



International Environmental
Law Research Centre

IN THE HIGH COURT OF JUDICATURE MADHYA PRADESH AT JABALPUR

WRIT PETITION NO. --- OF 2005

In the matter of:

Narmada Bachao Andolan, 2, Sai Nagar, Mata Chowk, Khandwa, M.P., Petitioner

Versus

*Narmada Hydro-Electric Development Corporation (NHDC), Through Chairman,
2nd Block, 5th Floor, Paryavas Bhavan, Arera Hills, Bhopal 462011 et al. Respondents*

Order :

WP No. 3022 of 2005

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18.05.2005

Shri Murlidharan, Advocate with Mrs. Sharda Dubey, Advocate appearing for the petitioner. He produces the acknowledgements for having served respondents 1,2,6 and 7(i) to (vi) by hand. The said acknowledgements are taken on record.

Shri R.N. Singh, Advocate General for respondents 1,3 and 4.

Shri D. Sharma, Assistant Solicitor General appears for respondents 5,6 and 7(i) to (vi).

The petitioner files an application (IA No. 5071/2005) for amendment of the petition for correcting a typographical error, by substituting the word “stay” for the words “strike down” in Para 8(A) of the Writ Petition. The application is allowed as it is a typographical error. The petitioner is permitted to make the amendment.

The statement of objections filed by first respondent and respondents 5 to 7, to interim prayer are received.

The petitioner has sought interim stay of the notification dated 31.12.2004 (Annex P-8) requiring the oustees in 91 villages (earmarked for submersion) to vacate their properties by 30.4.2005. It also seeks an interim direction to the State Government to stop all eviction proceedings in violation of principles relating to rehabilitation and resettlement preceding submergence. There is also an interim prayer for stopping further construction on the Indira Sagar Project to ensure that the water level of the dam is kept at 245 meters or less, until all Project affected families are rehabilitated as per the NWDTA directions as also the Orders and judgment of the Supreme Court, conditions of the MoEF and Planning Commission clearance, Memorandum of Understanding and R&R policy of the State Government. Learned Counsel Shri Murlidharan, appearing for the petitioner, clarified that the interim prayer is not actually for stopping construction of the dam but for not closing the gates erected above the full crest resulting in submergence of the 91 villages.

Shri D. Sharma, appearing for respondents 5 to 7 supported the case of the first respondent and submits that any interruption with the construction will jeopardize the commissioning of spillage gates and result in rise of water level of Indira Sagar reservoir leading to submergence in an uncontrolled manner. He submitted that the work that is being carried out is only relating to completing the work that has already begun.

It is not possible for us to decide at this stage the correct factual situation in the 91 villages as the facts given by the petitioner and the facts given by the first respondent are completely different. While the petitioner relies on the several observations of the Supreme Court in the order dated 15.3.2005 (in Narmada Bachao Andolan vs. Union of India) in regard to principles of R&R, etc, the Assistant Solicitor General for Union of India relies on the earlier interim directions of the Supreme Court in the very same proceedings directing the persons aggrieved to approach the Grievance Redressal Authority (GRA). Be that as it may, in view of the seriously disputed questions of fact, a report of fact finding agency would be of great assistance in taking a decision on the interim prayer.

We, therefore direct the Grievance Redressal Authority (Indira Sagar Project and Omkareshwar Project) D-13, Machna Colony, Bhopal to verify, examine and give a report in regard to R&R positions of 91 villages given in the notification dated 31.12.2004 in regard to the following matters :

Whether the villagers (oustees) of the 91 villages have been provided reliefs as per the guidelines of the NWDTA, that is land for land, ie. 2 hectares of land for every oustee whose land in excess of 75% of the holdings has submerged and house-sites.

Whether compensation has been disbursed.

Whether there are any shortfalls in the R&R work.

The GRA may also give the particulars of extent of compliance and point out whether the non-compliance, if any, is on account of non-cooperation of the oustees themselves.

In fact, the Learned Advocate General submitted that the State Government has identified and earmarked 1000 hectares of lands for the oustee villagers, that 50% of the compensation is paid in cash and the remaining 50% is utilized for grant of 2 hectares of land, and that if any villager insists for full compensation instead of land, he is given full compensation instead of land.

We direct the GRA to submit the report within one month from today. We are aware that collecting of materials with respect to 91 villages in 30 days is a stupendous task. But having regard to the fact that the ensuing monsoon may have the effect of submerging the villages, it is necessary to have the correct picture immediately so that appropriate interim directions if required, can be given. To enable the GRA to appreciate the exact questions involved, the petitioner is directed to furnish a copy of the petition to the GRA and the first respondent is directed to furnish a copy of its objection to GRA.

The petitioner's counsel states that coercive steps are being taken against the villagers of the 91 villages by the Police and the district administration to drive them out of their villages. Learned Advocate General, on the other hand, states that no coercive steps are being taken and only warnings are being issued so that the oustees will leave well in time and will not be affected on account of submergence. This again is a disputed question. We, however, hope that during the pendency of these proceedings, the State will not take any action which can be termed as coercive.

Nothing stated above will come in the way of first respondent or the State Government proceeding with further measures for completing the R&R work.

Having regard to the urgency of the matter, list the matter on 20.6.2005. Registry is directed to hand over copy of this interim order to the learned Advocate General so that it can be sent to the GRA. The Registry is also directed to send a copy of this order directly to the GRA, etc.

CC as per rules.

R.V.Raveendran, Chief Justice

Shantanu Kemkar, Judge

