



International Environmental
Law Research Centre

B.D. SHARMA
v.
UNION OF INDIA

B.D. Sharma v. Union of India, Writ Petition (Civil) No. 1201 of 1990

ORDER OF 9 AUGUST 1991

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ORDER

1. We have heard Mr Sharma in person, learned Additional Solicitor General for Union of India and counsel for the States of Gujarat, Madhya Pradesh and Maharashtra, Mr Bagla, the present Commissioner who is present in Court has also been heard.

2. A letter received from Mr Sharma, while he was in office as Commissioner of Scheduled Castes and Scheduled Tribes has been treated as a writ petition under Article 32 of the Constitution, His letter essentially raised questions with reference to the relationship between the Commissioner and the Union of India as also the State Governments, the effective nature of the reports made from time to time by the Commissioner; implementation and non-implementation of the recommendations and the consequences arising out of the same and the constitutional methods which should have been generated for the purpose of treating the scheduled castes and scheduled tribes for the purpose of monitoring their welfare. That letter apparently appeared to raise constitutional issues of importance and, therefore, we considered it appropriate that it should be examined. It is true that in the letter reference was made to certain institutions where according to Mr Sharma, there was infraction of the obligation and, therefore, certain action should be taken.

3. The interlocutory application now filed is in relation to a question which perhaps requires more of regulation than constitutional questions to be looked into. We are told that writ petitions are already pending before the High Courts of Bombay and Gujarat filed by people who are affected by the developments that are taking place in those States with reference to the Sardar Sarovar. Apart from the fact that writ petitions are pending and the high courts had made certain interim orders, the nature and particulars are yet not known. It is really difficult for this Court to regulate the details of the working of a scheme of this nature but we are of the view that the rehabilitation of the oustees as a result of the project coming up can be examined.

4. Counsel for the three States have supplied the figures on the basis of which we find that in Maharashtra there will be 2,468 oustees, in Gujarat the number would be 4,500 and in Madhya Pradesh it would be 6,800 or so. The Award indicated certain figures but there has been a change in the position of oustees.

5. From the affidavit of the Gujarat Government we find that out of 4,500 oustee families about 3,100 families have already accepted rehabilitation. The remainder obviously is yet to be attended to. Mr Sharma has also told us that in view of the fact that State of Gujarat has already been taking rehabilitatory steps, there is not much of agitation against the scheme in Gujarat. We have been told that in the other two states there is some amount of agitation.

6. Sardar Sarovar is an inter-state project, the feeder being Narmada an inter-state river. This is financed by the World Bank and assistance is forthcoming from some of the foreign countries. As it is, completion is behind schedule. It is, therefore, difficult to look for enforcement of what had been contemplated either in the agreement or in the Award. While we agree that the rehabilitation should be done as far as possible in a methodical and meticulous way, to enforce terms and conditions stipulated in the agreement such as eighteen months' notice before effecting evacuation in terms may be difficult and may not be beneficial for the ultimate purpose. We understand that there is a Committee headed by the Secretary, Social Welfare, as a Sub-Committee under Narmada Control Authority. We would require this Committee where the Secretary, Social Welfare is the Chairman, to be activated so as to ensure rehabilitation. We would direct that this Committee should move in the areas where there is rehabilitation to be undertaken and directly ensure that rehabilitative process is undertaken. The rainy season is on but within a month or six weeks the weather would improve. We would, therefore, require rehabilitation to be personally supervised at intervals by the Committee in all the areas likely to be submerged when water is stored.

7. It was submitted to us that the first storage of water in Gujarat area is to be done in 1992, and within two years it would be done in the State of Madhya Pradesh. It is, therefore, necessary that before April 1992, rehabilitation should be effected in regard to the oustees who are said to be the remainder out of 4,500. Rehabilitation should be so done that at least six months before area is likely to be submerged, rehabilitation should be complete and should be in respect of homestead substitution of agricultural properly and such other arrangements which are contemplated under the rehabilitation scheme. This Court would require a report to be furnished of the developments and progress made in the matter of rehabilitation once in every month. We would, therefore, suggest to the Committee to meet at least once after they have visited the areas which they consider necessary, give their views with particular details of rehabilitation to be placed before the Court for directions.

8. We make it clear that it is not our intention to hold up the progress of the work. On the other hand, we would like it to be completed expeditiously so that the time lag may not affect the construction of the project.

9. Mr Bagla wanted to make out a point about his difficulties in functioning. To meet it, learned Additional Solicitor General made a statement that government had decided to set up the National Commission before the end of September 1991.

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