



International Environmental
Law Research Centre

ORDER OF THE GRIEVANCE REDRESSAL AUTHORITY, MADHYA PRADESH

**Grievance Redressal Authority, Madhya Pradesh
(Sardar Sarovar Project), Case No. 234 of 2004**

ORDER OF 11 SEPTEMBER 2004

*This paper can be downloaded in PDF format from IELRC's website at
<http://www.ielrc.org/content/c0409.pdf>*

ORDER

The applicants in IA No.4 and 7 in Writ Petition (C) No. 328 of 2002 filed before the Hon'ble Supreme Court seeking their rehabilitation, as mandated by the provisions of the Narmada Water Disputes Tribunal Award, hereinafter referred to as the 'Award' have approached this Authority as directed by the Hon'ble Supreme Court by orders passed on 16.4.2004 and 23.7.2004.

2. To appropriate the matter arising for consideration before this Authority, it would be useful to refer to the following relevant facts:

(i) Acting under Section 4 of the Inter-State Water Disputes Act, 1956, hereinafter referred to as the said Act, the Government of India constituted a Tribunal and made a reference to it relating to an inter-state water dispute referred by the State of Gujarat regarding the inter-state river Narmada and the river-valley thereof. The States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan were made parties.

(ii) On 16 August 1978 the Tribunal declared its decision, hereinafter referred to as the Award under Section 5(2) read with Section 5(4) of the said Act. Thereafter, references were filed by the Union of India and the concerned States before the Tribunal under Section 5(3) of the said Act. After hearing those references, the Tribunal gave its final Award on 7 December 1979. By that award, the height of the dam was determined at FRL 455 ft, which height according to the Tribunal was required for the purpose of irrigation and for generation of power. The Tribunal directed the State of Gujarat to take up and complete the construction of the dam. Clause XI of Chapter IX of the final Award contains directions regarding submergence, compulsory acquisition under the Land Acquisition Act, 1894 of land and buildings which would be affected by submergence and provisions for rehabilitation of displaced persons.

(iii) The provisions for rehabilitation lay down that in addition to compensation for the property acquired and payment of special grants, every oustee family would be entitled to and allotted a house site, i.e. a plot of land measuring 60' x 90' free of cost, at a rehabilitation site providing civic amenities as mandated and every displaced family from whom more than 25 percent of its land holding was acquired for being in the area of submergence shall be allotted irrigable land to the extent of land acquired from it, subject to the prescribed ceiling in the state concerned and to a minimum of 2 hectares per family, that irrigation facilities would be provided by the state in whose territory the allotted land is situated. It is further provided that the said land would be transferred to the oustee family if it agrees to take it. The Award directs that Gujarat in the first instance shall offer to rehabilitate the oustees in its own territory but Sub-clause IV(6)(i) of Clause XI of Chapter IX of the Award lays down that in the event of Gujarat being unable to resettle the oustees or the oustees being unwilling to occupy the area offered by Gujarat, the oustees shall be resettled by the home state in the same manner as provided for rehabilitation of the oustee families in Gujarat. Sub-clause IV(6)(ii) of clause XI directs that no submergence of any area shall take place unless all payment of compensation as laid down is made and arrangements for the rehabilitation of the oustees are made and intimated to them. The Tribunal also directed constitution of an inter-state administrative authority, to be known as the Narmada Control Authority, for the purpose of securing compliance with the implementation of the decision and directions of the Tribunal and constitution of a review committee to review the decision of the Narmada Control Authority.

3. The Narmada Bachao Andolan hereinafter referred to as NBA, an anti-dam organisation which is in the forefront of agitation against the construction of the Sardar Sarovar Dam has been in existence since the year 1986. After having chosen different paths to oppose the construction of the Dam, in the year 1994, NBA filed a petition registered as Writ Petition (C) No. 319 of 1994, before the Hon'ble Supreme Court under Article 32 of the Constitution of India, against the Union of India and others, praying *inter alia* that the Union of India and other respondents be restrained from proceeding with the construction of the dam which was required to be constructed upto 138 metres. The aforesaid Writ Petition filed by NBA was disposed of by the Supreme Court in its judgment dated 18.10.2000. The following observations made by the Supreme Court in Paragraph 79 of the judgment dated 18.10.2000 are pertinent:

The petitioner has been agitating against the construction of the dam since 1986, before environmental clearance was given and construction started. It has, over the years, chosen different paths to oppose the dam. At its instance a Five Member Group was constituted, but its report could not result in the stoppage

of construction *pari passu* with relief and rehabilitation measures. Having failed in its attempt to stall the project the petitioner has resorted to court proceedings by filing this writ petition long after the environmental clearance was given and construction started.

The Hon'ble Court further observed that it had entertained the petition

with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures at least to the extent they have been ordered by the Tribunal's Award (...) and the petition in regard to the other issues raised is highly belated (Paragraph 80).

4. During the course of hearing it was noted by the Hon'ble Supreme Court that the State of Gujarat which was the main beneficiary of the project in view of the irrigation facilities which would accrue to it, had liberalised its rehabilitation package by making provision for allotment of agricultural land to a major son of an oustee as well. It had also constituted a Grievance Redressal Authority to look into the grievances of the project affected families which had settled and would be resettled in Gujarat. Some time in March 2000 the Supreme Court directed the State of Madhya Pradesh to constitute a Grievance Redressal Authority in the State of MP, as was done by the State of Gujarat to hear and decide the grievances of the project affected families settled or to be settled in Madhya Pradesh. In pursuance of that direction, this Authority was constituted on 30 March 2000 as an independent autonomous authority whose decisions relating to the rehabilitation of the oustees are made binding on the oustees and the state government.

5. On 18 October 2000, the Supreme Court disposed of petition No. 319 of 1994 by directing that ever endeavour shall be made to see that the project was completed as expeditiously as possible. The Supreme Court issued *inter alia* the following directions:

i) Construction of the dam will continue as per the Award of the Tribunal.

ii) As the R&R Sub-group has cleared the construction upto 90 metres, the same can be undertaken immediately. Further raising of the height will be only *pari passu* with the implementation of the relief and rehabilitation and on the clearance by the R&R Sub-group. The R&R Sub-group will give clearance of further construction after consulting the three Grievances Redressal Authorities.

6. Thereafter the height of the dam was raised to 90 metres and then it was proposed to raise the height upto 95 metres after complying with the directions given by the Hon'ble Supreme Court. Aggrieved by that decision, the petitioner, NBA, filed another petition before the Hon'ble Supreme Court which was registered as Writ Petition (C) No. 328 of 2002, raising number of grounds assailing further construction of the dam. That petition however was disposed of by the Supreme Court on 9 September 2002. While disposing of the petition it has been observed by the Supreme Court as follows:

The Grievance Redressal Authority having been put in place, there is no reason for this Court to interfere. As far as the dispute raised in this petition is concerned, that is over and final with the earlier decision of this Court. In case an oustee or a person affected by the project has any grievance, it is open to him to approach the Grievance Redressal Authority.

It is also contended that land for land has not been given. If there is any person so aggrieved or has a justifiable grievance, it is open to that person to approach the Grievance Redressal Authority, failing which this Court. (...)

This Writ Petition is disposed of in the aforesaid terms.

7. By the aforesaid order one should have normally thought that the said order enabled an oustee whose grievance was not redressed by the Grievances Redressal Authority to approach the Supreme Court for relief by filing a petition enclosing a copy of the complaint filed by him, a copy of the reply, if any, filed by the state, a copy of the decision of the GRA and a statement of the grounds on the basis of which the order of the GRA was being assailed. Such a course would have been not only in conformity with the aforesaid order passed by the Supreme Court in Writ Petition (C) No. 328 of 2002 but would have also enabled this GRA to rectify at the appropriate stage any erroneous view taken by it to avoid repetition of that mistake in future while disposing of the complaints filed by oustees before the GRA. To illustrate, in Case No. 473 decided by this Authority on 25 July 2002, it was observed as follows:

It is therefore directed that as the complainant is an oustee who has to be rehabilitated at this stage in the light of the judgment of the Hon'ble Supreme Court delivered on 18.10.2000 in Writ Petition (C) No. 319 of 1994 and as now it has been stated on behalf of the complainant on 25.6.2002 before the Authority that he is unwilling to be resettled in Gujarat, the complainant shall be rehabilitated in Madhya Pradesh according to the provisions of the Award and the R&R Policy of the State Government. As he is entitled to be allotted irrigable agricultural land, he shall be allotted such land to the extent of his entitlement, provided the Director Agriculture of MP certifies that the land is arable. Irrigation expenses will be borne by the State. If the complainant agrees to take this land it shall be transferred to him as laid down by the provisions of sub-clause IV(7) of clause XI of Chapter IX of the NWDT Award. He shall also be allotted a residential plot in a nearby R&R site where all the civic amenities as mandated by the NWDT Award are available. It is made clear that in case after transfer of the agricultural land, the complainant has a justifiable grievance that the land is not arable, then the Authority shall on receiving a complaint in that behalf get that land examined by experts to ascertain the arability of the land. If according to the opinion of the experts so appointed, the land transferred to the complainant is not arable, then the State shall be directed to allot another piece of land to the complainant according to his entitlement along with a residential plot in case the plot allotted earlier happens to be far away from the agricultural land subsequently transferred to the complainant and the State shall have to bear such compensation as would be determined by the Authority for all the expenses incurred by him and the inconvenience caused to the complainant.

If the applicants had approached the Hon'ble Supreme Court within reasonable time for setting aside this order and if the order had been set aside, then as required by judicial discipline, this Authority would not have stuck to the aforesaid procedure for the last 2 years.

8. However, the order dated 9 September 2002 passed by the Hon'ble Supreme Court in Writ Petition (C) No. 328 of 2002 appears to have been constructed by the petitioner NBA, to mean that the Writ Petition (C) No. 328 of 2002 would never stand disposed of and that it had been kept pending to enable any project affected person to file IA in that petition without properly assailing any order passed by GRA. Hence without assailing the procedure followed in Case No. 473, the applicants in IA No. 4 and 7 filed before the Hon'ble Supreme Court, stated that valid offer of allotment of agricultural land was not made to them because the land at Musapura which was offered was not acceptable. The complainants thereafter gave a number of suggestions for acquiring land for allotment to the complainants. These suggestions were not accepted by the State Government. Hence, the applicants in IA No. 4 and 7 were directed by the Supreme Court to approach the Grievances Redressal Authority, MP That is how this matter has come up for consideration before GRA, MP vide letter dated 24 July 2004 sent by Shri S. Muralidhar and letter dated 28.7.2004 sent by Shri Sanjay Parikh, Advocates, Supreme Court.

9. The matter was fixed for hearing on 7.8.2004. Before the commencement of hearing this Authority had made it very clear at the outset that this Authority will not take into consideration any controversy about the arability of land at Musapura offered to the applicants but will confine its attention to ascertain whether any other arable land or land as suggested by them could be offered to them for allotment with a view to rehabilitate them. The Authority however stated that it would very much appreciate if the matter was amicably settled.

10. During the course of hearing the learned counsel Shri Muralidhar and officials of the State agreed to explore the possibility of amicable settlement of the problems raised by the applicants before GRA. The officials of the State Government also stated that they would be able to ascertain the availability of the land of the agriculture farm from the State situated at village Khajuri for allotment to oustees to enable the possibility of amicable settlement of the problems raised. The case with the consent of the parties was fixed for hearing on 24 August 2004.

11. On 24.8.2004, when the matter came up for hearing, it was stated before the Authority on behalf of the State that there was considerable progress as regards the availability of farm land situated at Khajuri, for allotment to oustees and it was assured that as soon as the formalities were completed for effecting transfer of the Government land to NVDA as provided in the Revenue Book Circular and that the said land was transferred to NVDA it would be added to the corpus of the land bank created by NVDA for the purpose of offering agricultural land for allotment to eligible oustees and that action would be taken to allot the same to the eligible applicants. It was observed by the Authority that as the applicants and the State as well were exhibiting their positive approach for arriving at an amicable settlement of the grievances of the applicants relating to their rehabilitation, 10 days time was granted as desired, to enable them to do the needful. Therefore, with the consent of the parties the case was fixed for hearing on 4 September 2004.

12. On 4 September 2004, it was stated on behalf of the State that once NVDA would be in possession of Khajuri land, it would be made available for allotment to oustees according to their entitlement. Written submission dated 4.9.2004 was also filed before the Authority on behalf of NVDA. It was stated on behalf of the applicants that response if necessary would be filed by 6 September 2004. That response on behalf of the applicants was filed on 6.9.2004. Similarly further submission on behalf of Stats was made on 6.9.2004 stating that with a view to reciprocating the positive attitude shown by the applicants, as a special case, the state was willing to allot agricultural land of Khajuri farm in District Jhabua to the eligible applicants of villages Jalsindhi and Pichhodi and as such it was possible to accommodate all the eligible oustees among the applicants in Khajuri farm land but it was made clear that this may not be treated as precedent as it would not always be practicable for obvious reasons to offer allotment of agricultural land as per individual choice of the oustees.

13. These statements submitted on behalf of parties were placed before the Authority on 5 September 2004, 7 September 2004 being a holiday in the State. Thereafter, after taking into consideration all facts as brought on record, this order has been passed by the Authority on 11 September 2004.

14. It was stated on behalf of applicants of village Pichhodi by Shri Sanjay Parikh, learned Advocate of the Supreme Court that those applicants had not approved the Khajuri land and that as directed by the Supreme Court, the land to be allotted to the oustees should be of their choice. Reliance was placed on the following paragraph of the judgment dated 18.10.2000 passed by the Hon'ble Supreme Court in Writ Petition (C) No. 319 of 1994 (Paragraph 180):

The Award provides that every displaced family, whose more than 25 percent of agricultural land holding is acquired, shall be entitled to and be allotted irrigable land of its choice to the extent of land acquired subject to the prescribed ceiling of the State concerned with a minimum of two hectares land.

It has to be borne in mind while interpreting the aforesaid observation, the Hon'ble Supreme Court has referred to Sub-clause IV(7) of Clause XI of Chapter IX of the NWDT Award which reads as under:

IV(7): Allotment of Agricultural Lands: Every displaced family from whom more than 25 percent of its land holding is acquired shall be entitled to and be allotted irrigable land to the extent of land acquired from it subject to the prescribed ceiling in the State concerned and a minimum of 2 hectares (5 acres) per family, the irrigation facilities being provided by the State in whose territory the allotted land is situated. This land shall be transferred to the oustee family if it agrees to take it. The price charged for it would be as mutually agreed between Gujarat and the concerned State. Of the price to be paid for the land a sum equal to 50 percent of the compensation payable to the oustee family for the land acquired from it will be set off as an initial instalment of payment. The balance cost of the allotted land shall be recovered from the allottee in 20 yearly instalments free of interest. Where land is allotted in Madhya Pradesh or Maharashtra, Gujarat having paid for it vide Clause IV(6)(i) supra, all recoveries for the allotted land shall be credited to Gujarat.

It has also to be noted that the choice of the state where an oustee should settle rests with him. It is reasonable to hold that while reproducing the aforesaid clause, the Supreme Court did not want to modify that clause in view of the provisions of Section 11 of the Inter-State Water Disputes Act, 1956 which reads as under:

Bar of jurisdiction of Supreme Court and other courts: Notwithstanding anything contained in any other law, neither the Supreme Court nor any other Court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act.

The Supreme Court had also noted that the aforesaid Sub-clause IV(7) of Clause XI of Chapter IX of the Award gives choice to the oustees to accept the offer. Therefore, the use of the word choice in Paragraph 193 of its judgment dated 18.10.2000 cannot be construed to mean that the land which is required be offered to an oustee should be of his choice. The land to be offered should no doubt be arable and irrigable.

15. It is further made clear that in view of the fact that the matter is being amicably settled, it is not necessary in the opinion of the Authority to deal with the validity of reasons given by the state for not accepting the suggestions made on behalf of the applicants to purchase private land as indicated by them.

16. As the farm land at Khajuri has been offered by NVDA for rehabilitation of eligible oustees and the land having been inspected and found suitable by the applicants of Jalsindhi, it is directed that NVDA shall proceed to

rehabilitate the applicants at the appropriate stage in the light of the judgment dated 18.10.2000 passed by the Hon'ble Supreme Court in Writ Petition (C) No. 319 of 1994, by allotting agricultural land to eligible applicants from out of the farm land at Khajuri, according to their entitlement along with house sites at an R&R site nearby providing all civic amenities as mandated by the Award and other reliefs due to them according to the provisions of the Award and the R&R policy of the state. It is made clear that in the event of failure to do so, the applicants shall have liberty to approach this Authority afresh for redressal of any specific grievance.

17. The case is accordingly disposed of.

18. The Secretary of the Authority is directed to send a copy of the order to the Assistant Registrar (PIL Cell), Supreme Court for placing it on record of IA No. 4 & 7 in Writ Petition (Civil) No. 328 of 2002. Copies of the order be also sent to Shri Sanjay Parikh and to Shri Muralidhar, learned counsel for the counsel as desired by Shri Sanjay Parikh, Advocate and to the Vice Chairman and Commissioner (Reh.), NVDA.

www.ielrc.org