opposed by Madhya Pradesh. In my view in the facts and circumstances of this case, nothing of the kind as suggested by the parties should be done for they would only lead to complications in future as contended rightly by Gujarat and may defeat the very object and purpose for which the projects of the respective States have been planned. I can imagine cases to be not too unreal where points of difference between the party States on certain issues on construction matter may take quite some time to be decided by the Narmada Control Authority or a Review Committee. The grounds pressed for by Madhya Pradesh

and Maharashtra pleading apprehension that their interest in the Sardar Sarovar Project may be in jeopardy are without substance. After all, we are deciding the case of States and not of ordinary person. Having regard to object and scope of the Act, there is little doubt that after the adjudication of water disputes, the rest of the matters is left to the concerned States. All the party States will, therefore, in their mutual interest and for public benefit ensure that Decision or Orders of the Tribunal are implemented.

Even so, Narmada Control Authority has been established with a Review Committee and there are enough powers given to them to see that interest of all the party States are safeguarded and construction, maintenance and operation of the concerned projects are carried out in accordance with the Decision and Final Order of the Tribunal.

Madhya Pradesh has urged that in case of major joint projects, the establishment of Inter-State Control

Board is favoured and in particular relied on the Betwa River Board. In my view, the Inter-State Control Boards apply to the projects which are joint projects. The State of Madhya Pradesh and Maharashtra may have some interest in the sharing of power generation from its project. But that fact by itself will not constitute such project as a joint project. In any case, such Board can be set up only by the consent of the concerned party States and thereupon appropriate acts may be passed.

Therefore, after giving my most anxious consideration in the matter, I am of the opinion that constitution and establishment of an Advisory Committee over the construction, maintenance and operation part of Sardar Sarovar Project must be refused and I order accordingly.

In the view I have taken of the matter, the other part of the question raised need not be answered.

PART III
ERRATA FOR VOLUME IV OF THE REPORT OF THE
NARMADA WATER DISPUTES TRIBUNAL

Para	Line	
1.1.2	16th	Read after "Narmada Water Resources Development Committee", hereinafter referred to as the Khosla Committee.
1.2.26	3rd	Delete 'and' after the word 'estimate'.
1.2.26	4th	Read 'is' for the word 'are'.
1.3.35	1st	Read 'substantially' in place of 'Substantially'.
1.3.48	7th	Read 'has' in place of 'have' after the word 'Tribunal'.
1.3.70	11th	Read 'released' in place of 'retained'.
2.2.20	2nd	Delete the one set of words 'Gujarat as'.
4.2.32	Heading	Read 'Dam' in place of 'Canal'.

PART IV

As I have given my separate opinion only on few points, it is not necessary to record my Final Orders extensively which have been set out in Chapter-IX of the Further Report. This Final Order shall be read subject to my separate opinion and Orders given in Part-II of this Volume¹.

NEW DELHI
December 7, 1979

Sd/- A. K. Sinha
Member

1. Be it noted that nothing contained in the Final Orders recorded in Chapter-IX of the Further Report, shall affect my separate opinion recorded in Volume IV of the Report and the decision of the Tribunal under Section 5(2) of the Act.

P. Agr. 144 (I)

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