International Environmental
Law Research Centre

NARMADA BACHAO ANDOLAN

vs.

NARMADA HYDRO-ELECTRIC DEVELOPMENT CORPORATION AND ORS.

High Court of Madhya Pradesh at Jabalpur
Writ petition No. 3022/2005

ORDER OF 8 SEPTEMBER 2006

International Environmental Law Research Centre
International Environment House
Chemin de Balexert 7, 1219 Châtelaine
Geneva, Switzerland
info@ielrc.org
www.ielrc.org

TABLE OF CONTENTS

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, MP — Petitioner

Versus

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

2) National Hydro-Power Corporation (NHPC)
Through Chairman
NHPC Office Complex,
9, Sector 33, Faridabad,
Haryana 121033

3) State of Madhya Pradesh
Through Chief Secretary,
Government of Madhya Pradesh
Vallabh Bhavan
Bhopal, M.P.

4) Vice Chairman, Narmada Valley Development Authority
& Principal Secretary,
Narmada Valley Development Department
Vallabh Bhavan, Bhopal

5) Chairman
Narmada Control Authority
Narmada Colony,
Scheme No. 78,
Vijay Nagar,
Indore

6) Chairman,
Central Water Commission,
Sewa Bhavan,
RK Puram,
New Delhi 110066

7) Union Government
Through

i) Secretary
Ministry of Environment and Forests,
Paryavaran Bhavan,
CGO Complex,
New Delhi

(ii) Secretary,
Planning Commission
Yojana Bhavan, New Delhi

(iii) Secretary,
Union Ministry of Power,
Shram Shakti Bhavan, New Delhi

(iv) Secretary,
Ministry of Social Justice and Empowerment,
Shastri Bhavan, New Delhi

(v) Secretary,
Union Ministry of Water Resources,
Shram Shakti Bhavan,
Rafi Marg, New Delhi

(vi) Secretary,
Union Ministry of Tribal Affairs,
Shastri Bhavan,
New Delhi .....Respondents

WRIT PETITION UNDER SECTION 226 OF THE CONSTITUTION OF INDIA

1. Particulars of the Applicant:

That the Petitioner is an organization working to secure the just rehabilitation and legal and human rights of the oustee families affected by large dams in the Narmada valley including the Indira Sagar Project. The members of the organization are working in public interest in order to create awareness among the farmers, workers and adivasis about their legal and social rights. The activists of the organization includes farmers, fisherpeople, Engineers, social workers, management graduates, etc who have been working full time for this work for the last two decades on a voluntary basis.

2. Particulars of the Respondents

The Respondents No. 1, Narmada Hydro-Development Corporation (NHDC) is building the Indira Sagar dam and the power component of the Project. The NHDC is a joint venture Company of Respondent No. 2 – the National Hydro-Power Corporation (NHPC) and the Respondent No. 3 – the Govt. of Madhya Pradesh. The NHDC was formed under a Memorandum of Understanding dated 16th of May 2000 to execute the (...)

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No. 3022/2005

Narmada Bachao Andolan…….....…….**Petitioner**

Versus

Narmada Hydroelectric Development…….....…….**Respondents**
Corporation and others

For the petitioner	:	Miss Chitraroopa Palit (In person)
For the respondents No. 1 & 4	:	Mr. R. S. Prasad, Senior Advocate alongwith Mrs. Suparna Shrivastava, Advocate
For the respondents 1, 3 and 4	:	Mr. R. N. Singh, Advocate General, and Mr. Arpan J. Pawar, Advocate
For the respondents Nos. 5, 6 and 7(i) To (vi)	:	Mr. Dharmendra Sharma, Assistant Solicitor alongwith Mr. Rajneesh Upadhyay, Advocate

---

Present : **Hon'ble Mr. Justice Dipak Misra**
Hon'ble Mr. Justice Shantanu Kemkar

O R D E R
(08.09.2006)

AS PER DIPAK MISRA, J:

The present litigation, a public interest one, frescoes a picture paints a canvass and builds a pyramid to highlight that is a democratic welfare set-up, apathy and indifference cannot be shown or allowed to be projected on the bedrock that certain things are to happen for glow of life of the numerical strength making it spectacular by causing inexonerable predicament to others and burying the value of essentiality of life, and to make them disappear in the glorification of economic progress, augmentation of electricity and proliferation of industry. To put it differently, the whole scenario pertains to raising of the water level in Indira Sagar Project (earlier known as 'Narmada Sagar') situated in the district of Khandwa, the mother of all down stream projects including Sardar Sardvar Dam in Gujarat. As the construction of Indira Sagar Dam has become a fait accompli, the only issue that survives to be dwelled upon and addressed to is the pondage in the already built reservoir and the consequential submergence which as a natural corollary, an inevitable one, ushers in the conception of rehabilitation. On one hand there is accentuation on the imperative necessity of water by the State and on the other there is a Himalayan accent and insistence on rehabilitation of the affected persons of such pondage on the fundamental base that the rehabilitation measures in entirety have to precede and not be guillotined with the attitude of emotionlessness, proclivity of impassivity and deviancy with cruel impassibility. Additionally what has been highlighted by the petitioner is that the rehabilitation package which has formed a part of the scheme formulated by the State Government is not in consonance with the award passed by the Narmada Water Disputes Tribunal (NWDT) (hereinafter referred to as 'the Tribunal') and further the arrangement in the policy suffers from total unreasonableness inviting the frown of Article 14 of the Constitution of India, the 'fon juris' of the living and organic document of the greatest democratic polity. It is also propounded that an endeavour has been made to create a mythical atmosphere that things are in order in the sphere of rehabilitation whereas the mandates of Article 21 of the Constitution of India have been kept at bay as if it is not an assuagement but a missile- a constitutional fibrosis .

PROLEGOMENON OF INDIRA SAGAR PROJECT

2. The Indira Sagar Project was initially conceived as Punasa Project. It was recommended for detailed investigations in the year 1948 by an Adhoc Committee of Central Waterways Irrigation and Navigation Commission (CWINC). Earlier in 1946 on the request on behalf of Govt. of Central Provinces and Berar, CWINC investigation was taken up on the Narmada River System for its basin wise development with flood control, irrigation and power generation objectives. In March 1949 the estimate for investigation of Punasa Project was sanctioned by Govt. of India. Pursuant to the aforesaid sanction a detailed study of Hydro Electric Potential of Narmada Basin was carried out by the said Commission in the year 1955. But as late as 1963-64 a final decision for construction of Punasa Dam was taken by the Respondent No.3. Initially, Sardar Sarovar Project, an inter state project, was to come up in Gujrat on which there was difference in the view of three Basin states. To resolve the dispute the Govt. of India in exercise of power conferred u/s 4 of the Inter State Water Disputes Act, 1956, referred the inter state water disputes to the Narmada Water Disputes Tribunal. The Tribunal gave its final decision on 6.12.1979 in respect of Sardar Sarovar Project. As the respondent No.3 showed its intention to construct a Dam at Punasa, the NWDT in order to avoid any future complications and dispute held that the respondent No. 3, State of M.P. shall take up and complete the Construction of the Narmada Sagar Dam later on known as Indira Sagar Dam with full reservoir level of 262.13 mtrs. before or simultaneously with Sardar Sarovar Project and further directed for regulated release to be made available. Though the Sardar Sarovar Project was determined the award of the NWDT in 1979, the Indira Sagar Project being an exclusive project of the respondent No. 3 the extensive survey of the affected areas were carried out only from 1980-81. Later on, after detailed survey of the affected area by respondent No. 3 and respondent No. 6, Chairman, Central Water Commission, the Dam foundations excavation on both the flanks was undertaken in the year 1987. Due to financial constraints Indira Sagar Project could not be commenced effectively until 1992. After the Govt. of M.P. was able to garner additional financial help from various sources for the construction of the Dam and to compensate the oustees (Project affected families) the work commenced. With the construction of the dam, the necessity of eviction and rehabilitation emerged and as a sequitur certain litigations travelled to the Court.

PREVIOUS LITIGATIONS

3. Before this writ petition was filed by the present petitioner one Pyar Mohd. and others had knocked at the doors of this court in W.P.No.2506/2001 for issue of writ of certiorari for quashing of the order dated 05.3.2001, Annexure-P-1 therein, and command the respondents to implement the scheme of rehabilitation and further to restrain the respondents from insisting the villagers to vacate the villages till the time the writ petition was decided and further to direct the respondents to look into the grievance of the villagers of villiage Baldi contained in Annexure-P-4 therein. It was contended in the said case that the petitioners had been given the march order without complying with the conditions precedent resettlement and rehabilitation package and there was apprehension in the minds of the villagers that they would be shifted to another place without much time at their hand. A grievance was made that some of the villagers have not been granted compensation though their lands have been acquired. Insistence was being made and the villagers were being pressurized to withdraw the applications filed under Section 18 of the Land Acquisition Act, 1894 (for brevity 'the Act'). A reply was filed by the answering respondent therein. Learned Advocate General for the State at that juncture stated that without grant of resettlement and rehabilitation package steps would not be taken to dislodge the villagers. The villagers would not be evicted without giving reasonable breathing time. The cases of the villagers who have not been granted compensation would be taken up by the competent authority expeditiously under the provisions of the Act and compensation would be determined in quite promptitude. The Collector concerned would release the awarded amount as well as the rehabilitation package without prejudice to the claims and contentions, to be raised by the affected parties before the appropriate civil court and the pendency of any application for reference would not be an impediment in disbursement of the awarded sum. It was also conceded that no steps which were likely to affect the living pattern of the villagers would be taken before resettlement and rehabilitation package is given and the applications u/s 18 of the Act would be referred to the Civil Court immediately.

4. Another Writ Petition was preferred by Jai Singh and others forming the subject matter of W.P.No.3436/01. A Division Bench of this Court on 12.9.2002 disposed of the said Writ Petition taking note of various reliefs .prayed for in the said Writ Petition. Submission of petitioners therein was that though the State Govt. has formed R&R policy no adjudication has taken place in accordance with the policy and it has become a policy on paper. A Return

was filed controverting the stand of the petitioners therein by taking the composite stand that they would follow the policy and not deviate from it. While dea ing with the said case was made to the order dated 16.5.2002 passed in 2506/2001. It is worth noting that on 22.7.2002 this court took note of the submissions of the learned counsel for the petitioners wherein a colossal grievance was made that without complying with the rehabilitation scheme attempts are being made to dislodge the petitioners from their habitation. Learned Advocate General for the State had submitted, at that juncture, that the State Government has taken a policy decision to grant separate land to the oustees or to pay them Rs.20,000/- who are not inclined to avail the land. A stand was taken that many people had accepted the money in lieu of land and declined to be governed by the scheme. Learned counsel for the petitioners therein submitted that though many persons have accepted the amount in lieu of land, yet some of them were in a state of suffering. Considering the factual dispute this Court wanted further affidavits to be filed stating what steps are being taken for concretizing the rehabilitation process. A direction was issued to the State to apprise with regard to the establishment of schools and Primary Health Centres and such other ancillary facilities in the location so that the area would become habitable. The said affidavits were not filed. As further factual disputes were likely to emerge at that juncture it was thought that the same should be looked into by the fact finding authority, a broad-based one. This Court had observed that it was not inclined to address itself whether the petitioners are adjusted in the new site or not. Learned Advocate General submitted that the grievances of the petitioners which had been highlighted in the writ petition can directly be putforth before the Grievance Redressal Authority which is headed by retired Additional Chief Secretary of the State who would dwell upon every issue that is permissible to be dealt with as per R&R policy and other circulars or decisions taken by the Stat Government from time to time. It was also conceded by the learned Advocate General that as per the aforesaid scheme the appellate authority is to be constituted consisting of Chairman and two members. It was brought to the notice of this Court that a Chairman and two members had already been appointed to form the said Authority. The counsel of the petitioner accepted that they may be directed to approach the said authority but stood embedded in this submission that there should be a retired High Court Judge in the said Authority. This Court did not accept the said stand. However, it recorded that to have a judicial base a vacancy which had occurred should be filled up by a retired District Judge. Learned Advocate General left it to the discretion of this Court and considering the facts and circumstances of the case and regard being had to the nature of controversy to be decided, the plight of the people who have to leave their hearth and home, the social strata to which they belong and keeping in view the four major facets, namely, contemplation, reason, action and implementation and the necessity of faith which is vital, to the human issues of this nature a direction was issued to the State Government, to nominate a retired District Judge as a member. Finally following directions were given:-

> "(a) The petitioners as well as any other villages Chherva, Segva and Undwa would be at liberty to directly approach the GRA within a period of four weeks.
>
> (b) If individual representations agitating specific and precise grievances are putforth/agitated before the authority, it shall advert to the same and decide the controversy after perusal of the material by ascribing cogent and germane reasons within a period of six weeks from the date of representation as far as plausible.
>
> (c) As the petitioners belong to the poor strata of the society and their houses are situated at far of villages from the capital of the State the authority will endeavour to decide the controversy in the camp Court holding the same at Tahsil Harsud in the District Khandwa as far as practicable.
>
> (d) The villagers shall cooperate with the proceedings and shall not seek unnecessary adjournment or play truant for the simple reason truancy is not appreciated.
>
> (e) The authority shall deal with the grievances of the villagers that are covered under the policy promulgated by the State Government and such subsequent orders/circulars/direction.
>
> (f) The petitioner shall not agitate the grievances relating to enhancement of the compensation which have been awarded under the Land Acquisition Act.
>
> (g) The representations shall contain the grievance in specific terms so that the authority would be in a position to advert to the same in accordance with the policy and other circulars in vogue."

CIRCUMSTANCES SETTING AFLOAT THE PRESENT WRIT PETITION

5. After disposal of the aforesaid Writ petitions which were filed by some villagers the question of further eviction arose and till Monsoon of 2004, 120 villages were acquired and upto monsoon of 2005 further 91 villages were to be acquired. The stand of the respondents in quintessentiality is that obviously after acquisition of the land in thes villages rehabilitation and resettlement was carried out by the answering respondents in its full capacity and without much complaints from the oustees. The villagers of 91 villages were noticed about the fact that they would be entitled to use their respective property situated within the affected areas upto 31.4.2005. There was no threat of submergence of the property of any affected family without acquisition of the property. However, at that juncture there was a grievance that without complying with the resettlement and rehabilitation policy attempts were being made to bulldoze the affected villages and create a sense of disorderliness. It was also the grievance, a colossal one, that pondage of water more than 245 metres would create tremendous submergence affecting the life and property of the people in great magnitude. In that factual bedrock the present writ petition was filed asseverating that the State has become a predatory one yielding to corporate contamination and compelling the citizens to the path of compulsive papurisation.

THE INTERLOCUTORY STAGES

6. On 18.5.2005, this court considering the prayer for interim stay of the notification dated 31.12.2004, Annexure P-8, requiring the oustees in 91 villages (earmarked for submersion) to vacate the properties by 30.4.2005 and dwelling upon the assertions made in the writ petitions and having heard the learned counsel for the parties expressed the view as under:-

> "It is not possible for us to decide at this stage the correct-factual situation in 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. UOI) 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 the 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 Onkareshwar Project), D-13, Machna Colony, Bhopal to verify, examine and give a report in regard to R&R poistioins of 91 villages given in the notification dated 31.12.2004, in regard to the following matters:
>
> (a) Whether the villagers (oustees) of the 91 villages have been provided reliefs as per the guidelines of NWDTA, that is land for land i.e. 2 hectares of land for every oustee whose land in excess of 75% of the holdings has submerged and house sites.
>
> (b) Whether compensation has been disbursed.
>
> (c) 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 land for the ousted villagers, that 50% of the compensation is paid in case and 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 ensuing monsoon many 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 villagers of the 91 villages by the Police and the district administration to drive them out of the villages. Learned Advocate General, on the other hand, states that no coercive steps are being taken and only warnings are being issued so that 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 this 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 GRA etc."

7. After some debate on 27.7.2005 the Division Bench of this Court took note of the submissions that NHDC has violated the golden rule that rehabilitation should precede submergence and there should be a clear gap of 6 months from the date of release of rehabilitation benefits (compensation, allotment of sites and agricultural land) and the date fixed for vacation/submergence to enable the oustees to settle down; that there has been non-conferral of legal entitlements to the project affected families; that steps have been taken by the NHDC to achieve FRL of 262.13 mtrs. by closing the gates during monsoon of 2005., without meeting the obligations as contained in the award dated 7.12.1979 of the NWDT. Narmada Water Scheme framed by the Central Govt. u/s 6-A of the Inter State Water Disputes Act vide notification dated 10.9.80 and modified notification dated 3.6.1987, office memorandum dated 24.6.87 issued by the Ministry of Environment and Forest, Govt. of India granting environmental clearance for the project; letter dated 7.10.87 from Ministry of Environment and Forest, Govt. of India granting approval for diversion of 41112 hectares of Forest land for submersion financial clearance dated 6.9.89 issued from the Planning Commission, Govt. of India for the project and rehabilitation and resettlement policy and R&R action plan of the Government of M.P.for PAFs of Narmada Project principles laid down by the Supreme Court with regard to R&R and the directions; issued by the Narmada Control Authority and its R&R subgroup from time to time and after referring to the memorandum of understanding dated 16.5.2000 between the State Government and the Narmada Hydro Electric Power Corpn, Ltd., office memorandum dated 24.6.87, Planning Commission's letter dated 6.9.87, award dated 12.12.79 passed by NWDT and Rehabilitation and Resettlement Action Plan of the project issued by NVDA in January 1994, rehabilitation policy of the State Government for the oustees of Narmada Project and after referring to the decision rendered in the case of **B.D.Sharma Vs. Union of India, 1992 Supp (3) SCC 93** and **Narmada Bachao Andolan Vs. Union of India**, 2005 (4) **SCC** 32 and the undisputed fact that R&R measures should precede submergence, the stand taken by the petitioners that such R&R measures should be completed atleast one year or six months before submergence and the stand putforth by the State and NHDC to the contrary that the notice of one year or six months is not necessary in all cases and it is sufficient if measures are completed within reasonable period prior to submergence depending upon the circumstances of the case and further taking note of the fact that notice had been issued on 31.12.2004 requiring 91 villages to be affected and land acquisition awards had been passed only in regard to 54 villages; and the awards in respect of 37 villages were passed on in the months of January, February, March and April, 2005 and the awards in respect of villages Junapani and Karanpura were passed only on 30.4.2005 the date by which the villagers were required to vacate; and that considerable amount of about 25% are due in regard to land acquisition compensation even on the date of passing of interim order and that being the position in regard to to Special Rehabilitation Grant, Rehabilitation grant, Employment grant, grant in lieu of sites and transportation grant and partial payment in that regard has not been completely carried out, this Court in paragraphs 10 to 18 delineated on the delay in granting compensation amount and rehabilitation grants referred to in the report as regards the R&R compensation in 91 villages by the GRA. Eventually the Court in paragraphs 17 onwards proceeded to state as under:-

"17. We can not allow the State or the NHDC to trample the fundamental rights of the villagers of the 91 villages or the ground of expediency, and permit submergence when the R&R measures are not completed. However, while safeguarding the rights and interests of the land holders and residents of the 91 villages, we cannot ignore the larger interests of the entire State. M.P. is an electricity deficit State and there is a growing demand for electricity. If the dam can be filled up to the FRL (262.13 M) or at least 258 M, the production

of electricity will increase several times leading to the prosperity of the State. If the State and the NHDC are able to complete all R&R measures within say 15 days, and If most of the villagers vacate by then, it may be possible to permit NHDC to raise the water level of the dam even to 258 M by taking appropriate safety measures. Whether the State and the NHDC are in a position to complete R&R measures within two weeks and the response of the villagers to such R&R measures requires to be observed. If NHDC is not able to complete the R&R measures, the villages cannot obviously be permitted to be submerged. On the other hand if all the R&R measures are completed within 15 days, and if all the villagers (except a few hard core) leave the villages, the question whether payment of monetary compensation (compensatory allowance) at the rate of Rs.3,500/- per PAF for six months will adequately coirnpensate the PAFs for inadequate notice can be considered and if accessary NHDC can be permitted to increase the water level gradually under constant monitoring.

18. Therefore, pending completion of R&R measures, interim direction has to be issued not to increase the water level of the dam to an extent which will cause submergence of the 91 villages. On the facts and figures submitted by both sides, it appears that the water level can be increased from crest level (245.13 M) to 248 M., without submerging the 91 villages. If the R&R measures are completed in 15 days, we may, consider modification of the interim order.

19. In view of the above, we issue the following interim directions to Respondent No.l (Narmada Hydro Electric Development Corporation Ltd.) and the State Government (Third Respondent):

(i) The water level of the Indira Sagar Dam shall not be increased beyond 248 Metres until further orders. There shall be no submergence of the 91 villages mentioned in the impugned notification dated 31.12.2004, before completion of the resettlement/rehabilitation measures in regard to the land holders and abadi land/ House holders of the 91 villages.

(ii) No coercive steps shall be used to evict the present occupants of 91 villages. It is however made clear that this order will not entitle those who have already left the 91 villages to come back to the villages. Nor will the petitioner not to indulge in any activity that will obstruct or delay NHDC from completing the R&R work.

(iii) NHDC and the State Government shall immediately organise adequate rural resettlements with Temporary houses with the basic facilities of water, electricity, drainage and roads for a period of six months as Transit housing for oustees.

20. It is open to the NHDC to proceed expeditiously, with the completion of the following Rehabilitation measures as per the R&R Policy of the State Government in regard to the PAFs of the 91 villages;

(g) Payment of entire compensation for the acquisition of agricultural lands or abadiland/ houses in terms of the Land Acquisition Awards (without prejudice to the right of the owners to seek enhancement).

(h) Payment of Rehabilitation Grant to those whose Abadi lands and houses have been acquired (Rs. 18,700 for SC & ST and Rs. 9,350 for others).

(i) Allotment of a rural site measuring 60' x 90' in a rural re-settlement area or Rs.20,000/- in lieu of such residential plot to those whose abadi lands/houses have been acquired.

(j) Payment of transport grant of Rs.5,000/- for shifting the household articles to those whose Abadi lands/houses are acquired.

(k) Payment of Special Employment Grant of Rs.49,300/- (for landless labourers and landless SC & ST) and Rs.33,150/- for other categories of landless oustees as per R&R Policy.

(l) Payment of Special Compensatory Allowance (at the rate of Rs.3,500/- per family per month) for those who have shifted from the 9-villages after 31.12.2004 till date and those who will be shifting within 15 days from date.

NHDC and the State may also consider offering two hectares of land or payment of the revised Special Rehabilitation Grant (in terms of the offer made today) to the persons whose agricultural lands have been acquired, in place of the Special Rehabilitation Grant now in force.

NHDC is also at liberty to give wide publicity through the "Electronic/ Newspaper media or otherwise, to its offer to pay all dues and the special package of incentives (relating to offer of six months Special Compensatory Allowance and the offer of Revised Special Rehabilitation Grant).

The State Government may also request/instruct the members of the Grievance Redressal Authority for Indira Sagar, to hold sittings till 10.8.2005 at Indira Sagar headquarters of NHDC so that grievances of PAFs/oustees can be solved on the spot without delay.

List for further orders on 12.8.2005. C.C as per rules."

8. When the matter was taken up on 1.7.2005, after narrating the facts, recording the submission of the learned Advocate General on behalf of the State Government and the Corporation in paragraphs, 7 & 8, this Court expresse the view as under:-

"7. When the arguments were in progress, the learned Advocate General, on behalf of the Narrnada Hydro-electric Development Corporation (first respondent) submitted that the State Government and the Corporation are as much concerned as regard to the safety villagers and will safeguard the viltagers/oustees. He stated that Corporation will take note of the several genuine issues and aspects raised by the petitioner and recalculate the back water levels at the farthest reaches, re-examine the safety measures and re-survey the villages that will be affected and re-examine the entire matter with reference to the rehabilitation and re--settlement measures.

8. The learned Advocate General sought 15 days time to complete the reassessment of the situation, in particular the effect of rising of level of water in the dam. The learned Advocate General submitted on behalf of the State and Narmada Hydro-electric Development Corporation that until further orders, NHDC will ensure that the water in the Indira Sagar Dam will remain at the crest level that is 245.13 meters and that the gates will not be closed so to increase the water level beyond the crest level. He also reiterated that until further orders, no coercive steps will be taken to evict the villagers in the 91 villages (except taking action against encroachers)."

9. Thereafter in paragraph 10 the following directions were issued:-

"10. The State and NHDC are directed to furnish the following particulars on the next date of hearing:

(i) List of residents of the 91 villages.

(ii) Particulars of lands/sites available for allotment to oustees.

(iii) The date of printing of the M.P. Gazette Extraordinary dated 31.12.2004, the number of copies printed and the date it was made available to public (by means of an affidavit of Director of Printing in charge of M.P. Gazette."

10. In pursuance of the aforesaid order the respondent No. 1 submitted the particulars. It is worthwhile to reproduce them:-

"(I) List of residents of the 91 villages:-

The list of residents of the 91 villages with the payment position of award amount and the special rehabilitation grant, is filed separately as the same is too voluminous.

(II) Particulars of lands/sites available for allotment to oustees:-

A) The Respondent No.l has in all, developed 33 rehabilitation sites (including Chhanera) with the basic civic amenities, schools, dispensaries, community hall, etc. However, out of these 33 rehabilitation sites the total number of fully developed sites is 19 whereas 13 sites are in the process of being developed. In these rehabilitation sites the total number of plots is 4421 out of which 1795 plots have been alloted whereas 2626 plots are still lying vaccant. Copies of the chart showing details of the rehabilitation sites are enclosed as ANNEXURE RF/1. The Respondent No.l is also offering plots to the rural area based PAF's/ Oustees, at Chhanera, where 2403 plots are still lying vacant. A copy of the chart showing the development status of Chhanera and the plots lying vacant therein is enclosed herewith as ANNEXURE. RF/2.

Apart from the aforesaid as the PAF's/Oustees of the Indira Sagar Project have settled themselves at 8 private place, the Respondent No.l is in process of providing the basic amenities viz. approach road, electricity, drinking water, primary school, etc, at these private settlements also. A chart showing the details of amenities being provided to the private settlement is enclosed as ANNEXURE RF/3.

B) As per the R&R Policy, in order to provide land to the entitled PAF's/oustees, the Respondent No.1 had invited offers from the land owners who were willing to sell their Agricultural land. In response to the NIO floated/advertised by the Respondent No.l, as many as 36 land owners submitted their offers for sale of approx 912 acres of Agricultural land situate mostly in Khandwa district and the neighbouring Khargone district. However, as none of the entitled PAF's/Oustees exercised its option seeking land for land and preferred cash instead, therefore, there was no point in taking any further step towards enhancement of the land bank. A copy of the chart showing details of the land arranged by the Respondent No. l is enclosed as ANNEXURE RF/4.

Though none of the entitled PAF's Oustees came forward with a demand of land for land but it is worth mention that till date the Respondent No.l has paid a Registration fees of more than 15 crores towards the Agricultural land purchased by the entitled PAF's/Oustees, in as many as 16 districts of Madhya Pradesh. The Respondent No.l is still receiving huge demands of Registration fee from the Registrars of various districts. Thus, it is very clear that the entitled PAF's/Oustees have been purchasing Agricultural land of their own choice since the year 2001, in the districts of Khandwa, Harda, Dewas as also in the adjoining districts of Khargone, Burhanpur, Hoshangabad, Ujjain and Indore. A copy of the chart showing details of the Registration fee paid by the Respondent No.l is enclosed as ANNEXURE RF/5.

It needs mention that after receiving grants under various heads by the Respondent No.l, certain landless Oustees have purchased land in Khandwa and Harda districts; certain outstees who were having unirrigated land have purchased irrigated land; certain oustees having less land have purchased more land. A copy of chart in support of aforesaid is ANNEXUR-E RF-5/A.

(III) The date of printing of the MP Gazette Extraordinary date 31.12.2004, the number of copies printed and the date it was made available to public.

Date of printing of the M.P. Gazette Extraordinary is 31.12.2004 and it is published at page No. 1175 to 1176 (4). In all 500 copies of the aforesaid M.P. Gazette Extraordinary were printed and made available to Narmada Valley Development Authority, Bhopal on 20.1.2005. The M.P. Gazette Extraordinary dated 31.12.2004 was brought to the notice of the villagers of affected areas, by the Land Acquisition Officers & Rehabilitation Officers, in the last week of January, 2005. An affidavit of the Deputy Controller of Government Printing Press, Bhopal is enclosed as ANNEXURE RF/6.

However, there has been no complaint from anybody including the petitioner that the date from which vacating was required i.e. 30.4.2005 (as per M.P. Gazette Extraordinary) was not publicized and made known by the Respondent No. 1, 3, and 4."

FIRST STATUS REPORT:

11. After receipt of GRA report the respondents filed a status report in respect of rehabilitation and resettlement of project affected families and also gave comments on GRA report. The relevant portion of the same reads as under:-

"6. That, not much later after the aforesaid survey was carried out by the answering respondents, all of a sudden w.e.f. 25.5.2005, the applications of the PAFs from 7 villages, seeking land for land, started pouring in. The action of PAFs was obviously at the instance and instigation of somebody else. The applications made by the PAFs were in a set proforma. Almost, 67 applications were received from the PAFs for Jaitapurkala, which has been fully vacated long back. In all about 172 applications seeking land for land were received by the PAFs of about 7 villages. However, after examination, the answering respondents have found that most of the said PAFs have received full compensation for their land. A copy of the chart showing details of the receipts of applications is **ANNEXURE R-B,** whereas the applications so received are cumulatively annexed herewith as **ANNEXURE R/C.**

7. That, so far as the issue of disbursement of compensation is concerned, though the GRA has stated in its report that large scale disbursement is in progress, however there is some delay in the compensation reaching in the hands of an oustees.

It is submitted that as on date out of the total awards amounting to Rs.1231 crores passed by the competent authority, compensation to the tune of Rs.ll39 crores has been disbursed by the answering respondents. As such till 27.6.2005 only 92 crores of compensation is to be disbursed to the oustees. However, the non-disbursement of compensation is not infact attributable to the answering respondents in as much as a huge amount of Rs.19.21 crores has not reached the oustees because of their failure to open a bank account. Likewise, an amount of Rs.14.07 crores is withheld due to litigation, whereas an amount of Rs.3.26 crores could not be disbursed due to failure of the beneficiary to produce the legal heir certificate. A copy of the detailed chart showing the disbursement of compensation by the answering respondents is annexed as ANNEXURE R/D.

XXX XXX XXX XXX XXX

9. That, the GRA has stated in its report that the delayed payments provided very little time of the PAFs to vacate their dwellings. In this regard, it is worthwhile to mention that no sooner a PAF undertakes the exercise to dismantle his hosue, he is issued rehabilitation grant according to his entitlement. Thereafter, immediately for transportation, a PAF is issued transportation grant. Therefore, it cannot be said that there is a long time gap in the release of payments to the PAFs'.

10. The answering respondents in their action plan submitted in this Hon'ble Court on 18.5.2005 had already stated that they had developed 33 sites for the rehabilitation of the oustees. However, the GRA in its report has stated that the answering respondents have developed 19 sites whereas 13 sites are still in the process of development. It is submitted that the 33 sites which were process of development at the time of the survey conducted by the GRA, have been developed and made worth living the answering respondents. However, it needs mention that the 6 rehabilitation sites fully developed by the answering respondents have not been occupied by a single oustee even till date. The reason behind is that the oustees after getting handsome compensation have chosen to shift and resettle at their own choice and convenience.

11. That, the GRA has mentioned in its report that out of the 91 villages, a very few oustees have physically moved out and have dismantled their dwellings.

In this regard it is submitted that the GRA as per its own version had undertaken survey of only 41 villages therefore its conclusion in respect of the 91 villages cannot be said to be accurate. It is worthwhile to mention that out of the total 91 villages only the population has to be shifted in 33 villages. In rest of the 58 villages only agricultural land will be submerged and therefore no shifting of these villages is required. The report submitted by the GRA needs to be examined in light of the aforesaid factual scenario.

12. That, though on 18.5.2005 the actual PAFs to be shifted were about 2225, however, as on date only 1350 PAFs are left to be shifted. A copy of the status of resettlement of the aforesaid PAFs is annexed herewith as ANNEXURE R/E. A perusal of the aforesaid chart would reveal that up to the level of 258 meters, only 123 PAFs are left to be shifted and all these PAFs have been paid compensation. The rest of the 1227 PAFs would be affected only on the water level attaining an height of 258-262 meters. As per the Reservoir Operation Manual 2005, the water level of 258 meters will be maintained till August, 2005 and the water level of 258-262 meters may be achieved only in the month September. However, in the year 2004 the maximum submergence was at water level of 252 meters. As such there is no eminent danger to any of the aforesaid PAFs who are in the process of shifting.

XXX XXX XXX XXX XXX XXX XXX

14. That, though the GRA has been given the aforesaid findings in its report, but as a matter of fact it was brought to the notice of the GRA by the answering respondents that no receiving complaints from various sources, it had resurveyed as many as 42 villages and even out of these 42 villages no fault has been found in the earlier survey of 23 villages. However, the answering respondents are determined and all set to take every coercive measure for identification of the affected villages and for the safety of the population living therein."

SECOND STATUS REPORT

12. Second status report was submitted by the respondents relating to disbursement of amount of award, compensation, rehabilitation and resettlement PAFs. In the said report in paragraphs 4,5,6,7,8,9,11 & 12 stated it was thus:-

> "4. That, after an undertaking was given in the Hon'ble Court on behalf of the Respondent No. 1, 3 and 4, a detailed backwater study has been carried out, of Indira Sagar Project by the Central Water Commission, which is a statutory authority of the Government of India. In the said backwater studies, the backwater effect in respect of Indira Sagar Project has been recalculated vide report dated 13.7.2005 by the Central Water Commission on the basis of updated data using the latest method approved by the US Federal Emergency Management Agency (FEMA). As per the said backwater studies if the water level at the Dam Site is maintained as 258.62 meters, none of the 91 villages would be affected. Even if there is a flood of 43782 cumecs the same can easily be passed through Spillways with all gates open and none of the 91 villages being affected at all. A copy of the affidavit given by the Chief Engineer, Design and Engineering, NHDC, Bhopal is enclosed herewith as ANNEXURE R/H.
>
> 5. That, on the basis of the backwater studies carried out by the Central Water Commission, the actual house level in the Abadi villages out of the 91 villages in question have been verified and it has been found that in no manner whatsoever any of the 91 villages in question would be affected if the water level at the Dam Site is maintained as 258.62 meters. However, in these 91 villages 3935 PAF's were likely to be affected out of which 3233 PAF's have been shifted and the remaining are in the process of shifting. A copy of the information pertaining to water level and the present position of shifting is enclosed herewith as ANNEXURE R/I.
>
> 6. The Respondent No. 1 has ensured that the PAFs are paid the award amount before they are required to shift from their houses and properties situate in affected areas. A copy of the chart showing the date of payment and the balance is enclosed as ANNEXURE R/K. It is apparent from a perusal of the aforesaid chart that the balance to be paid to the PAF's is quite less and the same is not solely attributable to the Respondent No.l but the payments are also withheld for various reasons mentioned in the said chart itself.
>
> 7. That, the PAF's/Oustees of the 91 villages in question have also been paid the special rehabilitation grant as also the rehabilitation grant and whatever meager amounts of payments are pending, the same are in the process of being paid at the earliest. Copies of the chart showing details of payment of special rehabilitation grant and rehabilitation grant are annexed as ANNEXURES R/L & R/M respectively.
>
> 8. That in order to unable the handful of PAF's still staying in the affected areas, for voluntarily vacating their dwellings, the Respondent No.l, 3 and 4 have announced a package under which a substantial amount would be paid in case the said PAF's vacate their respective houses and properties within the period stipulated in the package itself. A copy of the package offered by the Respondent No.l, 3 and 4 is annexed herewith as ANNEXURE R/N.
>
> 9. The General Manager (R&R) has instructed all the Rehabilitation Officers of the answering respondent to immediately start the process of payment in case the PAF's/Oustees opt for the package. A copy of the letter dated 14.7.2005 in this regard is annexed herewith as ANNEXURE R/O.
>
> After the aforesaid package has been offered by the respondent No.l, there is a positive response by the PAF's who could not shift/vacate the affected area for various reasons. However, now the said PAF's are willing to opt for the package and voluntarily vacate their houses and properties situate in the affected areas.
>
> XXX XXX XXX XXX XXX XXX XXX
>
> 11. That, the entire picture as painted before this Hon'ble Court by the petitioner in respect of the grants/ compensation issued by the Respondent No.l in favour of PAF's/Oustees, is incorrect. The maximum PAF's/ Oustees of the 91 villages have timely received 80% of the grants and compensation for vacating their houses and properties after 30th April, 2005. In fact, after the passing of award, it normally takes one month time for the commencement of payments. Nearly 80% of the payment towards grant and compensation is paid to an Oustees within a period of 2 months from the date of passing of the award. Some times there is a delay in the payment because PAF's/Oustees do not open their bank account even after receipt of information under Section 12 of the Land Acquisition Act. A copy of the chart showing the date of passing of award, commencement of payment etc. in respect of a randomly selected village, is enclosed herewith as ANNEXURS R/Q.

12. That, in view of the aforesaid it can safely be concluded, that none of the 91 villages forming subject-matter of the present petition would be affected at the water level of 258.62 meters. As the PAF's of these 91 villages have mostly received grants/compensation, therefore, no prejudice would be caused to their interest. The interim relief as prayed for by the petitioner is misconceived and deserves to be rejected on the basis of the facts and figures narrated hereinabove and annexed with this status report."

13. A reply was filed by the petitioners to the particulars of the second status report and the interim report on backwater status of ISP.

14. The matter was taken up again on 17.8.2005 and further order was passed on interim prayer. By that time NHDC had already filed IIIrd status report and compliance memo dated 11.8.2005. The Division Bench Court proceeded to state as follows:-

"2. The NHDC has filed a Third Status Report-cum-compliance memo on 11.8.2005. In the said report, NHDC has stated that in the two weeks between 27.7.2005 to 10.8.2005, they had carried out resettlement and rehabilitation activities on a war footing and disbursed the following amounts (aggregating to about Rs.28 crores) to the PAFs/oustees:

Rs.10.688 crores towards compensation, under the Land Acquisition awards.

Rs. 2.644 crores towards Rehabilitation grant plus employment Grant plus amount in lieu of plot.

Rs. 3.770 crores towards Special Rehabilitation Grant.

Rs. 1,296 crores towards transportation grant.

Rs. 10,210 crores towards Special Compensatory Allowance.

(New Package)

NHDC has also given the overall status in regard to distribution of R&R benefits in respect of the 91 villages as follows:

Type of payment in (Crores).	**Total Payable**	**Total Paid**	**Balance Payable**
Award (Agri+Habitation)	136.46	133.74	2.72
Special Rehabilitation Grant.	31.34	30.45	0.89
Rehabilitation Grant (RG+ Employment Grant+plot/ Rs.20,000/- in lieu of plots.	22.25	20.81	1.44
Transport Grant	1.91	1.57	0.34
Special Compensatory allowance (Rs. 21,000)	10.36	10.21	0.15
Total	202.32	196.78	5.54

The NHDC has also stated that they have upgraded five rural resettlement sites (four sites on Government land and one developed by the NHDC); and that there are 30 Rehabilitation Camps (19 in Khandwa, 6 in Harda and 5 in Dewas district) where 1582 fully developed sheds are available and work on another 451 sheds is in progress. It is alleged that none of the PAFs have moved into those Rehabilitation Camps, though they are located within 1 to 4 kilometers radius of the 91 villages. NHDC has alleged that except 331 hard-core families, all other occupants have left the 91 villages. According to NHDC, the petitioner is influencing the said 331 hard-core families to continue their stay in their villages, by holding out a false hope that by staying back, they will get more amounts and benefits. It is stated that 330 out of 331 families have already received their full entitlement of award amounts, grants and allowances and the remaining one family could not be paid the amounts due to pendency of litigation. It is submitted that PAFs who are yet to shift constitute less than 1% of the total PAFs. Lastly, it is stated that NHDC has already prepared action-plan for safety of the people affected by any flood situation. It is stated that even if the water level reaches 258.62 meters, the back water effect thereof will not affect any of the 91 villages

3. NHDC has also fifed the affidavits of its General Manager and the Chief Engineer about the detailed back water effect study. According to them, the maximum level on account of back water effect at a continuous flow of 43,782 cumecs estimated with reference to a water level of 258.62 meters at Dam Site, would vary from 258.62 m. (at dam site) to 264.87 m. (at farther reaches). It is submitted that hardly three villages (Fategadh, Pachola and Neemkheda mal) will be affected at such levels. They have also submitted that it is not necessary to examine the matter with reference to peak flood level of 82000 cumecs, as it is unlikely to be reached. It is submitted if the flood level reaches 82000 cumecs, the adverse effect thereof would be the same whether there was a dam or not.

4. The petitioner has filed a reply wherein they have painted a grim picture. According to the petitioner, if the Gates installed in the Indira Sagar Dam are closed thereby raising the water level to maximum of 262.13 m, more than 5000 families will come under submergence as detailed below:

Sl. No.	Description of category	Numbers of families.
1.	Houses acquired at FRL.	Atleast 800 families from 5 villages. Many more other villages.
2.	Families likely to lose 10,000 ha. of sown agricultural lands.	Around 5000 landholder families and around twice this number of adult sons and unmarried adult daughters entitled to land.
3.	Freshly found in rectified FRL surveys.	Thousands of families in at least 18 villages.
4.	Left out houses mentioned in Gazette.	540 houses or more than 1000 families.
5.	Exclusion of families as per Gazette and NHDC chart.	1415 families.
6.	Between FRL and BWL	Thousands of families, SSP that has half the impoundment has 12,000 families as per SC order of 2000.
7.	Arbitrarily excluded families.	Thousands of families.

The petitioner has also stated that the R&R measures are far from completion. It is pointed out that the R&R measure of grant of land of 2 hectares per displaced family has not been extended to any of the displaced families so far, including those who have not received the Special Rehabilitation Grant in lieu of such land. It is further pointed out that the very fact that a sum of about Rs.28 crores was paid between 27.7.2005 and 10.8.2005 itself shows that the payments due to the PAFs (which ought to have been paid at least six months before the date by which they are required to vacate the villages), is belatedly paid and furnishes positive proof of the breach of the terms of the R&R policy by NHDC. They also allege that the claim of the NHDC that hardly a sum of Rs. 5.5 crores is due to the PAFs, is totally erroneous. According to them, the majority amount is still to be paid. They reiterate that unless all the R&R measures are executed and six months time is given submergence should not be permitted.

5. It is very difficult for us to decide the actual and exact number of families still residing in the 91 villages. What is certain is that the number of families continuing to stay in those villages is neither as low as 331 families as alleged by the NHDC, nor as high as 5000 families (or more) as alleged by the petitioner. The truth may lie somewhere in between. But the fact that the number is large can be inferred from the quantum of amount now being distributed by NHDC with reference to the total number families in the 91 villages. Be that as it may.

6. One another aspect that should be noticed with concern is that the NHDC has issued a preliminary notification as late as 30.4.2005 under the Land Acquisition Act for further acquisition of some more areas which is likely be submerged or subjected to island formation, at FRL. There is a clear possibility of some

villages earmarked for partial submergence may come under full submergence. Evidently, the survey that has been done by the NHDC in regard to area of submergence on account of back water effect, if the water level is permitted to be increased up to the FRL of 262.13 m, is incomplete and inaccurate. This is evident from the figures given by NHDC vis-a-vis the figure given by the Central Water Commission. We are also concerned that the NCA is not monitoring the survey relating to submergence and that the R&R Sub-Group of NCA is not involved in monitoring the R&R measures implemented by NHDC.

7. The facts and figures clearly show that the rehabilitation and resettlement measures are still going on. Huge amounts are still to be disbursed. The compliance is nowhere near what the Narmada Award and the Supreme Court expect before submergence. The PAFs should be extended all R&R benefits at least six month before the date when they are required to vacate. In this case, the R&R benefits are still being distributed. In the circumstances, we are of the view that it is neither legally permissible nor technically or logistically safe to permit the NHDC to increase the water level straight away up the FRL of 262.13 m. from the level of 245.13 M.

8. On the other hand, if the NHDC is not permitted to increase the water level at all, it will result in enormous financial loss to the NHDC apart from reduction in the production additional electrical energy to the detriment of the populace of M.P. State.

9. On balancing the effect of the non-compliance of the R&R requirements by the NHDC on one hand, with the hardship that is likely to be caused to the State and the citizens of the State on the other, we are of the view that interests of justice would be served if the NHDC is permitted to raise the water level of Indira Sagar Dam up to 255 meters during this year. We are informed by NHDC that, at this level, there wil1 be no submergence of any of the 91 villages mentioned in the impugned notification dated 31.12.2004, even taking into account the back water affect. NHDC should however continue to implement the R&R measures on a war-footing to ensure that the R&R benefits are paid to the PAFs/oustees at least by end of this year (31.12.2005) so that they will have clear six months as breathing time for resettlement before the on-set of next monsoon from 1.7.2006. This period (upto 1.7.2006) is also required by the NHDC to assess the effect of increase of water level up to 255 meters at the dam site and the cooresponding back water affect and to have a fuller and proper survey of the back water effect of further increasing the level up to 262.16 M.(FRL). This will also give adequate time to the Grievance Redressal Authority for Indira Sagar Project to process all complaints and grievances in regard to non-grant of R&R benefits and take remedial steps.

10. In the circumstances, we issue the following further interim directions in modification of the directions contained in our order dated 27.7.2005:

(i) NHDC is permitted to raise the water level of Indira Sagar Dam up to 255 meters (two hundred and fifty five meters) and not beyond, to ensure that there is no submergence of the 91 villages mentioned in the notification dated 31.12.2004 during this monsoon (2005-2006).

(ii) NHDC is directed to complete all R&.R measures in regards to PAFs/oustees of the 91 villages on or before 31.12.2005 and issue a fresh notification requiring the existing residents to vacate before the on set of next monsoon (1.7.2006).

(iii) No coercive steps shall be taken to evict the existing occupants of the 91 villages. It is made clear that this order will not entitle those who have already left the 91 villages or those who have received the Special Compensation Allowance of Rs.21,000/- to come back. It is also made clear that those families which continue to stay in the villages and have not already vacated, will not be entitled to the special compensation allowance of Rs.21,000/- as it is meant for on those who have been ousted without adequate notice.

(iv) The Grievance Redressal Authority for Indira Sagar Project is directed to hold regular sittings at least once a week at Indira Sagar to receive, consider and dispose of the complaints and grievances of the PAFs and to ensure that by the end of this year, the R&R benefits are fully extended to all Project Affected Families/oustees.

(v) NCA (R&R Sub-Group) is also directed to involve itself in the monitoring of the R&R measures by NHDC to the PAFs/oustees of the 91 villages.

(vi) Nothing stated in our order dated 27.7.2005 and this order shall be construed as a final decision on the quantum of R&R entitlements of the PAFs.

THE FINAL FACTUAL SCENARIO AND THE CONTROVERSIES INVOLVED.

15. The Narmada Hydro-Development Corporation (NHDC) is a joint venture company of National Hydro-Power Corporation (NHPC) and the Government of Madhya Pradesh. The said joint venture came into being under the Memorandum of Understanding dated 16.5.2000 to execute Indira Sagar Project. The respondents 3 and 4 are the authorities under the State Government and agency of Government of Madhya Pradesh which were executing the project before its transfer to the NHDC in August, 2000. The respondent No. 5, the Narmada Control Authority is an inter-State administrative authority agency set up under the final orders and decision of the Narmada Water Disputes Tribunal Award (NWDTA) of 1979 for the purpose of securing compliance and implementation of the decision and directions of the Tribunal. On 13.6.1987 the Ministry of Water Resources issued a Gazette Notification wherein it was stated that it had been decided to enlarge the role and strengthen the composition of the Narmada Control Authority and the review committee. The role of the authority stipulated in the notification was mainly to see over all coordination and directions of the implementation of all the projects including the engineering works, the environmental protection measures, the rehabilitation programmes and to ensure the faithful compliance of the terms and conditions stipulated by the Central Government at the time of clearance of the projects. The control authority, as pleaded, is under obligation to see that environmental safeguard measures are followed in letter and spirit by the authorities of the Indira Sagar Project. That apart the said authority is also required to see that rehabilitation are planned am implemented *pari passu* with the progress of work on the project. The respondent No.6, the Central Water Commissior of India was entrusted with the task of working out the backwater levels at the highest flood levels by the Narmada Water Disputes Tribunal, in consultation with the State Government in order to identify the houses that needed to be compulsorily acquired at the backwater level of the Maximum Water Level of the dam. An assertion has been made that the Government of MP had been entrusted by the Union Ministry of Water Resources with the work of completing the detailed survey of population likely to be affected in all phases of Narmada Sagar Project in three years from October, 1986, The Union Ministry of Environment and Forests gave the environmental clearance to the Indira Sagar Project on 24.6.1987. The Planning Commission, Government of India granted a conditional investment approval to the Indira Sagar Project on 6.9.1989 giving emphasis on environmental clearance and working out of rehabilitation and resettlement plan. It is urged that the Planning Commission, Union Ministry of Power and Union Ministry of Social Justice and Empowerment were collectively entrusted with the work of monitoring the progress of the rehabilitation and resettlement programme of the oustees of Indira Sagar Project. It is asseverated that rehabilitation and resettlement had to precede the submergence but the authorities without making provisions for rehabilitation and resettlement in respect of villagers residing in 91 villagers bent upon raising the water level up to the full capacity and thereby creating an escalation of the backwater level during Monsoon.

16. According to the writ petitioner the State has issued a notification dated 31.12,2004, Annexure P-8 requiring the villagers of 91 villages as the names find mention in the notification to vacate the houses and land by 30.4.2005. Reference has been made to the decision rendered in the case of Narmada Bachao Andolan Vs. Union of India and Others, (2005) 4 SCC 32 to highlight that there cannot be submergence without rehabilitation in entirety. It is put forth that all entitlements should be given one year before the submergence. The rehabilitation and resettlement envisage grant of land, plots for construction of houses, compensation for properties and other amenities, but without adhering to the same efforts have been made to evacuate the people from 91 villages. Criticism has been advanced that the District Administration was bent upon in vacating the people from the area by applying force without complying the requirement of rehabilitation. It is urged that the height of the water level will give rise to the backwater level and, therefore, rehabilitation and resettlement have to be provided even to those villagers who run the risk of submergence of their houses due to raising of water level. An extract of the report on 'Environment Management of Indira Sagar Project' showing backwater levels of village Joga Fort, District Dewas has been brought on record. It is set forth that rise in water level and its backwater effect is required to be computed by the Central Water Commission in consultation with the State Government. It has been pleaded that there has been no consultation and no monitoring but endeavour is being made to raise the height of water level which would seriously affect the villagers of 91 villages. The grievance has been made that villagers of 91 villages cannot forcibly be evicted without providing land, plots and other amenities as per the rehabilitation and resettlement policy. Certain examples have been given how the State officials have taken the law unto their own hands and emergent steps are taken to evict the persons without providing basic amenities. It is put forth that the directions issued by NWDTA would apply in equal force to the present project, namely Indira Sagar Project and thereby what has been said by the Apex court in the judgment relating to Sardar Sarovar Dam would apply mutatis mutandis to

Indira Sagar Project. It has also been highlighted that both the projects have been dealt with in singular compartment and any kind of segregation in any sphere is impermissible. Indira Sagar Project is a full reservoir of level of 262.13 metres and maximum water level of 263.35 metres. After completion the project would have an installed capacity of 1000 MW of power but firm power based on actual hydrological flows would be 223.5. Indira Sagar Project reached the crest of 245 metres in the Monsoon of 2004 and after the crest level was achieved, the remaining is to put in the twenty 17 metres high spillway gates. If these gates remain open the water level can be maintained at 245 metres. It is put forth that in the monsoon of 2005 due to the increase of the dam from 245 metres to 262 metres additional 62,400 heactare of land would be affected. It is contended in the writ petition that steps were being taken to raise the water level as a consequence of which 130 villages would be submerged if the gates are closed and reservoir is filled to the FRL. It has also been alleged that there is eminent threat of submergence of land thousands of people without land acquisition which tantamounts to violation of the conditions of environmental clearance and decision of the NWDTA and also the provisions of rehabilitation policy of the State and conditions of the Memorandum of Understanding executed between the Government of MP and the National Hydro-Power Corporation. It is putforth that fundamental principle is that rehabilitation and grant of other benefits have to precede submergence but the same has not been done. Reference has been made to MOU to highlight the role of joint venture. It is also the case of the petitions that the directions issued by NWDTA have to be followed as regards the Indira Sagar Project and that would attract the applicability of NWDTA to the rehabilitation and resettlement of the oustees before submergence. Various references have been made to rehabilitation obligation of the State Government. There is reference to orders passed by the Apex Court from time to time which relate to rehabilitation raising of height of the dam, applicability of principle of *pari passu*, the entitlement of the oustees, conditions of environment clearance, conditions of the Planning Commission, rehabilitation conditions of Narmada Valley Development Department of Government of MP and the entire financial responsibility and ground reality agenda of the NCA, submergence of 38 villages, loss of 6999 houses due to submergence caused by Indira Sagar Project, eviction and displacement of persons by applying force, the threats of the authorities and possible action of the force and submergence of villages in the Monsoon, 2004.

15 (*sic*). Status of rehabilitation and resettlement of 91 villages likely to be submerged in Monsoon, 2005 has been given in a Tabular Form in the writ petition. It is contended for house plots out of 4869 eligible families, 189 plots have been allotted till 15.4.2005 which is 3% of the achievement rate. Even the said families spread over in three sites do not have access to the most basic facilities such as potable water sources. It is urged that as the authorities had not provided entitlement of lands, house piots and compensation by 30.6.2004 in 90 villages out of 91 villages to be submerged by 30.6.2005 prior to closing the gates of the Indira 5agar Dam whereby the height of water is raised by 17 mtrs,. Which would cause submergence of said 91 villages and the same is impermissible. It is pleaded that by 31.12,2004, only six months prior to 30.6.2004 compensation had not been paid to the oustees of 73 out of 90 villages losing their agricultural land and house plots on 'lagani' lands. The compensation had not been paid to the oustees of 18 out of 21 villages who were losing their houses built on 'abadi' lands. The amount of compensation that has been paid is seriously criticized being low and meager. No cultivable agricultural land with irrigation facilities had been offered till date for the purpose of rehabilitation to a single adult son or adult unmarried daughter of the land owning oustee family as required by the rehabilitation policy and the Narmada water Disputes Tribunal Award and resettlement sites have not yet been developed with full civic amenities as required under the policy. No cash compensation has been given to the oustee families which are entitled to get cash compensation in lieu house plots by 31.12.2004 to purchase new house plots. The encroachers who have been cultivating land prior to 13.4.1987 eligible for land allotment and compensation living in these 91 villages have not been given agricultural land which is the mandate of the rehabilitation policy.

16 (*sic*). The Special Rehabilitation Grant given to the land holders as a substitute for government allotment of irrigated and cultivable land had not been given to the hundreds of families. The Special Rehabilitation Grant have not been computed at the rates of irrigated land or for a minimum extent of 2 hectares as has been done under the rehabilitation policy. Various facts have been mentioned how the rehabilitation had not been compIeted in all aspects before the steps were taken for submergence. A report of the GRA has been referred to which relates to Harsud town. Reports of NCA has been laid emphasis upon to highlight the progress of rehabilitation work required to be expedited keeping in view the fact that the dam blocks been raised to RL 245.13 mtrs. and 79% rehabilitation remained to be completed. A grievance has been urged that the authorities have paved the path of callousness to create huge man made tragedy by closing the gates of the dam impounding the waters and submerging 130 villages without first rehabilitating the villagers with the land, house and compensation. It is put forth that some of the families of three villages, namely, Barkhalia, Bijipur Mafi and Sindkheda have neither received resettlement along with civic amenities, nor they have received cash in lieu of land to purchase such plots. It is the case of the

petitioner that the rehabilitation has been belated as a consequence of which it has become difficult for the oustee families to purchase land which has further led to large farmers to buy small piece of land and small farmers to join the army of unemployed labourers. Even for those who wish to purchase lands, the waiver of stamp duty provided in the policy has not been made available, owing to non payment outstanding sum of Rs.4 crores by NHDC by the registrant authorities.

18. Pyramiding the pleadings with regard to submergence without acquisition it is setforth that Full Reservoir Level of Indira Sagar Project is 262.13 mtrs, and maximum water level is 263.35 mtrs. A survey had been conducted in the early part of 2005 by the authorities which shows that 37 villages are affected upto the MWL. These families were informally informed by the surveyors that the authorities intend to acquire their houses as they fail within the submergence zone. But the survey was only done to the maximum water level without making the survey upto the backwater of MWL which would be much higher. The list of families which were photographed by the authorities have been enclosed for four villages. But all the houses on agricultural lands that fall within that extra 1.5 mtrs were not brought under the singular compartment. The inaction of the authorities even to identify the houses falling between the MWL and back water level have been commented upon. Reference has been made to sub clause II of Clause XI of the final order and the decision of the Narmada Water Disputes Tribunal with regard to acquisition policy. The land which are required to be compulsorily acquired have been led emphasis upon. It is the case of the petitioner that distinction cannot be made in respect of the persons who have been permanently affected and the people who are temporarily affected by the submergence.

19. It is canvassed that in August, 2004 nearly 200 hectares of land and 200 houses were submerged in 20 villages in Khandwa, Dewas and Harda districts by the back water of reservoir and none of those 20 villages were slated for submerged in 2004, nor their lands have been acquired. Reference has been made in respect of village Mahendgaon in the district of Harda which has not been identified to have been submerged when the dam height had come upto 245 mtrs. It is asseverated that when the water reached only 10000 MCF level, the field and 70% of the houses of the villages, namely, Tipras, Fategarh, Narayanpur and Khapras, began to be submerged. Reference has been made to the report of the Grievance Redressal Committee made at the direction of the court in W.P.No.2211/ 2004 to show that the people are apprehensive about the accuracy of survey levels of submergence. It is urged that some of the villages, Dantha, Dang, Nandana Mathani, Phefaria Kala, Bediav, etc which were suppose to come under submergence at the 262.13 mtrs. got flooded at the level of 252 mtrs. and as a precautionary measure the villages were evacuated.

20. It is the further case of the petitioner that the submergence zone that indicated large number of families have earlier been identified to be affected by the submergence, have been left of the acquisition and compensation process. A reference has been made to the report of the Narmada Valley Development Authority entitling "Note on Rehabilitation and Resettlement" which mentions that every PAF has been given submergence card containing information and regarding land and property under submergence. The people who have been given such cards earlier, their lands are not being acquired and 52 of such families from village Nandana have claimed to have received such card from the authority earlier but now they have been excluded from the acquisition process. The above exclusion indicates huge discrepancies in the identification of acquisition of process. The consequence of such exclusion by not acquiring lands at the backwater of MWL or erroneous survey is likely to usher disaster and death for thousands of people who are caught unaware by submergence.

21. The rehabilitation policy of the State Government though envisages that all oustees whose lands and livelihoods are affected would be offered relocation and resettlement and their previous standard of living would improve within reasonable time, yet NHDC in pursuit of its corporate self interest of profits has minimized, eroded and whittled down the entitlement of the affected persons. The envisagement in the policy for protection and special care of the families of scheduled castes, scheduled tribes, marginal farmers and small farmers have been given a total go by and those categories of people have been compelled to pave the path of pauperization.

22. It is the stand of the petitioner that the State Government and the Project Authorities have the obligation to provide oustees families losing more than 25% of their lands with irrigated agricultural lands of equal measure with minimum entitlement of 5 acres of land. The same is also reflected in the forest clearance and the approval of the Planning Commission but the authorities of Indira Sagar Project have become oblivious to the same and completely failed to provide singular oustee family with land. While referring to the forest clearance of the Ministry of Environment and Forest given on 7.10.1987 and the clearance of the Planning Ministry on 6.9.1989 and the land available for rehabilitation of the oustees it is asseverated that 44,772 hectares of land is available as is evincible from R&R Action Plan of Narmada Sagar Project contained in Annexure P-33.

23. It is contended that despite identification of 44,000 hectares of available agricultural land in the Rehabilitation Plan, the State Government did not offer any single oustee family agricultural land and oustees were compelled to accept the cash compensation and mechanisms like "Sauda Chitt" has been set up so that the requirements of the land provision are somehow fulfilled. Reference has been made to the report of Director (Rehabilitation) Narmada Control Authority to highlight that the oustees neither were informed about the land for land package nor was land being offered to any of the oustees as should be done under the rehabilitation policy. By taking recourse to grant of compensation in cash and not adverting to make efforts to give land for land after replacement the Government has abdicated its obligation towards the small and marginal farmers as well as tribals and dalits and put them on the road to pauperization. Additionally, it is contended that the grant of compensation is so meagre that it is impossible on the part of the oustees to buy land for land. Reference has been made to Clause 2.2 of the Rehabilitation Policy which requires determination of compensation for agricultural land and village abadi plots proposed for acquisition for the project, price of land in the nearby command area will be taken as the basis but the whole exercise seemed to keep the land prices low, rather than give the oustees compensation at the rates that would allow them to buy irrigated lands of equal measure elsewhere. It is contended that the farmers owning irrigated land have been compensated at the rates of unirrigated lands and there has been inadequacy with regard to compensation. It is putforth that survey conducted by the petitioner for nine settlement areas, (seven sites settled by the government and two sites settled by the affected oustees themselves) show that the families who owned land were unable to replace their resources with the cash compensation that they received. Criticism has been advanced with regard to workability of the policy by highlighting how the oustee have not been offered the choice of land and the adult sons have not been considered for grant of benefits as independent units.

24. The special rehabilitation grant which has been introduced by the State of Madhya Pradesh on 15.5.2000 by way of policy has been seriously criticized as it is founded on rates for irrigated/un-irrigated land on the iand registry rates in the same Tahsil or land registry rates in Harda command for the year prior to the year of Section 4 notification of that village which ever is higher, but the same has been followed more in breach than in compliance. It is also putforth that computation of special Rehabilitation package is given on the lower rate than that has been stipulated in the rehabilitation policy in as much as it is not computed in accordance with the concept of parity which was to be land for land. Thus, in a way two aspects have been highlighted, namely, that the policy is not acceptable and further the policy has not been complied with the letter and spirit. It is contended that Special Rehabilitation grant used for villages such as Jhagadia and Bhawarli submerged in the 2004 monsoon were Rs.37,197/- for un-irrigated lands and Rs.52,605/- for irrigated lands whereas the current rates of unirrigated land in the district is around Rs.l lac per acre and that of the irrigated land of the same measure is Rs.l.25 to 1.5 lacs per acre. Certain registered documents have been filed to show the difference of amount. It is pleaded that there has been deliberate manipulation by the State Government to ensure that the only lowest registries are selected which are for lands either outside the command area or at the very tail end so that the Project authorities have to pay minimum SRG amounts.

25. It Is also the case of the petitioner that there is total lack of transparency on the part of the State Government in the grant of Special Rehabilitation and about the process of fixing of the land rates and there is total arbitrariness. It is also putforth that the encroachers are not provided land or compensation and the encroachers who have been sitting the the area have not been identified who would be affected by the submergence. It is setforth that the Project Authority have not acquired full land holding for oustees who are losing more than 75% of land under submergence despite many requests. There is violation of rehabilitation policy. Certain examples have been given with regard to village Malud which is losing 88% of their agricultural land. It is also contended because of submergence of land the people would be without means of livelihood. The houses of 863 families have not been acquired but most of their lands have been acquired and submerged. Reference has been given to rehabilitation of Malud village. It is the stand in the petition that the State and the Project Authority have miserably failed to provide resettlement by provision of house-plots and amenities as required under NWTA and the rehabilitation policy. Reference has been made to certain documents to show that 58 villages are lossing their homes and though certain villagers are asking unequivocally for resettlement site the same has not been paid proper attention to. It is contended that families in villages Dang and Nandana have asked for settlement but the authorities responded by stating they could only get resettlement in Dewas district not close to their village and lands. The authorities have demarcated 65 plots out of which 54 plots have been allotted in the resettlement site for village Barkhalia-Mahaputra where 548 families are losing their houses in the villages. There are two handpumps and people have been building their houses and living there with purchased water. There is no electricity or school and other facilities. 108 plots have been distributed in Bijora Mafi settlement site but the amenities are not adequate. Similarly grievance has been made with regard sites at villages Sindkheda and Dagadkhedi. It is also putforth that villagers of Piplani,

Bandria and Brahmogaon are still without resettlement although more than a year has elapsed since the monsoon of 2004. It is further contended that even where settlement sites have been build such as in village Bhawarli, 70 families are still left to receive house plots and many families are yet to receive compensation.

26. A grievance has been putforth that compensation for house are not given keeping in view the drive at resettlement area. That apart, persons who are entitled to get benefit have been excluded from the displaced family lands. It is contended that proper definition has not been placed in respect of displaced families and the persons who have lost their farm lands due to submergence have not been counted in the category of displaced families which has violative of State Government Rehabilitation Policy for the oustees of IV project. Emphasis has been put on the fact that it is in the category of displaced family the families who are losing farmland due to submergence and the adult sons of these families will be treated as separate families. It is contended that the State Government on 31.12.2004 has listed several villages where substantial farmland are coming under submergence such as Bori Bandari (220.16 hectares), Gulgaon (175.32 hectares), Junapani (177.88 hectares) in Khandwa district and Unwa (209.88 hectares), Khardana (164.18 hectares) in Harda district but not even a single family in these villages is being counted as ''displaced family".

27. Emphasis has been laid on the said omissions and how certain families are totally kept out of consideration in various villages, namely, Dang, Dantha, Pamakhedi, etc. it is also urged that there is arbitrary exclusion of houses and lands from acquisition. Various reasons have been ascribed for the colossal failure of rehabilitation and resettlement and how maximization of Corporation's interest has led to deprivation of the poor persons who are affected by such submergence. It is also the stand that the awards passed under the Land Acquisition Act are totally illegal and passed by the persons who are absolutely biased and judges of their owu cause and the same required to be declared as nullities.

28. Serious criticism has been advanced with regard to abdication of responsibility of monitoring by the authorities which tantamount to willful and criminal negligence. It is contended that Indira Sagar Project was cleared on strict conditions of monitoring and in that regard decision of the Apex Court in the case of first Narmada Bachao Andolan (supra) has been referred to. The role of NCA has been highlighted on the basis of the clearance issued by the various authorities. The report of rehabilitation and resettlement of displaced persons in Madhya Pradesh, Indira Sagar Project by the Narmada Control Authority in March, 1998, Annexure P-34, has also been referred to show that how the interest of the oustees have been affected being not given full R&.R Package. It is proponed that though the policy initially provided that there should be land for land, the same has been given a go by and PAF's have been given cash compensation. It is contended that the State of Madhya Pradesh has blocked the monitoring by the NCA field visits as the Chief Secretary of State of M.P. communicated to the Secretary, Ministry of Water Resources stating separate R&R sub-group and monitoring of ISP R&R was unnecessary. Reference has been made to the Memorandum of Understanding dated 16.5.2000. Various communications have been referred to highlight the statements made by the State of Madhya Pradesh that it has no objection in furnishing regular progress report to the NCA but it had objection R&R sub-group extending its jurisdiction to cover Indira Sagar Project. It is urged that union of India has not appreciated the role of NCA and has supported the stand of the State Government. How displacement has taken place in the haste manner in the monsoon of 2004 has been stated in detail putting forth a stand with regard to lack of co-ordination of Union of India, State of Madhya Pradesh and marginalised role of NCA. It is also putfoth that status report released on Environment Management in December, 2004 by the NCA on the eve of completion of project stipulates that Secretary, Ministry of Environment and Forest has expressed the information that the R&R aspects in respect of Indira Sagar Project should be monitored by sub-group of NCA. The said status report on environment management has been brought on record as Annexure P-65.

RELIEF SOUGHT

29. In the aforesaid bedrock the petitioner has prayed for various reliefs which are: not to sever the life supplies; striking down of notification dated 31.12.2004; stoppage of construction of Indira Sagar Project and maintaining of water level of Dam at 245 meters; monitoring the rehabilitation by Narmada Control Authority and it sub groups; direction to the State of M.P. to publish a list of villages affected by backwater of MWL; completion of land acquisition of all house affected by MWL, issue of direction to NHDC to disclose the names of project affected families of Indira Sagar Project, issuance of a direction to the respondents to disclose all periodical progress reports and other reports; issue of a command for providing direct irrigated agricultural land to the eligible oustees' families Including encroachers adult sons and adult unmarried daughters; order for recomputation

of SRG of irrigate land; issue of direction to NHDC not to release the families using their agricultural land or houses in the Indira Sagar Project in the list of displaced families; to direct the NHDC to acquire full land holding in cases where 75% of the land of an oustee is to come under submergence; to command the respondents to include the list of encroachers contributing on the encroached Govt. land prior to 1987, order the NHDC to compensate houses and property at replacement rates; direct the NHDC to allot house-plot and construct resettlement sites for all villages eligible for resettlement with full civil amenities; to quash all the land acquisition proceedings and to pass fresh awards by the competent authorities; and further to take appropriate action against the erring officers.

RETURN ON BEHALF OF RESPONDENT NO. 1, NHDC

30. A return has been filed by the respondent no.l, National Hydro Electric Development Corporation Ltd., (hereinafter referred to as 'Corporation') combatting the prayers on the ground the Writ Petition has been filed at the belated stage with oblique and ulterior motive to any how stagnate one of the most fruitful hydroelectric project in the state of M.P. The reliefs sought by the petitioner are criticized on the ground of delay and laches. Reference has been made to the orders passed in Writ Petitions No.2506/01 and 3436/01 which were preferred seeking similar reliefs and this court had disposed of the said petitions on the basis of the undertaking given on behalf of the Govt. of M.P. and hence, the present writ petition is hit by the doctrine of res judicata. It is contended that there is no forcible eviction or razing of housed either by respondent No.l or by the respondent No.3. At no point of time the live supplies like drinking water and electricity were severed by the answering respondent. The acquisition, resettlement and rehabilitation of 91 villages for which the notification was issued on 31.12.2004 is substantially complete. Indira Sagar Dam is complete and twenty gates have been installed. It is contended that Water level of the dam has been raised to the level of 255 mtrs as per the interim order of this court. By order dated 17.8.2005 this court directed the Narmada Control Authority to involve itself in the monitoring of resettlement and rehabilitation measures in respect of the oustees of ninety one villages in question. The list of affected families is available and it has been made public. A decision has been taken to acquire the houses affected by the backwater of MWL. In compliance of the interim order dated 1.7.2005 the relief has been granted to them. As per the interim direction of this court, three status reports and affidavits of its officials from time to time reporting the periodical progress and compliance report have been filed. A progress of R&R of Indira Sagar Project has been submitted to this court from time to time. It is contended that the oustees have preferred cash compensation in lieu of land and therefore, the petitioner is not entitled for a direction to provide agricultural land to the eligible oustees. The special relief grant has already been computed properly on the basis of the rates of category of land holding of the oustees. The respondents have already included the families loosing their agricultural lands or houses in the list of displaced persons as awardees and have provided them with all entitlements. A stand has been taken that the respondent is fully committed to comply with clause 2.3 of the rehabilitation policy but, however, in certain cases where the oustees have shown their unwillingness, their balance of 25% or less land holdings have not been acquired. The encroachers of Govt. land continuing in possession before 1987 have been treated at par with the oustees. The compensation towards houses and properties have been provided as per the rehabilitation policy. The respondents have already constructed number of resettlement sites with full civic amenities and developed more than sufficient number of plots and many of them are still lying vacant. Criticizing the prayer for quashing of all the acquisition proceeding and ordering for fresh award it is commended that the said relief cannot be granted as the entire acquisition in respect of 91 village in question is complete and the same has been done as per law by the competent authorities. It is putforth that if the awardees are not the land owners can seek reference u/s 18 of the Act for grant of enhanced compensation.

31. It is the stand in the return that the dam site, submergence area and command area being situated with the State of Madhya Pradesh, the Narmada Water Disputes Tribunal Award would not get attracted to the Indira Sagar Project. It is contended that till Monsoon of 2004, 120 villages were acquired and till Monsoon, 2005 91 villages in question were acquired. After acquisition of the land in the said villages resettlement and rehabilitation was carried out by the answering respondent. The rehabilitation and resettlement has been done as per the rehabilitation policy framed by the Government of Madhya Pradesh for Indira Sagar Project. The villagers were informed that they would be entitled to use their respective properties situated within the affected area till 30th April, 2005. No coercive measures were taken as alleged by the petitioner and there was no illegal eviction. The assertion that the award of the Narmada Water Disputes Tribunal is attracted to Indira Sagar Project has been disputed interpreting the Memorandum of Understanding. The oustees have voluntarily vacated to move to their new places of dwelling after receiving the compensation and various grants. The status of some persons belonging to 91 villages

have been disputed. It is also controverted that no life supplies like drinking water or electricity were disconnected. The schools were closed in some villages after the said villages became deserted and its inhabitants settled at new places. The oustees of 91 villages in question were timely allotted plots on demand at the four resettlement sites exclusively developed for 91 villages by the answering respondent and allotment was also done on other rehabilitation sites developed for 120 villages. In cases of private rehabilitation sites, namely, Kankarda, 105 plots were developed by the answering respondent. Reference has been made to the intereim orders passed by this Court wherein permission was granted to fill up Indira Sagar Project upto 255 mtrs. As regards the command for providing more time is concerned the same is no more the cavil as the special compensatory allowance at the rate of Rs.3,500/- per month and Rs.21,000/- in toto for six months have been given to the oustees of 91 villages, forming the subject matter of notification dated 31.12.2004. The allegation that vacant 'abadi' plots have not been compensated and compensation for houses have been made at the depreciated rate is disputed. It is pleaded that small number of oustees chose to have plots whereas majority of them chose to have cash compensation in lieu of their plots because they found it more beneficial. It is because most of the oustees living in these 58 villages moved out to construct their hosue on their own agricultural lands. For the purpose of payment of compensation the encroachers have been treated as land owners according to Clause 2.1 of the rehabilitation policy. It is averred that the decision of the Apex Court shall be followed for the purpose of deciding the status of encroachers on the forest land. The Special Rehabilitation Grant (SRG) was computed properly on the basis of the rates of category of lands held by the oustees. The method of calculation reads as under;-

> "SRG = Cost on per acre basis + solatium @ 30% of this cost – land award*
>
> * Land award includes award of agricultural land calculated on the basis of rates approved per rupee land tariff/Bhumi Lagan, Solatium @ 30% of Land cost and additional amount @ 12% on land cost calculated for a period from date of notification under Section 4 uptill the date of submission of award."

32. Commenting on the villages Bandariya and Piplani it is contended that though they are not in the list of 91 villages yet they have been provided developed resettlement site in accordance with the Rehabilitation Policy and after the oustees of village Piplani were settled as cluster on private site, the answering respondent has made available the adequate civic and other amenities at the said sites. It is the further stand that 36 plots are in process of development in the resettlement site of Piplani. As far as Bandriya village is concerned none of the oustee has demanded plot at any resettlement site. It is putforth that since in some cases awards could not be passed utpo 31.12.2004, the Special Compensatory Allowance of Rs.21,000/- was paid to all oustees. It is the stand of the respondents that at certain places the oustees have not opted for plot and demanded cash grant and in some cases the oustees have after receipt of the cash grant had refunded the same to the answering respondent for having plots at the resettlement sites. Mostly the oustees have chosen to receive cash grant because they already have agricultural land near to their respective villages and where they desire to construct their house. A chart has been brought on record as Annexure-R-6.

33. Commenting on payment of stamp duty it is contended that the same has been clarified and the said grievance really does not subsist. The answering respondent has taken steps to help the oustees to submit their income tax return at its cost to get the refunds as the amount was deducted under Section 194 LA of the Income Tax Act. It is asserted that out of total oustees approximating 39178, 584 have been subjected to income tax deduction and proper care is taken to see that the amount is refunded. Reference has been made to GRA report dated 04.11,2004 to highlight that GRA had shown satisfaction over the resettlement and rehabilitation. Emphasis has been laid on the fact that the gazette notification dated 31.12.2004 pertains to 91 villages and not for 131 villages and the said notification only required the oustees to use their property till 30.4.2005. It is the stand in the counter affidavit that at one point of time there was a direction to suspend the acquisition of land between FRL and MWL as priority was given to the acquisition of land and other properties up till FRL but it was never contemplated or directed that the properties upto MWL could not be acquired. The acquisition of the properties has been done as per the Detailed Project Report (DPR) of Indira Sagar Project. It is also setforth that in near future the acquisition of the houses and properties that may be affected between FRL and MWL would be done by the Government of Madhya Pradesh. Commenting on submergence of Mahendgao village without acquisition and grant of resettlement and rehabilitation, it is contended that the said village would be submerged when the water level would increase upto 261.88 mtrs. and not before. The said village has been acquired and vacated. As regards village Kanerkheda is concerned it is stated that inhabitants were taken to safe place under contingency plan and a sum of Rs.5,000/- was provided per oustee and later on the properties of the said villagers were acquired and compensation thereof has been fully paid to the displaced families. It is also contended that on raising of water level upto 255 meters none

of the villages, namely, Dantha, Dang, Nandana, Mathani, Bediyaon have been submerged. Comments have been given on GRA report with regard to submergence of villages by giving data which is as under:-

"Dantha	-	261.87 meters
Dang	-	261.26 meters
Nandana	-	260.62 meters
Mathani	-	261.15 meters
Bediyaon	-	(Not in the list of 91 villages)"

34. It is put forth in the return that special care has been taken in the policy itself to the families belonging to scheduled castes, scheduled tribes. Reference has been given to clause 6.1 of the policy that a farmers belonging to SC/ST are paid Rs.18,700/- as Rehabilitation Grant whereas the other categories of farmers are paid Rs.9,350/-. Reference has been made to clause 9.1 of the Rehabilitation Policy to highlight that landless SC/ST oustees are paid Rs.49,300/- as grant for purchasing employment oriented assets whereas the other category of landless, oustees (except agricultural labourers) are paid Rs.33,150/-. As per clause 7.2 of the said policy the rural oustee family would be getting additional grant apart from other grant so that he may be able to make arrangement for a house under Indira Awas Yogna. Clause 7.3 provides that Rural Oustee families living on rental basis would also be entitled to for grant in order to make arrangement for their house under the Indira Awas Yojna. It is asseverated that the provisions made in the rehabilitation policy for the SC/ST category, marginalized farmers and small farmers have been complied with in entirety. It is stated that most of the oustees preferred to have SRG in lieu of land. The question of offering land for land did not arise prior to filing of the present petition as till then the oustee instead of opting for land preferred to accept cash compensation and SRG. It is contended that as per the rehabilitation policy in order to provide land for land to the entitled oustees the answering respondent had invited offers from land owners who are willing to sale their agricultural lands and in response to the advertisement as many as 36 land owners submitted their offers for sale of approximately 912 acres of agricultural land situated mostly in Khandwa district and the neighbouring Khargone district. Since none of the entitled oustees exercised option seeking land for land and preferred to have cash compensation, no further steps were taken towards enhancement of the land bank. A chart showing details of the land arranged by the answering respondent has been brought on record as Annexure R/9. It is submitted that small farmers have been adequately compensated by way of SRG and other grants provided in the rehabilitation policy. Comments have been given with regard to price fixation under the land Acquisition Act and how the rates of lands have been determined. It is submitted that certain rates have been fixed by the Public Health Engineering Department of the State Government. The status of the land has also been disputed. It is urged that most of the oustees have purchased lands after getting cash compensation and SRG. It is the stand in the return that the rates of irrigated and unirrigated lands were worked out on the basis of Harda command area and the persons possessing inferior quality of land have been adequately compensated by SRG. The encroachers of government land in possession before April, 1987 have been treated at par with the oustees. The encroachers of 'Chhoti Ghas Ki Zamin' in possession prior to April, 1987 have been treated as oustees. Reference has been made to clause 2.3 of the Rehabilitation Policy. It is putforth that 25% of the land has not been acquired as it was felt that in many circumstances an oustee may like to retain remaining portion of the holding for some reason. However, there are some applications for acquisition of 25% of land holding that is left after the acquisition of major portion of their land and such applications are under active consideration of the Government of Madhya Pradesh. The respondent in furtherance of its obligations has provided adequate number of resettlement sites according to the demands of the oustees in proximity to the 91 villages in question. The oustees of villages Dang and Nandana have not asked for resettlement sites. Six oustees of Nandana village have been allotted plots in resettlement site at village Nanasa. Oustees of both the villages have opted for receiving cash compensation of Rs.20,000/- in lieu of plots. In the resettlement site at Bijoramafi, 136 plots are still lying vacant. Civil amenities have been provided in the resettlement site. For village Sindkhera the resettlement site Sewar has been developed and 21 plots are available for which shows that the number of plots is adequate. It is also the stand that at various places sites are available but in most of the cases the oustees have opted for cash in lieu of land. It is putforth that no depreciation value has been considered in determining the awards and the eligible oustees have been included in the family list and no one has been arbitrarily excluded. The family list prepared only for those who lose their houses and have no other house live. If a person is having a house outside the submerges area, in a partly submerged area, then he is not included in the family list, as he is not required to shift from the village. Number of villages have been mentioned where the families have been included. Number of families given in the Gazette Notification dated 31.12.2004 was not final as the family list is prepared after passing of the awards.

35. Meeting the stand that the Land Acquisition Officer a not competent it is contended that the Land Acquisitic Officer were on deputation and they were under the effective control of the Collector of the concerned distric. Even the ACRs of the Land Acquisition Officer are initiated by the concerned Collector. They only acted as ex-officio Collector and not as officers of the answering respondent in the land acquisition process. The Land Acquisition Officers were only given the responsibility to discharge the duties of the Rehabilitation Officer on behalf of the State of Madhya Pradesh. With regard to monitoring of NCA it is mentioned that the NCA is monitoring the R&R aspects of the Indira Sagar Project. It is contended that the Government of Madhya Pradesh has rightly blocked the monitoring of NCA at earlier point of time but in compliance of the order dated 17.8.2005 the NCA has started monitoring of R&R of the ISP project.

COUNTER AFFIDAVIT BY RESPONDENTS 3 AND 4

36. The respondents 3 and 4 have filed their return contending, inter alia, that the petitioner has an alternative remedy to approach the Grievance Redressal Authority in respect of Indira Sagar Project and hence, the exercise should not be undertaken under Article 226 of the Constitution of India. It is pleaded that the orders passed in Writ Petition No. 2506/01 and Writ Petition No. 3446/01 operate as res judicata as the similar issues were involved in the said cases. The petitioner which is working for the interest of the Narmada Valley for a couple of decades, have not come forward at the earlier point of time and hence, the present challenge is hit by doctrine of delay and laches. The dispute before the NWDT was regarding height of Sardar Sarovar Dam. NWDT has determined the shares of the four States thereafter determined the canal level for SSP, storage required at SSP including silt storage, the minimum draw down level for power generation. While determining the aforesaid parameters the NWDT took note of the submergence of lands and displacement of the population as also submergence of prospective power projects planned upstream of Sardar Sarovar in Madhya Pradesh and Maharashtra. It is contended that the NWDT Award is not applicable to ISP. It only regulate the timing of dam and maintenance of release to the State of Gujarat. Reference has been made to clause 11 to show that the NWDT is only applicable to inter-State projects, namely, Sardar Sarovar Project and not to ISP. It is also the stand in the return that SSP is interstate project in which as per the planning made by the NWDT under the doctrine of equitable apportionment, the oustees of upstream States are to be in Gujarat whereas the ISP is an intrastate project and resettlement of oustees in another state is not involved. The joint venture do not provide that the provisions for R& R of Sardar Sarovar Project are applicable to ISP. Clauses IX, X, XIV and XV of the NWDT have been referred to show that the joint venture would comply with the provisions of the NWDT Award and the directions of the NCA. It is also asserted that the provisions of NWDT are applicable to ISP and would be complied with by the joint Venture and not that provisions applicable to SSP would applicable to ISP.

37. It is also pleaded that in Narmada Valley it is planned to construct 29 major, 135 medium & over 3000 minor projects to utilize the allocated water of the State 18.25 million acre feet (MAF). Out of this 7,90 MAF water is stored at Indira Sagar Project for generating 1000 MW power and to irrigate 1.23 lakh ha. of area in 571 villages of Khandwa, Khargone and Barwani districts of Madhya Pradesh. This area would be served by Indira Sagar main Flow Left Bank Canal which is 248.65 Km. long contour canal having 160 cumecs discharge at head. The Khargone lift canal, which is 83 Km. long, takes off from the main flow canal at 92.10 km for irrigation of 0.24 lakh hect. In addition to above, 0.35 lakh hect. area would be irrigated from Punasa Lift Projecct (in Khandwa district), which is treated as a separate project.

The total GCA covered by main canal is 2.10 lakh hect., out of this 1.75 lakh hect. area is culturable and the irrigation is proposed in 1.23 lakh ha. It is proposed to complete the scheme by March, 2010.

38. There was a threat of submergence of the property of the affected people without acquisition is incorrect. There were no illegal submergence without acquisition, rehabilitation and resettlement. It is contended that rehabilitation and resettlement has been done as per the policy framed by the State Government and hence, there was no question of following the directions in Clause XI of NWDTA as the said clause is only applicable to Sardar Sarovar Project and not to Indira Sagar Project. The stand taken in the writ petition with regard to pari passu has been explained in the return that as per the decision of the Apex Court it has the nexus with the raising of the height with implementation of the relief and the rehabilitation. It is assured that the rehabilitation measures should be taken pari passu as and when the height of the dam is further raised. It is categorically stated that the direction given by the Apex Court in the case of Narmada Bachao Andolan (supra) relate to Sardar Sarovar Project and not to Indira Sagar Project. Reference has been made to the status reports to show how the payment of compensation,

rehabilitation and resettlement in respect of the 91 villages have taken place. It is the stand in the return that a decision was taken to concentrate on the efforts of acquisition of land and properties upto FRL and hence, acquisition of properties above FRL was temporarily suspended. The systematic approach was necessary looking to the degree of vulnerability. It was more or less certain that permanent submergence of FRL would take place if gates were closed but the temporary submergence of properties above FRL depended on the occurrence of a flood of the magnitude of 1 in 100 years. It was never contemplated or directed that the properties upto MWL (and back water) would not be acquired. The allegation of willlful criminal negligence has been controverted. It is putforth that village Mahendgaon has been fully acquired and vacated. In respect of village Kanerkheda it has been stated that the properties have been acquired and compensation paid. Commenting on the observations of GRA in paragraph 5.50(i) it is putforth that the same are based on the apprehension of the people and on verification it has been found that with 255 meters water level at dam site none of the villages, namely, Dantha, Dang, Nandana, Mathani and Bediyon, have been submerged or affected.

39. An assertion has been made that every single entitlement of the oustees has been minimized, eroded and whittled down or simply denied is incorrect inasmuch as the oustees have purchased land in Khandwa and Harda district and certain oustees who were having unirrigated land have purchased irrigated land. The provisions made in the rehabilitation policy for SC/ST, marginal and small farmer have been fully complied with. The persons have taken cash compensation and the rehabilitation grant in lieu of the land. It is also contended that 2676 osutees have purchased land with the help of SRG. The SRG at presently offered is well accepted by the oustees. It is putforth that allegations that the encroachers have not been provided land or compensation; need for acquisition of full land holdings; failure to provide resettlement; compensation for houses not at replacement rates; arbitrary and wrongful exclusion from displaced family list; wrong use of definition of displaced family, could have been easily forwarded to the Grievance Redressal Authority.

40. It is the stand in the return that bi-lateral matters are to be dealt with mutually by the States concerned and referred to the authority i.e. NCA if there is a dispute. The Indira Sagar Project being the intra state project, the NCA has really no concern with the monitoring of Indira Sagar Project. The meeting was held by the Review Committee of NCA (RCNCA). In RCNCA the Union Minister of Water Resources is the Chairman and the four Chief Ministers are the members. It was decided by the RCNCA that it was not necessary for the NCA to monitor the ISP and the Union Ministry of Environment and Forests would make separate arrangement in this regard. The stand and the stance of questioning the illegality of the awards under the Act has been disputed and clarification has made that the competent authority of the land acquisition proceeding have been carried out by the competent authority and the NHDC is not influencing or affecting the acquisition proceedings. It is contended that the Land Acquisition Officer acts on behalf of the Collector of the district and not as the officer of the NHDC. It is purforth that most of the reliefs sought for by the petitioner have already been dealt with and granted inasmuch as R&R of PAFs have been carried out and some of the relief sought have paled into insignificance because of the interim orders passed by this Court. It is contended that acquisition, resettlement and rehabilitation of 91 villages as per notification issued on 31.12.2004 are substantially complied with. It is the stand in the counter affidavit that construction of Indira Sagar Project Dam is complete and 20 gates have been installed and as per the direction of this Court the water level has been raised upto 255 meters. It is asserted that the petitioner is not really concerned about the temporary rise of water level by about 17 meters in 1 in 100 years flood but wants to prevent permanent storage of water in the dam, above the crest level. The grievance is paradoxical as the petitioner shows temporary submergence at the time of high floods which occurs once in century.

41. A reference has been made to assertions made by the petitioner that at the times of high fiood the houses of thousands of families will be affected by the backwater of the dam and they will be submerged and washed away and lives of these thousand families will also be at great danger. Replying to the same it is set forth that the said situation is not likely to come and in any case the State Government is prepared to meet that situation. Commenting on the role of NCA it is further putforth that Review Committee of NCA has already decided that NCA need not monitor R&R aspects of Indira Sagar Project. Reference has been made to the order dated 17.8.2005 wherein this Court observed that there should be monitoring of R&R of ISP by NCA. The view of the State were not made clear at that time. It is the further stand that the NCA even as per Narmada Water Scheme had no role relating to R&R aspects of ISP. Its role was restricted to R&R work of Sardar Sarovar Project. Reference has been made to the award to show that NCA has a role with regard to the composition and function of rehabilitation and resettlement oustees affected by Sardar Sarovar Project. It is urged in the counter affidavit that the SRG is totally distinct from the provisions in the rehabilitation policy and more than 2.5 thousand families have already purchased land on receiving SRG. It is also pointed out that the families losing their agricultural land or houses were already included in the list of displaced families.

REPLY ON BEHALF OF RESPONDENTS NO. 5 AND 7 (V).

42. A reply has been filed by the respondents No.5 & 7(v). It only says that the NHDC and Government of M.P. never allowed the respondent No.5 for monitoring and only after the order passed by this Court the R&R Sub-Group of NCA has been involved in monitoring of R&R aspects of Indira Sagar Project. The NCA Secretariat has called for necessary information action report on the resettlement of oustees concerning 91 villages of Indira Sagar Project for NHDC and Government of M.P. to enable monitoring of rehabilitation aspects.

REPLY ON BEHALF OF RESPONDENTS NO.7(II) AND (III)

43. A reply has been filed by the respondents No.7(ii) and (iii). In the said reply the stand taken by the respondents No.5 and 7(v) has been followed.

REJOINDER ON BEHALF OF THE PETITIONER

44. A rejoinder affidavit has been filed by the petitioner. In the said affidavit reference has been made to the interlocutory interim orders passed by this Court at various stages, press clippings and the intention of the respondent. No.l, NHDC, to increase the water level. It is also stated that the Grievance Redressal Authority has limited powers and the said authority cannot advert to the many a grievance that has been highlighted in the writ petition. The status report of the Grievance Redressal Authority has also been referred to highlight that the acquisition of thousands of oustees affected by the FRL and BWL have not yet commenced. A stand has been taken in the rejoinder affidavit that the present writ petition is not barred by doctrine of res judicata because the order passed in the earlier writ petitions. Commenting on delay and laches it is contended that the petitioner immediately approached this Court after notification dated 31.12.2004 directing the oustees of 91 villages to vacate the properties was Issued. Additionally, it is contended that the public interest litigation has been rightly filed after collecting the data in respect of the ground realities. It is the stand in the affidavit that the NWDTA is applicable to Indira Sagar Project and the NCA has a role. It is also canvassed that the directions contained in NWDTA as regards rehabilitation apply to Indira Sagar Project. It is setforth that rehabilitation of the oustees of Indira Sagar Project has to be governed by the norms for R&R as stipulated in the NWDTA and the responsibility of direction, coordination and implementation of rehabilitation and resettlement scheme of Indira Sagar Project are to be given to NCA. A reference has been made to the various documents to show that NCA has a role to secure compliance of the directions issued by the NWDTA. It is contended that in the GRA report the applicability of the NWDTA has been admitted. The interim order passed by this Court have been placed reliance upon to show the applicability of the award and the role ascribed to NCA. It is the further stand in the rejoinder affidavit that NCA and R&.R Sub-Group are legally required to monitor the implementation of R&R measures. Reference has been made to the decision of the Apex Court on 31.3.1994 wherein unequivocally it has been stated by their Lordships that th role of NCA is to close monitoring of the progress of land acquisition in respect of submergence of Sardar Sarova Project and Indira Sagar Project. Serious criticism has been advanced with regard to the failure of the R&R and monitoring of R&R. The action of the respondents have been called malafide on the foundation that the subsequent deeds reek of malicious action. As regards the backwater level, the stand in the rejoinder is to fill the Indira Sagar Project upto 262.13 mtrs. in the Monsoon, 2005, the State Government and the NHDC were required to acquire and rehabilitate the oustees of MWL as per the policy of December, 2005. Emphasis has been laid on Articles 21 and 300-A of the Constitution of India. It is contended that NHDC and the State Government both are aware that they were liable to acquire the house and the appurtenant lands thereto. Criticism has been advanced against the respondents No.l & 2 that discrimination and distinction are being done between temporary and permanent PAFs. It is also the stand that the respondents have taken into consideration the probable maximum flood level and the land acquisition has not been done covering the back water level. The jurisdiction of the Land Acquisition Officer has again been highlighted. It is putforth that the land acquisition awards that have been passed has been done by the NHDC officers under the aegis of NHDC. In essence, it is pleaded that the awards passed by the Land Acquisition Officers against the awardees are not in conformity with the Land Acquisition Act. The human suffering and catastrophe has been highlighted in the rejoinder affidavit. The determination of rate by the Land Acquisition Officer is low. A chart has been filed to the said effect. A report on proposed fist of rates determined has also been commented upon. It is contended that efforts have been made for minimization of entitlements. The demand

amongst people for getting irrigated and cultivable land has been highlighted. It is also the stand in the rejoinder that the respondents have deliberately manipulated in giving cash compensation based on land revenue rather than market value. Certain examples have been given as regards the reassessment of irrigated land in submerging villages by NHDC. In quint essentiality the stand of the petitioner is that the awards are null and void.

In the rejoinder affidavit criticism has also been advanced as regards the awards by the Land Acquisition Officer where there has been deduction of 12%; rate fixed as regards SRG; the methodology adopted in fixing the SRG, exclusion of adult sons and adult unmarried daughters. The effect and impact of submergence beyond 245 meters; applicability of decision rendered in Narmada Bachao case and horrid exhibited by respondents No.1 & 2. The non concerning exposited with regard to persons living in backwater level; apathetic attitude shown by respondents No. 1 & 2.

ADDITIONAL RETURNS

45. An additional affidavit has been filed by the respondent No.1 contending, inter alia, that the Grievance Redressal Authority has been empowered to decide various issues that have been raised in the writ petition. The contentions that have been raised are in a way to frustrate the economic interest of many a person; and to lower the power of GRA. It is further putforth that number of complaints filed by the affected persons/oustees have been dealt with by GRA. A chart showing in that regard has been brought on record as Annexure-AR/16. The awards passed by the Land Acquisition Officers have been supported. It is contended that if Indira Sagar Reservoir is filled up to its full capacity the power requirement would be fulfilled to great extent. It is also putforth that the answering respondent had never objected to the monitoring of R&R Sub Group of NCA and now it has been done in pursuance of the directions issued by this Court. It is contended that RCNCA in its meeting held on 13.11.1996 has moderated the NWDTA award as regards the pari passu and the same has not been disturbed by the Apex Court. The breathing time has been given to the villagers in 91 villages for alternative arrangement for dwelling and livelihood and for shifting to the resettlement site. It is further urged that interpretation of pari passu as done by the petitioner is totally out of context. Various data have been given with regard to steps taken by the respondent No.l and arrangement upto the backwater level of MWL. The grievance relating to the minimization of entitlement and consquent pauperization of oustees have been controverted. It is putforth that oustees have been given replacement value of their houses and no deductions have been done. A reference has been made to the report of GRA to show that water level of ISP can be done and after rise of everyone meter the over all situation can be assessed.

46. An additional return has also been filed by the State of Madhya Pradesh wherein emphasis has been laid that the petitioner could have approached the GRA, the same being the alternative forum and should not have invoked the jurisdiction of this Court under Article 226 of the Constitution of India. A reference has been made to the report of GRA dated 15.6.2005 wherein the GRA while stating that acquisition of 1000 of oustees affected by FRL, BWL, Tapu, etc. was yet to begun as also the recommendation for raising water level. It has been stated therein that Narmada Hydroelectric Development Corporation Authorities are agreeable to the suggestions that it would be the first year when reservoir would go above the crest level and this kind of gate operation will also ensure the safety of the banks of the dam and would cause jeopardy to the villagers. Emphasis has been laid on R&R action plan of Government of M.P. of January, 1994. A reference has been made to the notification dated 30.8.2001 to highlight the functioning of the GRA. The said functionings have been quoted in the additional return which basically relate to the setting up of proper mechanism before which oustees would be enable to lodge complaint/grievance in relation to any other matter arising out of resettlement and rehabilitation and a procedure for complaint/grievance may reach as expeditiously as possible to the Secretary of the Authority; the complaints/ grievances received by the Secretary or referred to him by the Authority is examined and communicated to the persons and agencies concerned as well as to the Authority; to take such steps to satisfy the grievances raised from time to time by the oustees.

It is also highlighted that now the present writ petition is hit by the principle of res judicata and how it is also hit by principle of doctrine of delay and laches. There is also a categorical stand that NWDTA is not applicable to the ISP because ISP is exclusively a State Project as catchment area, submergence area, location of dam site, command area and rehabilitation of PAFs are inside the State of Madhya Pradesh and, therefore, it is fundamentally an intra state project and not an inter state project. Various aspects have been quoted from the award to show that ISP is not covered by NWDTA award. Awards by the Land Acquisition have been supported on the foundation that they have been passed by the authorities who have jurisdiction under the Land Acquisition Act 1894. A reference has been made to Section 3(c) of the Act as well to the circular dated 31.5.1979 and clarificatory

circular dated 26.3.2002 and notification published in the M.P. Gazette on 05.4.2002 as per Annexure-R-3/O. Commenting on the policy it has been urged that the rehabilitation policy for oustees is just and proper as the same has been framed taking into consideration the situations in entirety. The allegation with regard to the deduction of 12 percent arbitrarily has been controverted Emphasis has been laid on SRG to highlight how the State Government has shown concern. It is putforth that appropriate steps have been taken for marginal and small farmers. As per the order of this Court R&R of 91 villages has been carried to the great extent, Tapu villages are not included in the 91 villages and there is no threat of life in Tapu villages.

47. Various applications have been filed regarding taking of document on record. All such documents broadly relate to the stands putforth in the writ petition, counter affidavit, rejoinder and additional affidavits.

48. We have heard Miss Chitraroopa Palit on behalf of the petitioner, Mr.R.S.Prasad, Senior counsel along with Mrs.Suparna Shrivastava, Advocate for the respondent No.1 and 4 and Mr.R.N.Singh, learned Advocate General alongwith Mr.Arpan J. Pawar, Advocate for the respondents No.l, 3 & 4 and Mr.Dharmendra Sharma, Assistant Solicitor General for respondents No.5,6 and 7(i) to (vi).

49. It is apposite to mention here that the petitioner appearing in person and the learned senior counsel for the respondents raised number of issues. We would like to compartmentalise the said issues and deal with the respective submissions proponed by the petitioner and the learned counsel for the respondents while delineating the respective issues. The issues which are required to be addressed are as under:

(1) whether the earlier orders operate as res judicata;

(2) whether the Pit at the instance of the petitioner is maintainable;

(3) whether the Narmada Water Dispute Tribunal's award is applicable to Indira Sagar Project;

(4) whether the awards passed by the Land Acquisition Officer are nullity being ab initio void;

(5) whether the rehabilitation policy is hit by Articles 14 and 21 of the Constitution of India;

(6) whether the Narmada Control Authority has any role in connection with the ISP;

(7) whether the GRA should be broad based to appreciate the controversy and effectuate the rehabilitation policy and directions to be given by this Court.

THE SURVIVING CHALLENGE

50. It is beyond disputation before us that the challenge in the Writ Petition is not to the construction of Indira Sagar Project inasmuch as the wall and power house have already been completed and the power generation has ensued. The central challenge is to ensure all R and R entitlements to all the affected families before filling up of reservoir and full submergence. It is contended that 91,378 Hectares are going to be affected under submergence in the project out of which 41,111 Hectares are under forest that supported rich and diverse vegetation and wild life. It is worth noting that the petitioner has referred to the benefits and cost of Narmada Sagar Project. But, the said aspect, as we perceive has nothing to do with the present litigation as the dam has already been constructed and the only issue that is alive today is rehabilitation. She has commended us to paragraphs 143, 146 and 147 of the decision rendered in the first Narmada Bachao case. We deem it appropriate to quote paragraphs 143 and 146:

> "143. In order to consider the challenge to the execution of the project with reference to relief and rehabilitation it is essential to see as to what is the extent and the nature of submergence.
>
> XXX XXX XXX
>
> 146. The aforesaid table shows that as much as 12,869 hectares of the affected land is other than agricultural and forest and includes the riverbed area.

51. The stand of the petitioner is that in May 2005 the wall of the Project was completed, gates installed and all eight turbines and the power house were commissioned. However, the canals are scheduled to be completed only

by 2011. It the further stand that the benefits of the project have already ensued 96% power production in 2005-06 as per the statement of the project authorities but the water related benefits would not accrue at least for next five years. The speed of construction of Indira Sagar Dam has come with a heavy cost and the same results have been claimed to have been achieved despite the fact there is interim order of stay of raising the pondage level beyond 255 Meters before the R&R measures for oustees and were yet to be completed. It is contended that there has been threat of eviction, use of force, breakage of life supplies such as water to the oustees and compel them to leave all without complying with the proposed rehabilitation scheme. The scheme of terror, dispossession without any or with grant of partial compensation and R&R entitlements continued which violates the decision of the Apex Court and also the basic facet of Article 21 of the Constitution. Reference has been made to certain dates to highlight how the rehabilitation has a primary role and paramountacy. The dates which are relevant for the present case are 10th September, 1980 whereby a notification was issued by the Ministry of irrigation setting up Narmada Control Authority. On 3.6.1987 a notification was issued by the Ministry of Water Resources amending the Narmada Water Scheme based on agreement between the State Governments bringing the R&R of the oustees of both Narmada Sagar Project and Sardar Sarovar Project under the jurisdiction of Narmada Control Authority and Narmada award. On 24.6.1987, the Ministry of Environment and Forest has issued a joint approval for Narmada Sagar Project and Sardar Sarovar Project from environmental angle. On 6.9.1989 the Planning Commission gave its investment approval for the Indira Sagar Project subject to certain conditions. In September, 1989 by letter No.762/2/180/27/87/11 the Narmada Valley Development Department, Govt. of M.P. issued a rehabilitation policy of the oustees of Narmada Project including the Narmada Sagar Project. In January, 1994 the Govt. of M.P. prepared and submitted R&R plan which included R&R Policy in details of non forest land required for the R&R of the oustees in compliance with the forest and environmental clearance. Reference has been made to the decision of the Apex Court which we have already referred to earlier. As pleaded, a notification dated 31.12.2004 was issued for eviction and vacation of 91 villages. The notification required the villagers to vacate the villages by 30.4.2005 and R&R work was yet to begin, payment of compensation under the policy was incomplete, and the scheduled date for vacation of villages was 30.4.2005. Ninety one villages were slated for submergence on 30.6.2005 and steps were taken to evict the villagers despite non payment of R&R entitlements.

RES JUDICATA

52. A preliminary objection has been taken by the respondents highlighting that the controversy raised in this case had already been dealt with in earlier litigation and number of reliefs that have been sought are negatived and, therefore, the said orders would operate res judicata. In the earlier case the controversy was quite different. The issues that are raised by the petitioner are in different realm. In the present litigation number of issues emerged and there is frontal attack to the policy, awards passed by the Land Acquisition Officer, Role of Narmada Control Authority and such other facets. When issues are not same and there is no adjudication in that regard, it is futile to say that the writ petition is barred by doctrine of res judicata and hence, we are constrained to repel the said submission of the learned counsel for the respondents and come to an irresistible conclusion that the writ petition is not hit by doctrine of res judicata.

DELAY AND LACHES

51(A). It is submitted by the learned senior counsel for the respondents that the petitioner and its core group were very much aware about the construction of the dam and coming of the project at various levels from early 1990s but at no point of time they assail the same. Their submission is that the petitioner woke up when the water level was raised which is bound to be done and at that point of time the petitioner knocked at the doors of this Court seeking reliefs for not raising the water level of the dam on the ground of rehabilitation packages have not been ensured. It is contended by the respondents that assail had been made from time to time by the others with regard to rehabilitation packages and this Court had directed that rehabilitation should precede submergence and accordingly the same was done but the present petition has been filed with ulterior motive after quite belatedly to stale the progress which is not in tune with the conception of global economy.

52(B). Submission of Miss Palit is that the present litigation is a Public Interest litigation and the organisation, namely, Narmada Bachao Andolan, after doing the field study and understanding the ground reality preferred the

writ petition. It is contended by her that assail in the Writ petition is with regard to real compliance of rehabilitation measures. Proponement of Miss Palit is that there could not be any delay with regard to rehabilitation factors as they are fundamentally and basically human and hence, the rehabilitation, as per the Apex Court judgment and as well as agreed position, has to precede submergence. It is also her submission that though the public interest litigation can be curtailed by delay and laches but in the present case as it pertains to compliance of certain aspects like rehabilitation package, compensation for land acquisition, distribution of land for land taking note of encroachers and interpretation of the policy, it cannot be said that it is barred by delay and laches. It is further submitted by Miss Palit that the question of construction of the dam does not arise as it is already a fait accompli and inevitable, logical fall out and corollary being to be taken care of and hence, the writ petition should not be thrown overboard.

53 Considering the facts and circumstances of the case, assertions made in the writ petition, voluminous documents brought on record, grievance that has been urged with sincerity and factual matrix that has been frescoed and the project that has been brought to our notice, we are not to think that the present litigation should be thrown overboard on the ground of delay and laches. Ergo, the preliminarys objection raised by the learned senior counsel for the respondents stands negatived.

THE VALIDITY OF REHABILITATION POLICY

54. Presently we shall proceed to deal with regard to rehabilitation policy framed by the State of Madhya Pradesh. The rehabilitation and resettlement policy was framed in 1989. The said policy has been brought on record as Annexure P-17. It is called as 'Rehabilitation Policy for the Oustees of Narmada Projects'. It relates to the policy of the State Government regarding rehabilitation and resettlement of displaced persons at Narmada Sagar Complex as amended upto August, 1998. The first part deals with the broad principles for rehabilitation of displaced families. The second part deals with definitions of displaced person, displaced family, landless person, small farmer and marginal farmer. Clause 2 deals with the land and property acquisition. Clause 3 deals with the allotment of agricultural land, Clause 4 deals with the fixation of rates for lands to be acquired, both due to submergence and for resettlement purposes. Clause 5 deals with recovery of cost of allotted land. Clause 6 deals with rehabilitation grant. Clause 7 deals with allotment of plots in rural areas, Clause 8 deals with Rehabilitation policy for the urban oustees. Clause 9 deals with landless displaced families. Clause 10 deals with civil amenities. Clause 11 deals with other facilities. Clause 12 deals with appeal.

The rehabilitated and resettlement policy has been amended from time to time. A chart has been filed by the respondents indicating the amendments. It is worth noting here that the said chart is not in chronological order. In chronological order the chart would read as under :

S. No.	Date of Amendment	Amended Clause	Amendment in brief
1	12/06/90	5.4	Amendment in respect of eligibility for grants where the amount of compensation is than the cost of land allotted.
2	12/06/90	7.3	Provision made for providing grant to displaced rural tenants falling below poverty line, for arrangement of house.
3.	15/10/1990	8	Rehabilitation provision for urban displaced.
4.	07/06/91	4.1	Amendment in respect of realisation of the cost of land allotted to displaced persons.
5.	07/06/91	4.1	Clause relating to formation of committee for fixation of the cost of land coming under submergence and the land to be allotted.
6.	07/06/91	8.3	Amendment in respect of eligibility of urban displaced and the size of plot they are entitled for.

S. No.	Date of Amendment	Amended Clause	Amendment in brief
7.	19/08/92	12	Provision added providing appeal to collector from the decision of Rehabilitation officer.
8.	07/07/93	2.1 (a), (b), (sa) (da)	Restrictions added so that encroachers may not get benefits accruing out of more than 2 hectares of land.
9.	07/07/93	3.3	Amended to the effect that those encroachers who are also land owners and have got the benefits under clause 3.2, will not be entitled for allotment of land.
10.	25/07/1998	7.1	Provision made for giving cash Rs. 20000 instead of plot.
11.	14/08/2000	1.1 (ba) 2	Son/unmarried daughter added in place of son.
12.	11/05/01	4.3	Proviso added in the matter of acquisition of land of SC/ST, small scale and marginal farmers.
13.	18/07/2001	6.3	Transportation grant in respect of ISP enhanced from Rs. 500 to Rs. 5000.
14.	04/06/01	6. 9	Provision for payment of difference amount as Additional Rehabilitation grant to displaced person whose acquired land is so less that the total grants received by him are less than the grants received by a landless person of same class.
15.	04/12/01	6.1 and 6.2	Rehabilitation grant enhanced from Rs. 11000 to Rs. 18700 and from Rs. 5500 to Rs. 9350.
16.	04/12/01	6.3	Transportation grant in respect of SSP enhanced from Rs. 500 to RS. 5000.
17.	04/12/01	9.1	Grant to landless families for purchasing employment oriented assets enhanced to Rs. 49300 and Rs. 33150 as per eligibility.
18.	02/05/02	11.3	The provision for exemption from payment of registration fee and Stamp duty in respect of land purchased by displaced person, made more liberal.
19	03/07/02	3.2 (a), (b), (sa)	“As far as possible” Added.
20	24/09/2001	6.3	Transportation grant for all projects enhanced from Rs. 500 to Rs. 5000
21	21/08/2003	1.1 (a)	“required under the project for construction of cannal or for construction of Govt. Project Colony.” Deleted from the definition of displaced person.
22	20/10/2004	7.1	Provision made for giving case Rs. 20000 instead of plot.
23	14/05/2004	8	Special package added for providing free of cost residential plot to the displaced persons of Harsud under ISP.
24.	20.10.2004	8	Provision added for giving residential plot adeasuring 60x40 to displaced persons of Dharanpuri.
25.	26.11.2005	2.8 ka, kha, ga	New Clauses introduced for giving certain benefits to kotwars.

55. The policy which has been laid emphasis upon is 2003 policy. The same is in Hindi and has been brought on record as Annexure A-R/5-A. The relevant clause is clause 1(ba) which defines displaced family. The English translation of the said clause reads as under;

> "1 (ba) Displaced family:-
>
> 1. The family consisting of displaced persons (as defined in clause (1.1)) which include husband, wife and minor children and other persons dependant upon the head of the family as widow, mother, widow, sister, unmarried sister, unmarried daughter and old father.
>
> 2. Each son/unmarried daughter of displaced family who has attained the majority on the date of issuance of notification under Section 4 of the Land Acq-uisition Act, shall be deemed as separate family."

56. Clause 3.3 which deals with entitlement of encroachers for grant of land on being translated in English reads as under:

> "(3.3). The landless persons who are encroachers of revenue land or forest land shall also be entitled to grant of land. If less than one hectare of land has been acquired from the encroacher, they shall be allotted one hectare and where more than one hectare has been acquired from them they shall be given two hectare though the acquired land may exceeds to two hectares. If the encroacher is landowner and has got the benefit of clause 3.2, he shall not be entitled to get the land allotted under this provision."

57. Clause 5 deals with the recovery of value of land allotted. Clause 5.4 deals SRG which reads as under on being translated in English:

> "If the amount of compensation is less than the value of the land allotted, in that case grant shall be given to adjust the difference between them. All the families belonging to SC and ST and other families from whom two hectares of land have been acquired shall be entitled to get the aforesaid grant. Such other families from whom two to eight hectares of land have been acquired, except the compensation given by the Narmada Valley Development Authority, shall be given the following grant and aid, whichever is less;
>
> (a) Rs, 2000/- per hectare or,
>
> (ba) 50% of the difference of the amount of compensation and value of the land allotted.
>
> Looking to the increase in the value of land, the amount of this grant shall be modified by the Authority. For the families from whom more than eight hectares of land have been acquired, the calculation of the grant shall be done on the basis of compensation for eight hectares of land and value of the land allotted."

58. The question that arises for consideration is whether the policy is exhaustive and proper one or requires to be annulled in exercise of writ jurisdiction of this Court. Submission of Mr. Prasad, and Mr. Singh is that the policy was framed in the year 1989 and amended 25 times and the acquisition proceedings were undertaken in the year 1991 and expedited in the year 2001-02. The policy was framed dealing with various bases and it is being challenged after long lapse of time. In this regard learned counsel for the respondents have commended us to paragraphs 46 to 50 and 229 of the first Narmada judgment. They have also placed reliance on the decision rendered in the case of State of Maharashtra Vs. Digambar, (1995) 4 SCC 683 wherein it has been held that person seeking relief at belated stage against the State under Article 226 cannot be granted relies unless fully satisfy the Court that the facts and circumstances justify the laches and undue delay.

45 (Sic). The learned counsel for the respondents has submitted that interference with the policy though is permissible in law but it has to be scrutinised with ample circumspection. In the case of N.D. Jayal and Another Vs. Union of India and Others. (2004) 9 SCC 362 in paragraph 65 the Supreme Court expressed the view as under:

> "In regard to the cases where families have already been shifted and where rehabilitation has already been done, HRC recommended only cash amount awarded to be paid instead of land and the cash option is recommended considering lack of land available for rehabilitation. Major married sons receive Rs. 1,50,000 and major unmarried sons and major unmarried daughters receive Rs.75,000 each. The government accepted this recommendation subject to the condition that all additional living eligible family members of fully affected families as on 19.7.1990 (excluding those who are given land for cultivation) including families already shifted in the past to the resettlement colonies from their earlier settlements would be eligible to

receive payment of an ex gratia amount equivalent to 750 times the minimum agricultural wage which at current rates is Rs.33,000/- per person. These are matters of policy and when the Government takes such a decision bearing in mind several aspects, we do not think this Court should interfere with the same."

59. In the case of Narrnada Bachao Andolan Vs. Union of India (2000) 10 SCC 664 in paragraph 224 and 229 it has been stated thus:

> "224. There are only three sources of water. They are rainfall, groundwater or from the river. A river itself gets water either by the melting of snow or from the rainfall while the groundwater is again dependent on the rainfall or from the river. In most parts of India, rainfall takes place during a period of about 3 to 4 months known as the monsoon season. Even at the time when the monsoon is regarded as normal, the amount of rainfall varies from regton to region. For example, North-Eastern States of India receive much more rainfall than some of the other States like Punjab, Haryana or Rajasthan, Dams are constructed not only to provide water whenever required but they also help in flood control by storing extra water. Excess of rainfall causes floods while deficiencey thereof results in drought. Studies land area due to absence of the Storage capacity. According to a study conducted by the Central Water Commission in 1998 surface water estimated at 1869 cu km and rechargeable ground water resources at 432 cu km. It is believed that only 690 cu km of surface water resources (out of 1869 cu km) can be utilised by storage. At present the storage capacity of all dams in India is 174 cu km which is incidentally less than the capacity of Kariba Dam in Zmbia/Zimbabwe (180.6 cu km) and only 12 cu km more than Aswan High High Dam of Egypt.
>
> 229. It is now well settled that the courts, in the exercise of their jurisdiction will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrum in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at the time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them."

60. In this context, we may refer with profit to the decision rendered in the case of Rusom Cavasjee Cooper Vs.Union of India, (1970) 1 SCC 248 wherein it has been expressed as under:

> "It is again not for this Court to consider the relative merits of the different political theories or economic policies… This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law."

61. In the case of G.B. Mahajan Vs. Jalgaon Municipal Council, (1991) 3 SCC 91 while dealing with the scope judicial review the Apex Court expressed the view as under;

> "…….With the expansion of the Sate's presence in the field of trade and commerce and of the range of economic and commercial enterprises of Government and its instrumentalities, there is an increasing dimension to governmental concern for stimulating efficiency, keeping consts down, improved management methods, prevention of time and cost overruns in projects, balancing of costs against timescales, quality control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. These are essentially matters violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority."

62. In the case of Premium Granites Vs. State of T.N., (1994) 2 SCC 691 while dealing with the powers of the courts interfering with the policy decision their Lordships have held thus:

> "54. It is not the domain of the Court to emark upon unchartered ocean of public policy in an exercise to consider as to whether a particular policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be."

63. In the case of Delhi Science Forum Vs. Union of India, (1996) 2 SCC 405 while adverting to the facet of validity of the decision of the Government to grant licence under the Telegraph Act, 1985 to a non-government company their Lordships observed thus;

> "The national policies in respect of economy, finance, communications, trade, telecommunications and others have to be decided by Parliament and the representatives of the people on the floor of Parliament can challenge and question any such policy adopted by the ruling Government."

64. In the case of R.K. Garg Vs. Union of India. (1981) 4 SCC 675 while dealing with the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities, the Apex Court expressed the opinion that the Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. Their Lordships went on to state as under:

> "7. …..There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals are fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations because these issues rest with the policy makers of the nation. No direction can be given or is expected from the Courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision."

65. In the case of MP Oil Extraction and Another Vs. State of MP and Others, (1997) 7 SCC 592 it has been expressed as under:

> "41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere impse dixit of the State Government of MP. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or should not outstep its limit and tinker with the policy decision of the sounded a note of caution by indicating that policy decision of the executive functionary of the state. This Court in no uncertain terms has of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. Legislature, executive and judiciary in, their respective field of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of three organ appreciate the need for mutual respect and supremacy in their respective fields."

66. From the aforesaid pronouncement of law it is clear as day that is not within the domain of the Courts nor the scope of judicial review to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether a better public policy could evolved. A policy is not to be struck down merely because a different policy could have been fairer, wiser or more logically acceptable. The courts can only interfere if the policy framed is absolutely capricious, not informed by reasons whatsoever, totally arbitrary and founded ipse dixlt or offending basic requirement of Article 14 of Constitution of India.

67. Submission of Ms. Palit is that the policy runs counter to the award passed by the NWDT and is not in consonance of the decisions of the Apex Court in Narmada –I and Narmada –II. It is also put forth that the policy frescoes a picture of total capriciousness, callousness, non-concern and arbitrariness and hence, invites frown of Article 14 of the Constitution of India and plays foul of it. It is also her proponement that the persons who suffer

because of submergence are like to suffer. Critising the policy as arbitrary Miss Palit has put forth the following contentions:

(a) The decision rendered by the Supreme Court in respect of Narmada Bachao Andolan, mutatis-mutandis would apply to the case at hand.

(b) Oustees are entitled to land in lieu of land as provided the intial plan enumerated in 1994 policy on the foundation of the first policy.

(c) The second policy which later on envisages that land for the land policy would be attracted or applicable as far as possible is not a reasonable one.

(d) The tribals though cannot claim not be displaced as the same is not a fundamental right, but they can definitely put forth their claims for rehabilitation so that, they are better than that of the one, where they were residing.

(e) The grant of compensation of money to the oustees does not stop them to claum such land for land even they refund their money and put forth that they being oustees, should be rehabilated by grant of land.

(f) The special rehabilitation grant has to be recomputed keeping in view the language of the scheme by an independent agency, so that the real valuation is determined.

(g) The small farmers have to be taken special care of as they have become landless and unless the land is given, money would be inadequate and they would be putting away the capital and eventually would become an unperson loosing right to livelihood.

68. The present policy is to be tested on the anvil and touchstone of the aforesaid decisions. The NVDA had formulated elaborate Resettlement and Rehabilitation policy (R.R. Policy) in February 1985. The same was modified from time to time to ensure that the oustees of the project are given a better and liberal R&R package as for as possible. The said policy was formulated on the base of the resources available with the State Government i.e. availability of fertile land for displaced agriculturists. Due to scarcity of fertile land in the State the State Government is considering for setting up of land banks for generating availability of fertile land but most of the land were either infertile or encroached. In view of the aforesaid the State Government has stated that It has no option but to make available lands for the displaced persons on as far as possible basis. The scarcity of fertile land also constrained the State Government to compensate for the submerged lands as 50% in the form of monetary compensation and the balance upon payment by the oustees in instalments as purchased price of the land. It is the stand of the State Government when this mechanism was put in practice, criticism was advanced by oustees about costlier rates and delays under the land acquisition proceedings and demanded compensation in monetary terms in one single instalment. As set forth the State Government also began facing problem of possible discrimination on the grounds of quality of land made available to the oustees. There was one more pressing problem that while making efforts to provide land to the oustees, the Government could not make others landless by acquiring their land. These compelling factors prompted the State Government to introduce R & R package in the form of 'Special Rehabilitation Grant' where poor quality of land was sought to be compensated by compensation sufficient for buying equal amount of land of average quality. The State Government continuously evolved R&R policy so as to afford/offer the most suitable rehabilitation package to the project oustees. It is urged that the rehabilitation details would show that the R&R policy of the State Government for ISP and the packages made available thereunder have been implemented in letter and spirit by following the procedure which is just, fair and reasonable. Almost 99% of the oustees have already taken the benefits of R&R as per the stance of the State.

69. It is contended that rehabilitation and resettlement of PAFs of ISP began as early as in 1991-92 with the commencement of construction of the dam and the process of acquisition of properties likely to be submerged also began simultaneously. The rehabilitation of PAFs gathered momentum in the year 2000-01 when respondent No.1 took over construction work of the dam. It is put forth that 250 villages had been identified as the affected villages to be rehabilated as remaining 38 villages comprised of government land. It is set forth that a total number of 39,289 families have been resettled and rehabilitated as under:

Up to year 1999	:	239
Year 2000	:	191
Year 2001-02	:	3119

Year 2003	:	8573
Year 2004	:	19810
Year 2005	:	6915
Year 2006 (upto 9.7.06)	:	389
Total families rehabilitated	:	39,236

70. It is asserted by the respondents that as on date, only 25 PAFs are remaining the 91 villages under consideration, who have been paid their full entitlements one year before, are to be evacuated from the affected areas. These 25 PAFs are, however, hard core supporters of the petitioner and hence, they have chosen to stay in the affected areas even after getting their full compensation. Further, there are 28 PAFs staying in 2 villages (under FRL) who have come into notice by subsequent surveys. These familes have also been paid full compensation and are in the process of shifting. It is submitted that in order to verify the ground situation, the administration has undertaken extensive field investigations by means of district wise teams comprising of revenue and other officers to verify the status of rehabilitation. Panchanamas for each village duly signed by public representative(s) have, revealed that 46 encroachers and 53 oustees remain in FRL area.

71. It is submitted that the rehabilitation policy of the Government of Madhya Pradesh has emerged with experience to ensure a better package for the oustees. Naturally, this has necessitated some amendments in the schemes too, which the administration has done most willingly to ensure better package. The various rehabilitation packages under the said policy have been highlighted . They relate to (i) Compensation under Land Acquisition Act (on the basis of Lagan) In terms of Section 23 of the Land Acquisition Act, 1894, compensation for the acquired land is paid to the oustees. The said compensation is calculated as under:

(i) rates for land acquisition are calculated on the basis of category of land (soil type);

(ii) "lagan" is based on the category of land and therefore; "rate per Rs. Lagan" per acre is the unit for rates determination;

(iii) average rates (per Rs. Lagan Per Acre) are taken on the previous one year sale deeds of the nearest command area;

(iv) rates for land acquisition based on average rates are approved by the Divisional Committee (comprising of the Commissioner, Collector, Land Acquisition Officer, Chief Engineer, NVDA, MLA and Janpad Adhayaksha or Municipal Committee Chairman);

(v) compensation rates are calcuated from time to time corresponding to the dates of notification(s) under Section 4 of the Land cquisition Act. The average rates have been found as under:

Rs.38000- Rs. 45,000 per Rs. Lagaan per acre for irrigated, Rs. 20000 - Rs. 25000 per Rs. Lagaan per acre for unirrigated landless

(vi) the award passed is equivalent to (Area of land *. Lagan per acre * Average rate per Rs, Lagan per acre) + 30% solatium + 12% additional amount from Section 4 notification to Award date.

(ii) Special Rehabilitation Grant (SRG)

It is put forth that the oustees having a land of inferior quality complain that they were being unfairly discriminated. The administration, appreciated their concerns and can with the Special Rehabilitation Grant or the SRG to ensure that land holders of very poor quality of land got enough compensation to buy equal amount of land of 'averag quality'. Under SRG, compensation for land acquired is computed on the basis of average per acre rate of nearest command area. On the basis of SRG, computed from time to time corresponding to the date of Section 4 notification landholders, irrespective of the type of their soil, get a minimum average rate as under:

Rs. 40,000 - Rs. 45,000 per acre for un-irrigated land

Rs. 70,000 – Rs. 75,000 per acre for irrigated land.

A table has been referred to highlight the types of grant. It reads as under:

Lagan of acre 1 land being acquired	For Un-irrigated Land				
	Value per acre as per LA Act	Calculated value under SRG per acre	Difference (Column 2-1)	SRG to be paid	Total paid to the oustees (not to be less than calculated value) (Column 2+ 4) or Column 3 whichever is greather
1	2	3	4	5	6
0.5	11000	45000	34000	34000	45000
1	22000	45000	23000	23000	45000
1.5	33000	45000	11000	11000	45000
2	44000	45000	1000	1000	45000
3	66000	45000	-21000	0	66000

Lagan of acre 1 land being acquired	For Irrigated Land				
	Value per acre as per LA Act	Calculated value under SRG per acre	Difference (Column 2-1)	SRG to be paid	Total paid to the oustees (not to be less than calculated value) (Column 2+ 4) or Column 3 whichever is greather
1	2	3	4	5	6
0.5	22000	72000	52000	52000	72000
1	40000	72000	32000	32000	72000
1.5	60000	72000	12000	12000	72000
2	80000	72000	-8000	0	80000
3	120000	72000	-48000	0	120000

The calculated value under SRG is equivalent to – average rate per acre (irrespective of soil type)* area of land + 30% of this cost. SRG (cost on per acre basis + 30% of this cost) – award value, or calculated value – award value. It may be mentioned that Rs. 224.18 crores have been sanctioned out of which Rs. 223.01 crores has already been disbursed as SRG:

Suppose rate of compensation (under Land Acquisition Act) on the basis of Lagaan are

Rs. 22000/- for un-irrigated land for 1/- Lagaan per acreage

Rs. 40,000 for irrigated land for 1/- Lagaan per acre.

Rate of calculated value under SRG on the basis of area is

Rs. 45000/- for un-irrigated land per acre

Rs. 72,000/- for irrigated land per acre

(iii) Rehabilitation Grant (RG)

It is pleaded that for the purpose of providing better rehabilitation arrangements, the rehabilitation grant or the RG is made available to the oustees. This grant consists of the following:

(a) rehabilitation grant

(b) employment generating assets' purchasing grant

(c) grants for residential plots

(d) transportation grant

(e) registration fee and stamp duty grant for purchasing immovable property.

An example of grants for oustees of various categories is as under:

Type of grants	Landless labourer		SC/ST		Marginal & Small Farmers	Other Land holders
	Agrl. labourer	Other labourer	Landless (both Agrl. & other labourer	Land holders (no limit)		
RG	18700	9350	18700	18700	18700	9350
Employment Generating assets	49300	33150	49300	0	0	0
To purchase Residential Plot	20000	20000	20000	20000	20000	20000
Transportation Grant	5000	5000	5000	5000	5000	5000
Total	93000	67500	93000	43700	43700	34350

(iv) Special care for weaker Sections

It is propounded that there are number of provisions in the rehabilitation policy which provide special relief to the weaker sections of the society.

These provisions are as follows:

"(a) SC/ST family gets Rs.18700/- (irrespective of their land holding) as RG whereas the other category of oustees are paid Rs.18700 only if they are small and marginal farmers or agricultural labourers. Otherwise they get Rs. 9,350/- (Calluse 6.1 of the Rehabilitation Policy);

(b) landless SC/ST are paid Rs.49300/- as grant for purchasing employment oriented assets whereas other category of landless oustees (except agricultural labourers) are paid Rs.33150/- (clause 9.1 of the Rehabilitation policy);

(c) a rural oustee family, living below poverty line, would be getting additional grant apart from other grants so that he may be able to make arrangement for a house under the Indira Awas Yojana (clause 7.2 of the Rehabilitation Policy);

It is submitted that disbursement of compensation and other grants is about 99% up to FRL and compensation between FRL to MWL is nearly 90%. The details of disbursement of compensation and various grants is annexed hereto and marked as Annexure A-7.

72. It is submitted by Miss Palit that verification and certification of completion of R&R aspect for which individual oustee is required from State and Monitoring agency before permission of impoundment because the burden of proof of establish compliance with Article 21 lies with the State. It is further contended that the determination of value and structure in SRG/entitiements violate both Articles 14 and 21 of the Constitution because they are arbitrary. The learned representative has contended that completion of R&R aspects, compliance with the Central Government including MOEF clearance and the scheme prior to submergence is basic violation of Article 21 of the Constitution. To bolster the aforesaid submission she has commended to the Deena alias **Deen Dayal and others Vs. Union of India and others**, (1983) 4 SCC 645, **Msr. Maneka Gandhi Vs. Union of India**, (1978) 1 SCC 248.

74. Per contra, as has been indicated hereinbefore, Mr. Prasad and Mr. Singh have contended that the formation of the policy is within the domain of the executive and the pros and cons of the policy are not to be scrutinized by the Court for the purpose of varying, modifying or annulling it, based on however sound, and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law since the Court can declare it as ultra vires.

75. The next attack of Miss Palit is that the policy does not take cognizance of the adult son or adult unmarried daughter as a separate unit. In course of hearing Mr.Prasad and Mr.Singh submitted that the policy takes cognizance of the same treating the adult son and adult unmarried daughter as separate unit. In view of the aforesaid we do not intend to deliberate on this facet of the policy.

76. Submission of Ms.Palit is that the formula of grant is SRG is not based on proper computation. The policy postulates a formula of SRG which is not really rational. It confers certain benefits on the oustees by which they can not really construct shelter for themselves. We have reproduced the SRG which is a Special Rehabilitation Grant, It cannot be really found fault with. Whether it is properly worked out or not or its workability is proper or not and there has been inappropriate computation and that can be the matter of adjudication. Because of the improper adjudication or inappropriate computation, we are afraid, the said part of the policy can be struck down in that regard.

76 (*sic*). But, in the case at hand, the concern of the welfare State is writ large and the policy has been framed to give all the requisite benefits to the oustees and to cover in its ambit and sweep the various kinds and categories of oustees which makes the policy rational and reasonable keeping in view the interest of the weak and marginalized section of the oustees and hence, by no stretch of imagination it can be said that it offends or plays foul with Articles 14 and 21 of the Constitution of India.

77. As has been indicated above we are not disposed to declare the policy as unconstitutional. However one submission of Miss Palit, as we are inclined to think in praesenti, cannot be totally brushed aside or ostracise from the compartment of consideration for rehabilitation. We may hasten to clarify that non-inclusion of coverage of the area because of pondage level may not per se, make the policy unconstitutional or invalid but the same has to be focused upon. That apart, certain other facets are to be reverted to. We shall advert to the same at a latter stage while dealing with the said aspects from a different spectrum.

APPLICABILITY OF NWDT AWARDS

78. Now we shall proceed to deal with the facet pertaining to applicability of NWDT Awards to Indira Sagar Project. While dwelling upon the issue whether the Narmada Water Dispute Tribunal Award is attracted to the Indira Sagar Project and whether the Narmada Control Authority (NCA) has any role qua the Indira Sagar Project, the petitioner has drawn our attention to the memorandum of understanding between the National Hydro Electric Power Corporation and the Government of M.P.

> "This memorandum of understanding is made between National Hydroelectric Power ration (NHPC) and Government of Madhya Pradesh to affirm the joint commitment of the parties to exploit the hydro electric potential of the Narmada Basin by taking up and completing the Indira Sagar and Omkareshwar Projects as a joint venture project between the NHPC and Government of Madhya Pradesh"

79. In the said minutes of understanding clause V deals with rights of the joint venture and clause VI deals with Obligations of the Joint Venture. They read as under:-

> "V. Rights of the joint venture.
>
> (a) Personal working in the Madhya Pradesh Electricity Board (MPEB), Narmada Valley Development Authority (NVDA), Water Resources Department (WRD) and other departments of GOMP shall be taken on deputation in the joint venture subject to their suitability, keeping in mind the principal of merit.
>
> (b) Apart from the R&R staff, a ceiling of 30% and 70% of the total of the Joint Venture be imposed on the number of GOMP/MPEB employees to be taken on deputation in respect of executive and non-executive staff respectively during construction,
>
> (c) The owenrship of the Dam (Unit I) and the Power House (Unit III) of the two projects shall vest in the Joint Venture.
>
> (d) Operation of the water releases from their reservoir would be controlled by the Joint Venture subject to the stipulations of Clause VI (a).
>
> (e) Rights and obligations of GOMP in the context of agreements signed between it and the contractors for the on going contracts of Unit 1 and Unit III of the two projects shall stand transferred to the Joint Venture.
>
> (f) No state taxes shall be levied on account of the transference of ownership of Unit I and Unit III of the projects from the GOMP to the Joint Venture.
>
> VI. Obligations of the Joint Venture.
>
> (a) The joint venture would comply with the provisions of the Narmada Waters Disputes Tribunal (NWDT) Award and the directions of the Narmada Control Authority (NCA), its various subgroups and the Review Committee of the Narmada Control Authority (RCNA).
>
> (b) The joint venture would comply with the conditionalities imposed by the Planning Commission/ Ministry of Environment and Forest (MOEF)/ Ministry of Social Justice and Empowerment in respect of the clearances issued to the projects by the various agencies of the GOI."

80. The petitioner has also emphatically drawn our attention to clause VII(a) which is as under:-

> "(a) The work of Resettlement and Rehabilitation (R&R) of the oustees of the two projects would be the joint responsibility of the joint venture and GOMP. The entire expenditure incurred on this account would be borne by the joint venture. This activity would be implemented in accordance with the R&R policy as already approved for these projects. GOMP would provide staff on deputation to enable the joint venture to carry out this task. It shall be the responsibility of GOMP to ensure the timely acquisition of land, resettlement of PAPs and vacation of lands required for the project in accordance with the project and implementation schedule."

81. A reference has been made to the final order and decision of the Tribunal which was gazetted on Dec. 12, 1979. Clause XII of the same deals with social amenities for each Municipal Town owing under submergence. Clause XIV(7) of the same reads as under

> "Allotment of Agricultural Lands: Every displaced family from whom more than 25% 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% 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."

"V(3)(iii): Gujarat shall at each successive stage of submergence intimate to Madhya Pradesh and Maharashtra the area coming under submergence at least 18 months in advance. The inhabitants of the area coming under the respective stages of submergence will be entitled to occupy or use their properties without being required to pay anything for such occupation and use till a date to be notified by the State concerned which date shall be less than six months before submergence. They must vacate the area by the notified date."

82. The petitioner in this context has referred us to notification dated 3.6.1997 wherein it has been mentioned that the Central Govt. had framed a Scheme known as Narmada Water Scheme, inter alia, constituting the Narm Control Authority in exercise of the powers conferred Section 6-A of the Inter State Water Disputes Act, 1956 notification dated 10.9.1990 for regulating and orderly development of the Narmada Valley and Narmada Sagar, Sardar Sarovar and other basins after further discussion with the concerned State Governments. An agreement had been reached to enlarge the role and sustain the composition Narmada Control Authority and the Review Committee so to take such measures as are necessary or expedient for protection for the environment and prepared Schemes for the welfare and rehabilitation of the oustees and other effected persons. In the said notification in clause 5 it has been stipulated that in sub paragraph (1) to paragraph 1 the following sub paragraphs shall be substituted.

"The role of the Authority will mainly comprise of overall coordination and direction of the implementation of all the projects including the engineering works, the environmental protection measures and the rehabilitation programmes and to ensure that faithful compliance of the terms and conditions stipulated by the Central Government at the time and clearance of the aforesaid projects."

83. The petitioner has also invited our attention to the office memorandum dated 24.6.1987 which deals with clearance from environmental angle to SSP and ISP by Ministry of Environment and Forests. Clause V of the same is worth reproducing. It is as follows:

"After taking into account all relevant facts the Narmada Sagar Project, Madhya Pradesh and the Sardar Sarovar Project Gujarat are hereby accorded environmental clearance subject to the following conditions:

i) The Narmada Control Authority (NCA) will ensure that environmental safeguard measures are planned and implemented pari passu with progress of work on projects.

ii) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment.

iii) The Catchment Area Treatment programme and the Rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

iv) The Department should be kept informed of progress on various works periodically.

84. After referring to the aforesaid documents submissio of Ms.Palit, petitioner in person, is that from the two decisions that pertain to Narmada Bachao Andolan it should be clear as crystal that the award passed by the NWDTA an the role assigned to the NCA by the Award as well as the subsequent notification are applicable to the Indira Saga Project and the State Government is under legal obligation to follow the same in letter and spirit and no deviancy can be shown to curtail any rights of the oustees and no deviation can be taken recourse to shown to thwart the same. It is contended by Ms.Palit that the Indira Sagar Project is a large dam project being built on the river Narmada and it is an upstream storage from which regulated release of water are to be provided for the Sardar Sarovar Dam, downstream in Gujrat and the mandate is to ensure the flow Narmada water to Gujrat and Rajasthan as required by the NWDTA and hence this project is to be regarded as an inter-state project as a consequence of which the award gets attracted. The aforesaid stand has a fundamental folly in it. It is difficult to accept the spacious submission of Ms.Palit that as the indira Sagar Project earlier known as Narmada Sagar Project is an upstream storage and hence, it has to be regarded as inter state Project. The fundamental schemes that had come into existence by the ultimate eventuate is the Award. In essentiality, the proponement of Ms Palit is that even if the State Government forms a policy the same has to be in consonance with the award and the entire facet of rehabilitation has to be supervised by the NCA and other Reviewing committee and in the garb of sovereign exercise of power by the State- vis-à-vis the making provision of rehabilitation measures the State Govt. cannot afford to behave like a predatory State brushing aside the elementary welfare measures.

85. Per contra, Mr. Prasad, learned senior counsel forget the Award attracted to it. Be it placed on record in certain interim orders there has been reference to the Award and the decisions rendered in the context Sardar Sarovar

Project. But the court had not held that the award is applicable to the present project but relied upon certain directions of the Apex Court to see that proper rehabilitation takes place and R & R policy is effected prior to submergence. If the factual background is appreciated the constitution of the project is to cover irrigation for the lands situated in the district of Khargone, Dhar and Badwani etc and therefore, the project is exclusively for state of Madhya Pradesh. The State of Madhya Prades has all the liabilities in respect of the project and hence, NWDTA is not attracted to the said project.

THE ROLE ASCRIBED TO NARMADA CONTROL AUTHORITY

87 *(sic)*. Presently, we shall proceed to deal with the spectrum of monitoring the NCA. NCA has been constituted under clause 14, further report in sub clause 8(1)(2) of ciause 14 deals with power and funtioning of NCA. The involvement of NCA in ISP is restricted to phasing the coordinating and constructing SSP and ISP. To appreciate the same it is condign to reproduce the sub-clause (8) of the clause 14 which deals with the powers, functions and duties of the authorities:

> 8(1): The role of the Authority will mainly comprise co-ordination and direction. Normally all bilateral matters should be dealt with mutually by the States concerned and referred to the Authority only if there is a dispute.
>
> 8(2): The Authority shall be charged with the power and shall be under a duty to do any or all things necessary, sufficient and respondent No. 1 and Mr.R.N.Singh, learned Advocate General for the State would contend that all the documents that have been placed reliance upon have to be read in harmonious manner for their proper construction so as to find out whether the Award passed is applicable to IS Project and whether NCA has any role as regards the rehabilitation. The submission of learned senior counsel for the respondent is that the Award is relatable to the Sarda Sarovar Project and the role assigned to the NCA has nexus to the said projects. The clearance by the Planning commission endow a role to NCA but the said role cannot be extended to all the projects in Narmada Valley as that is likely to cause immense, chaos and confusion. It is their further submission that the State Government has constituted the GRA and the same is functioning in the area smoothly with utmost objectivity and the State Government at present has the intention to broaden the constitution of the GRA so that any person who has the grievance as regards grant of rehabilitation measures can always approach the GRA and thereafter to this Court under Articles 226 and 227 of the Constitution of India.

86. (sic) At this juncture it is worthwhile to state that NWDT was constituted under Section 4 of the Inter State Water Disputes Act, 1956. The issues fundamentally dealt by the Tribunal are in respect of regulated release of water from State of M.P. Certain issues were agreed between the Chief Ministers of four States and all of them related to execution of NAVAGAM Project. The final order of NWDT mainly clauses 9 and 10 are meant for regulated release applicable to M.P. The NWDTA has not issued any direction for R&R. The clearance letters when appreciated with studied scrutiny it is difficult to discern that the Award passed by the Tribunal would be attracted to the Indira Sagar Project. True it is, there are certain reference but the said reference would not expedient for the implementation of the, Orders with respect to:

> (i) the storage, apportionment, regulation and control of the Narmada waters;
>
> (ii) sharing-of power benefits from Sardar Sarovar project;
>
> (iii) regulated releases - by Madhya Pradesh;
>
> (iv) acquisition by the concerned State for Sardar Sarovar project of lands and properties likely to be submerged under Sardar Sarovar;
>
> (v) compensation and rehabilitation and settlement of oustees; and
>
> (vi) sharing of costs.
>
> 8(3): In particular and without prejudice to the generality of the foregoing functions, the Authority shall perform *inter alia* the following functions:-

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

(ii) The Authority shall decide the phasing and shall co-ordinate construction programmes of the Narmadasagar project and Sardar Sarovar Unit II- Canals with a view to obtaining expeditiously optimum benefits during and after the completion of the construction of the projects, having due regard to the availability of funds.

Sub clause 16 of clause 14 of the report further deals with supervisory function of NCA only over SSP. Language used is "monitoring of R&R by ISP by NCA" and "overall coordination and direction of implementation, by NCA" are two different things. It is contended by Mr.Prasad and Mr.Singh that the further role was later envisaged in NWDT. It is contended by them that W.P.No.3436/2001 monitoring by NCA was sought but no relief was granted. Addltionally it is urged ISP is a Inter State Project and therefore, R&R cannot be monitored by Inter State Authority. It is putforth by them the submergence area, location of the dam, Catchment Area, Command Area and R&R of PAF are all in the State of M.P. Planning Commission clearance dated 6.9.1989 postulates monitoring of R&R by Govt, of M.P. and not by NCA. In NWDTA there is no direction for monitoring of R&R by ISP, by NCA or its subgroups. It is also highlighted that the Government of India by letter dated 28.9.2005 which has been fifed as a annexure to the additional return by the State of M.P. it is indicated by the fact that the Central Government has disapproved monitoring of R&R of ISP by NCA.

88. It is worthwhile to note that Indira Sagar Dam is already complete. It is a fait accompli. The respondents have taken a stand that the rehabilitation is almost over and, therefore, the issue of monitoring of R&R aspect by NCA is of academic interest. NCA is also conscious about its limited role in ISP. In its 51st meeting it has been so reflected. The same is evincible from its 51st minutes which reads as under :-

"After discussion at length, it was decided that the NCA will continue to monitor the construction of the ISP Dam and while doing so, It, will also taken into account the progress in respect of R&R so far as it affects the construction of the Dam."

89. It has been putforth by the respondents No.l to 3 that ensuring compliance of condition of clearance does not necessarily mean monitoring of R&R aspect of ISP by NCA. It is contended that if NCA is allowed to monitor R&R of 29 major, 135 medium and 3000 minor projects which are exclusively in M.P. there would be total chaos and no project wold be completed. The limited role of the NCA was to see that ISP is constructed, ahead of or simultaneously with Sardar Sarovar Project and further that regulated release of water from ISP is ensured. At this juncture it is worth referring to the order dated 9.5.2006 passed by Supreme Court in I.A.Nos. 18 & 22 in Writ Petition (Civil) 328/2002. In the said applications the dispute was about the rehabilitation of the oustees in terms of the Award of NWDT and the decisions of the Apex Court in the case of **Narmada Bachao Andolan.** A question was posed whether the oustees was to be rehabilitated for the State of M.P. pari passu with the completion of the dam or the year prior thereto. The learned Additional Solicitor General brought to the notice of the court an order dated 21.4.2006 issued by Government of India constituting Sardar Sarovar Project Relief and Rehabilitation Oversight Group. The Apex Court took note of the same and noticed the decision taken in the meeting on 27-28/4/2006 and summarized the decision taken in the meeting. Thereafter, their Lordships stated as under:-

"The Grievance Redressal Authority having 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 upon 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.

It is made clear that full assistance will be rendered by the Narmada Control Authority as well as the State Governments to the Grievance Redressal Authority in the discharging of their respective functions."

90. From the aforesaid analysis it is vividly evincible that as far as the role of NCA is concerned it is limited. While saying so, we may not be understood to have said that NCA has role to all projects that is likely to build. Quite apart from the above it is worthstating here that a role has already been ascribed to NCA and subgroups by this Court by way of interim order. They have to some extent have worked in the field. In the counter affidavit a stand has been taken by the NHDC that once a role has been ascribed by the Court further relief in that regard is not permissible. The limited role that was given at initial stage would be summerised the while enumerating our conclusions.

ASSAIL TO THE DEFENSIBILITY AND SUSTAINABILITY OF THE AWARDS PASSED UNDER THE LAND ACQUISITION ACT.

90. The next aspect that we would, like to revert to is whether the Awards passed under the Land Acquisition Act as contended by the petitioner, are ab initio void. It is contended that NHDC is a company registered under the Companies Act and hence is required to pay for the cost of land acquisition of the Indira Sagar Project. As it is the beneficiary if it is a interested party. The notifications under sections 4 and 6 of the Land Acquisition Act were issued by the District Collector, the decisions of subsequent functions of the Collector under sections 9, 11, 11-A, 12 and 18 of the Act were undertaken by Officers under the aegis of NHDC, the Company for which the land was acquired.

91. To bolster the aforesaid facet, copies of notices were issued under sections 9 and 12 and copies of the Award passed in respect of certain land situated in village Bhawarli and Jhagdia under section 11 of the Act have been brought on record as annexures. It is contended that the Award has been passed by the Land Acquisition Officer, NHDC, Khandwa by the same entity and, therefore, the said Officers are become the Judges of their own cause. A reference has been made to the provisions of section 3 which deals with the definition of Collector. It is averred that Special Appointed Officer delegated to perform the function of Collector of a district has to be a Govt.Officer. The persons who have adjudicated the controversy as the Land Acquisition Officer and passed the Award have not been appointed by the appropriate Government and gazette notification has been issued by the Revenue Department. The stand taken in the writ petition is that no Officer deputed to NHDC is competent to be notified as Collector under the Land Acquisition Act and they would subserve the interest of the beneficiary Company. It is the stand that the role ascribed to the officers of NHDC is violative of the principles of natural justice and is hit by the principle “nemo judex in causa sua”. Miss Palit has submitted that the land has to be compulsorily acquired only by the government as the government has eminent domain on the land. She has commended us to the decision rendered in the case of **State of Andhra Pradesh Vs. Goverdhanlal Pitti,** (2003) 4 SCC 739. She has invited our attention to paragraphs 20 and 21 of the said decision. They read as under:-

> “20. This Court cannot overlook the fact that the new norms whatsoever fixed for setting up of a school building may not be necessarily applicable to the existing buildings. Norms, if any, fixed by the Urban Development Authorities can be insisted upon for proposed new school buildings in the newly developed areas. It is not necessary to go further into that subject.
>
> 21. In State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga this Court nas recongized the right of the State of “eminent domain” that is “the right of compulsory acquisition of any private property”. This power of eminent domain of the State is sovereign power over powers and rights of private persons to properties. The High Court of Andhra Pradesh has referred and, distinguished the Division Bench decision of its own court. We find that challenge in similar circumstances by private owners to the action of acquisition taken by the State and the contention based on malice in law was negatived by this Court in the case of State of U.P. v. Keshav Prasad Singh. The relevant part of its reads thus: (SCC pp.589-90, para 4)
>
> *“4 Having considered the respective contentions, we are of the considered view that the conclusion of the High Court was clearly illegal. It is seen that the land acquired in the year 1963 for building a PWD office and after construction a compound wall was also constructed to protect the building. As found by the civil court, on adducing evidence in a suit that the Department had encroached upon the respondent’s land which was directed to be demolished and delivery of possession to be given. It is seen that when that land was needed for a public purposed i.e. as a part of public office, the State is entitled to exercise its power of eminent domain and would be justified to acquire the land according to law. Section 4(1) was, therefore, correctly invoked to acquire the land in dispute. It is true that the State had not admitted that Its officers had encroached upon the respondent’s land and had carried the matter in appeal. The finding of the civil*

court was that the property belongs to the respondent. The factum of the action under the Act implies admission of the title of the respondent to the extent of land found by the civil court to be an encraochement. Though the State chose to file the appeal which was pending, better judgment appears to have prevailed on the State to resort to the power of eminent domain instead of taking a decision on merits from a court of law. In view of the fact that the PWD office building was already constructed and a compound wall was needed to make the building safe and secure and construction was aiready made, which is a public purpose, the exercise of power of eminent domain is perfectly warranted under law. It can neither be said to be colourable exercise of power nor an arbitrary exercise of power."

92. Miss Palit has further contended that the Special Appointment Officer to perform the function of Collector of the district under Section 3(c) of the Land Acqusition Act, 1894 should have either been by name or by virtue of office as contemplated under Section 15 of the General Clauses Act. But in the case of Indira Sagar Project, no notification been issued either by name or the office of the Land and Rehabilitation Officer, NHDC. In this regard she has commended us to the decisions rendered in the cases of **Abdul Husein Tayabali and others Vs. State of Gujarat and others**, AIR 1968 SC 432 and **State of Gujarat Vs. Chaturbhuj Maganlal,** (1976) 3 SCC 54. In this regard Ms. Palit has further submitted that the jurisdiction under the Land Acquisition Act, 1894 cannot be conferred except under Section 3(c) of the said Act. To bolster the aforesaid submission she has placed reliance on the decision rendered in the case of **Fulchand Bhagwandas Gugale and another Vs. State of Maharashtra,** (2005) 1 SCC 193. It is urged by her that non-fulfillment of Section 3(c) of the Act made all the conducts of such officers incompetent to do so as the same was without jurisdiction and hence, the award passed by them is a nullity ab initio. In this regard she has referred us to the consent, waiver acquiescence of parties cannot confer jurisdiction where there is inherent lack of jurisdiction which makes the decision ab initio void. She has placed reliance upon the decisions rendered in the cases of **K. Kankarathnamma and others Vs. State of Andhra Pradesh and others,** AIR 1965 SC 304, **Sharda Devi Vs. State of Bihar and another,** (2003) 3 SCC 128 and **Sarwan Kumar and another Vs. Madan Lal Aggarwal**, (2003) 4 SCC 147. It is also putforth that the time period that has been postulated under section 11-A of the Land Acquisition Act has lapsed and, therefore, the notification has come to an end. On a perusal of the pleadings it is clear as day three questions emerged for consideration:

i) whether the award passed by the Land Acquisition Officer can be recorded as nullities having been passed by the Officers who have been deputed by the State Government;

ii) whether they have become the adjudicators of their own cause thereby defeating the fundamental concept of principles of natural justice; and

iii) whether in a Public Interest Litigation of this nature, the court would deal with same.

93. She has commended us to paragraphs 25, 59, 60, 61 and 64 of the second Narmada Bachao Andolan case. She has also placed reliance on paragraphs 50,62, 251 and 254 of first Narmada Bachao Andolan Case. She has also commended us to the decision rendered in the case of N.D. Jayal and another (supra). She has specifically invited our attention to paragraphs 59,60 and 261 of the said decision which read as under:

"59. The construction of the Tehri and Koteshwar Dams will result in the formation of two lakes having a spread of 42 sq. km and 2.65 sq. km respectively at full reservoir levels. The Tehri Dam will submerge Tehri town and 22 villages. Another 74 villages will be partially affected. A major portion will get affected in the first phase with the construction of the cofferdam and the remaining by final impoundment. In addition, 2 villages fully and 14 villages partially will be affected by the Koteshwar Dam. By the construction of New Tehri Town, project works and colony construction will affect another 13 villages. In total, the Tehri Power Project will affect 37 villages fully, 88 villages partially and Tehri town. Rehabilitation of these much-affected people is the main issue before us.

60. Rehabilitation is not only about providing just food, clothes or shelter. It is also extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. Thus observed this Court in Narmada Bachao Andolan case. The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time-limit was fixed by this Court in B.D. Sharma Vs. Union of India and this was reiterated in narrnada. This prior

rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment.

61. The rehabilitation package is prepared. It is also made clear that the rehabilitation conditions in this case are also applicable to the oustees of the Koteshwar Dam as well as those living on the rim of the reservoir and to all those who are likely to be affected by the project. The authorities concerned will have to take proper steps to rehabilitate all those who are entitled to rehabilitation before six months of the impoundment. Without the completion of rehabilitation there shall not be any impoundment."

94. In this regard we may refer with profit to the additional return filed by the Government of M.P. wherein notification has been issued under section 3(c). Said notification reads has been brought on record as Annexure R/3M. It stipulates that the State Government in exercise of his power u/s 3-(c) has designated all the Dy.Collectors who have completed five years of service and have passed the requisite departmental examination or the persons who have been granted relaxation from passing those examination, they will function as Collector under the Land Acquisition Act within their territory. Thus, the Deputy Collectors were appointed as Land Acquisition officers and hence, they cannot be said to lack jurisdiction to decide the land acquisition cases.

95. Additionally, it is urged by the learned counsel for the respondents that the Awards are finalised by the Collector to a particular fiscal extent beyond Rs. 2 crores by the Commissioner. It is contended that the persons have been deputed by the Government to function as Land Acquisition Officer for the NHDC exclusively for the purpose as to deal and adjudicate the factum of claim. Their deputation cannot be found fault with. It is in accordance with the Government circular and the parameters of the statute. In this context we may refer with profit to the decision rendered in the case of **Hindustan Petroleum Corporation Ltd. Vs. Yashwant Gajanan Joshi and others,** 1991 Supp. (2) SCC 592.

"12. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. There is no provision in the Act prohibiting the Central Government to make an appointment of an employee of the Corporation as competent authority. Apart from determining the compensation, many other functions are assigned to the competent authority and there may be one competent authority for all the above purposes or different persons or authorities may be authorized to perform all or any of the functions of the competent authority under the Act. The scheme of the Act shows that a competent authority has to discharge various and diverse duties under the Act. He has to attend survey of land required for pipeline, verification of land revenue records of the surveyed area, drawing up of panchnama for land, crop, plantation, trees or any other agricultural or non-agricultural activity carried on in the surveyed land or the pipeline, issue of notification under Section 3 (1) of the Act, receipt of claims/objections for assessment of damages, disputes etc. issue of clearance to concerned oil company and deciding all the disputes arising out of the authorised persons, power to enter notified lands and various other duties. Thus such persons becomes a better qualified and experienced person equipped with a proper background to decide the amount of compensation also. We cannot accept the contention of Mr.Dholakia that merely because a person is an employee of the corporation, he would have a bias in deciding the compensation under Section 10(1) of the Act.

13. It may also be pertinent to note that the legislature has used the words "the amount of which shall be determined by the competent authority in the first instance" (emphasis supplied) in sub-section 9(1) of Section 10 of the Act. This clearly shows that in the first instance it has to be decided by the competent authority and such determination shall not attain any finality. Then under sub-section (2) of Section 10 itself it has been provided that if the compensation is not acceptable to either of the parties then an application can be filed before the District Judge. No doubt there is a marked difference in this regard between the provisions of this Act and the provisions contained in the Land Acquisition Act, 1894 but in our view under Section 10(1) the compensation is to be determined by the competent authority only in the first instance. A party is entitled to raise the ground of bias against an appointment of an individual officer as competent authority on sufficient material placed on record in this regard, but not merely because such competent authority is an employee of the Corporation. It cannot be a ground for any disability or disqualification in appointing such person as competent authority. If we take the matter to its logical conclusion the result would be that no employee of the State Government or the Central Government as the case may be will be appointed as competent authority where petroleum and minerals pipelines are to be laid for a project initiated by the State Government or the Central Government respectively. It would be too broad a proposition to extend the theory of bias to exclude persons only

because such persons draws the salary from the bodies like public corporation, State Government or Central Government. It would altogether be a different case if it was a case of a private employer and his employee. We cannot equate the case of a person in private employment with that of a person in public employment. The authorities mentioned above and relied upon by Mr.Dholakia are clearly distinguishable."

96. In view of the aforesaid analysis, we are of the considered opinion that as there is a notification under Section 3 and officers of the State Government had been sent on deputation to act as Land Acquisition officers, the awards passed by them cannot be declared as nullity because of lack of inherent jurisdiction of the Land Acquisition Collectors.

97. Apart from the above, an affidavit has been filed 3,900 awards have been passed and 9000 cases have been referred to the Reference Court on the basis of applications preferred under section 18 of the Land Acquisition Act. The Reference Court, as we have been apprised, more than 1,800 cases have been disposed of. This facet we have highlighted only to show the things have proceeded and in a Public Interest Litigation it is difficult rather impossible to set aside the awards and the benefits availed by the persons.

98. Miss Palit has submitted that the organisation is not against the Indira Sagar Project though the learned counsel for the respondents would consider them an organisation who have anti-dam attitude. We are not really concerned with that. Many grievances have been raised with regard to R&R policy and SRG. We have already held that the policy is constitutionally valid but while saying so we have indicated whether it is working out in entirety, appropriately and objectively is to be seen and whether any further directions are required to be given to get the policy an accomplished one. We do not intend to modify the policy by adding our perception but we would like to advert to the same on the bedrock of Article 21 of the Constitution the authorities to consider certain facets. In this regard we would like to clarify as far as R & R policy and SRG are concerned, we are not inclined to state that they are unconstitutional but we would hasten to add that a letter dated 20.5.2000 has been referred to us by the competent authority. The same is in Hindi. There is immense cavil that the Hindi version has not been appropriately translated. On a query being made Mr. Prasad and Mr. Singh submitted that Hindi version shall be followed in letter and spirit.

99. Miss Palit has submitted that the rehabilitation policy has not really been worked out and many people have been coerced to leave the place. Her grievance is that adult son and adult unmarried daughters are not being treated as separate unit. It is submitted that the respondent State is bugged and inflicted by corporate contamination as if it has predetermination to abandon democracy and pave the path of predatory one. It is put forth by her that the functionaries of the State in collusion with the Officers of the respondent No.l have razed the houses, got the articles thrown and treated the people in an inhuman manner. Miss Palit has putforth with immense force that a policy well made is not a policy well worked out. She has commented that 'a tiger on paper is not real tiger'. It is canvassed by her that there must be a real will to apply the policy in appropriate manner arid not show a policy to the whole country that they are fair, reasonable and uncapricious but in actuality allowing it to die slow death.

100. Per contra, Mr, Singh would contend that the policy has been worked out. Number of inhabitants of villages which are part of 91 villages which are subject matter of the present case have been given land. A land bank has been constituted. The State authorities are trying to give land for land. Some oustees have taken money and left as they wanted to purchase the land at some different place and after availing money they cannot take a somersault that they wanted to give back the money. It is also urged by him that adult son and adult unmarried daughter are considered as separate units.

101. The rivalised stances cannot be really adjudicated under Article 226 of the Constitution though we can prima facie take note of the fact that has been brought before us. There has to be inspection at the ground level. This Court by way of interim order had directed the NHDC to complete all R&R measures in regards to PAF/s outsees of the 91 villages on or before 31.12.2005 and issue a fresh notification requiring the existing residents to vacate before the next date of monsoon i.e. 1.7.2006, A further direction was given that no coercive steps shall be taken to evict the existing occupants of the 91 villages but the said order was conditional one that the same will not entitle those who had already left the 91 villages or those who had received the special compensation allowance of Rs. 21,000/- to come back. It was also stated that those families which continue to stay in the villages and have not already vacated will not be entitled to the special compensation allowance of Rs.21,000/- as it was meant for only those have been ousted without adequate notice. The Grievance Redressal Authority was directed to dispose of the complaints and grievances of the PAFs by end of 2005 and extend the full benefit. This Court also directed the NCA (R&R Sub-Group) to involve itself in the monitoring of the R&R measures by NHDC to the PAFs/ oustees of the 9l villages. This Court stated that the said directions shall not be construed as final decision on the quantum of R&R entitlement of the PAFs.

103. We would like to mention that the present controversy depicts a serious and crucial human problem. It has a disquieting effect but the gravitous and magnitude of the said problem have to be weighed with progress, egalitarian conception, utilatiran vision, global economy and permissible quantum leap from the past to future and, therefore, a delicate balance has to be struck down. The policy covers certain categories of persons and leaves some. A criticism has been advanced by Miss Palit that the victims of the submergence have to be regarded as innocent sufferers. They have to be allowed to live with dignity. They cannot be driven to streets because of their lack of resources to fight against the 'City Halls'. Their right to live as envisaged under Article 21 of the Constitution of India has to be given the fullest and completest meaning. Their rehabilitation has to be real and not a mirage. It has to be immediate and not distant. It has to be in compliance of the policy and not in breach. It has to be followed with ethicality and not with deceptive propensity. There has to be a real resettlement and not settlement on paper, for shelter is the basic facet of resettlement. True it is, land for land has to be given as far as possible and we do not declare the said facet unconstitutional. However, it is submitted by the learned counsel for the respondents that the land bank has been constituted. The persons who want the land for land and had not availed the money in lieu of land should be offered the sight with all civil amenities.

104. The next facet which has been seriously canvassed by Miss Palit is that the properties which are required to be acquired under the provisions of the Land Acquisition Act have not been really acquired. A stand has been taken by the respondents that in some cases they have left 25% but have given option to the land owner as regards the acquisition. We do not intend to get into the validity of the said spectrum. We would only like to say that if a land owner wants his entire land to be acquired where 75% has been acquired, the same shall be acquired and appropriate compensation as per law and R&R policy be given.

105. Miss Palit has submitted that the State of Maclhya Pradesh is not acting as a socialistic welfare State as contemplated under the Constitution of India. Per contra, Mr. Prasad and Mr. Singh submitted that this submission has no leg to stand upon and in fact it is like building a castle in the air. To elaborate, the submission of Miss Palit is that if the height of the pondage is raised thousands of people are likely to get affected and the State has taken a decision to acquire houses and not the land. Mr. Prasad and Mr. Singh would submit that even if the maximum level of water is raised, the reservoir of backwater level which is likely to increase has been taken care of. The land that has been sought to be acquired by the respondents are likely to be flooded once in hundred years and may be in thousand years. The same is in the technical realm and it is difficult to dwell upon the same.The persons whose lands have been acquired would be given a house sight one kilometre away from the land and if there would be flood, a minor one, the land would become more fertile and the land owner has nothing to loose. Countering the said submission it is contended by Miss Palit that the report of the GRA shows that the villagers of all number of villages have to live in apprehension as there is risk to life as there can be submergence. Resisting the same it is submitted by the learned senior counsel for the respondents that this is a mythical and unnecessary fear of those villagers as nothing did happen when the height of the dam was raised to 255 metres. Whether the villagers are justified in harbouring fear or not but the possibility of fear cannot be kept at total bay. In the case of Purushaindra Kumar Kaurav Vs. The Union of India and Others (Writ Petition No.561/2001) the Division Bench of this Court while dealing with a public interest litigation for taking measures in respect of the catastrophe and cataclysm caused by earth quake in the city of Jabalpur and nearby area in the latter part of the last millennium expressed the view as under:

> ".....right to life includes not only right to livelihood and right to health but also in its connotative expanse includes various subtle rights which are germane to the human existence. Human life has to be lived with dignity. Life without dignity and self respect is essentially sense life in proper sense of life the noblest and priceless gift of nature. Dignity does not come to a man if he is compelled to remain in a state of constant fear or any interminable apprehension of damage that loom large. It has been said by Thoreau "nothing is so much to be feared as fear". Fear is antithesis of real freedom. To put it differently it is an anathema to freedom to live with dignity. Recurring of disastrous earthquake in a city like Jabalpur creates a shrill in the spine and makes a man to wake up in the mid of night as the nighmarish effects of the first earthquake are difficult to be forgotten. We are of the considered view, that it is the obligation of the State Government to see that appropriate and effective steps are taken to protect its citizens from such a cataclysm and to make arrangements to handle the crisis when it occurs. We say so as we have no doubt in our mind that to live without fear is also a facet, a singnificant facet, of Article 21 of the Constitution."

106. In this context, we may refer with profit to the decision rendered in the case of MP Human Rights Commission Vs. State of MP and Others, AIR 2003 MP 17. In the aforesaid case this Court was dealing with the grant of compensation to the victims who had lost their vision because of negligence in an eye camp held by the Government

doctors. This court expressed the view that the law in the sphere of Article 21 has taken a marathon speed and marched ahead and proceeded to express the view as under;

> "In a democratic welfare set up a citizen has a right to lead a life as permitted within the constitutional framework and the State cannot do anything that would curtail or abridge the protected rights of a citizen. A citizen has a right to live with dignity. It has been emphasised time and again, right to live does not mean to live a life which is sans substance. Thus, the substance of life has become the substratum of Art. 21 of the Constitution. The State has obligation under law to take care of health of its citizens and cannot be allowed to do anything which would jeopardise the same."

107. We have referred to the aforesaid decisions only to show that the fear cannot be allowed to loom large over the inhabitants. Fear corrodes the marrow of life. A citizen in his individual capacity is entitled to be a protagonist in his own life and the said life cannot be worth living if one lives in constant fear as constant fear affects the human dignity which is contrary to the constitutional philosophy. We would give appropriate directions in this regard when we enumerate our conclusions and directions.

108. The next aspect in this regard is relatable to the availability of civic amenities at the shifted place. A place of shifting where human being is rehabilitated cannot be just a place. It has to have all the civil amenities. There has to be proper hygienic and clean atmosphere, place for imparting education and places where people can avail the medical facilities, etc.

109. Before we proceed to record our conclusions and issue directions we would like to state that there cannot be collective progression unless the people who suffer because of modernisation of economy are taken care of. It is the sacrosanct duty of the State. One cannot be oblivious of the fact that orderly growth is the bedrock of social justice. Any devise, however dynamic may be, has to keep in view the substratum of the conception of social justice, bridge the gap and accord justice to the, weakest and the disabled. When so done the constitutional philosophy gets incremented. In the name of economic growth, no person should be degraded to become an unperson. A harmonious, delicate, pragmatic and hamanitarian balance is to be struck. If the State, if we allow ourselves to say so, fails to do so, it creates a fundamental paradox and incorrect perceptual shift which the law does not countenance.

110. In the ultimae eventuate our conclusions and directions are enumerated in seriatim as under:-

(a) The present litigation is maintainable as a public interest one and not to be thrown overboard on the ground of delay and laches.

(b) The orders passed in the earlier writ petitions do not operate as res judicata.

(c) The award passed by the Naramada Water Disputes Tribunal is not applicable to the Indira Sagar Project except what has been stated therein and what has been clarified hereinbefore.

(d) The Narmada Control Authority has fundamentally no role vis-a-vis Indira Sagar Project. In any case the same has paled and melted into insignificance because of the interlocutory orders passed by this Court from time to time ascribing the role to the said authority and the Sub-Group of the same.

(e) The awards passed by the Land Acquisition Officers are not nullities and have been passed by the competent officers under the Land Acquisition Act, 1894.

(f) The persons who have not filed the applications under Section 18 of the Land Acquisition Act seeking reference would be entitled to the benefit as engrafted under Section 28-A of the aforesaid Act.

(g) The policy evolved by the State Government from time to time is constitutionally valid.

(h) The Hindi version of letter dated 20.5.2000 would prevail and the same should be followed in letter and spirit.

(i) The adult sons and the adult unmarried daughters would be treated as separate units for grant of R&R and Special Rehabilitation Grant and other benefits provided under the policy.

(j) The encroachers who have been there prior to the cut off date shall be extended all the benefits under the policy. The State shall endeavour to create a further land bank to provide the benefit of land for land as far as possible.

(k) The persons who have not accepted the compensation in lieu of land would be at liberty to ask the authorities to grant land for land and the same shall be adhered to in terms of the policy;

(l) The sites which have been demarcated by the respondents No.l and 2 should be developed so that the civic amenities are available and the oustees live with dignity.

(m) The persons who are aggrieved by the awards under the Land Acquisition Act can prosecute their grievances under the provisions of the said statute.

(n) The State Government would not advance a plea before the Civil Court that as the SRG has been granted there should be no enhancement of the award passed by the Land Acquisition Officer if the same is permissible within the parameters of said enactment.

(o) The R&R group of Narmada Control Authority would do the field study and apprise the Grievance Redressal Authority with regard to the grievance of the affected persons.

(p) The Grievance Redressal Authority should be broad based by inducting a retired District Judge. Ordinarily we would have left it to the State Government, but we think condign to name Shri M.R. Kasania, a retired District Judge to be a Member of G.R.A.

(q) The Grievance Redressal Authority shall deal with the grievances applications with utmost objectivity.

(r) The Grievance Redressat Authority shall at least meet once a week in the affected area and do the needful which include the computation of R&R as well as SRG.

(s) The order passed by the Grievance Redressal Authority shall be subject to judicial scrutiny of this Court.

(t) The Central Water Commission shall study further with regard to the persons and the houses which are likely to be affected by the back water level.

(u) The Grievance Redressal Authority and Central Water Commission would make close study whether the persons whose houses have been acquired barring the land whether it is justified or not, and if not so, recommend to the State Government for its appropriate decision.

(v) The oustees whose lands have not been acquired and, if not to be acquired, but lose their houses in the process acquisition should be given sites within the distance of 1 Km. along with the civic amenities relating to education, health and hygene and other necessary facilities.

(w) The persons whose lands have been acquired to the extent of 75% and seek indulgence with regard to the balance 25% the same should be acquired and award should be passed.

(x) The pondage of the dam should be raised upto 260 metres in praesenti. Be it clarified, we do not say in regard to the height of the dam or the capacity of the reservoir. The capacity of the reservoir is 262.13 metres, but in praesenti we permit this much as certain rehabilitation packages are yet to be carried out. The same shall be carried out by the respondents No.l and 2 in quite promptitude with utmost objectivity in consultation with Grievance Redressal Authority and suggestions given by the Central Water Commission. We may further add the Central Water Commission, Grievance Redressal Authority and the respondents No.l &2 should evaluate the effect of the pondage on the backwater level and thereafter proceed pari passu with regard to raising of height of the water and rehabilitation programme.

111. Accordingly, the Writ Petition stands disposed of without an order as to costs.

(Dipak Misra)

JUDGE

(Shantanu Kemkar)

JUDGE

rm/ks