International Environmental
Law Research Centre

IN THE SUPREME COURT OF INDIA
CIVIL WRIT JURISDICTION
I.A. NO.10 IN I.A. NO.4 AND
I.A. NO. 11 IN I.A. NO. 7

IN

WRIT PETITION (CIVIL) NO.328 OF 2002

NARMADA BACHAO ANDOLAN **P E T I T I O N E R**

VERSUS

UNION OF INDIA AND ORS **R E S P O N D E N T S**

S.B. SINHA, J.

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I. INTRODUCTORY REMARKS

Sardar Sarovar Project (SSP) is one of the most ambitious multipurpose projects which on completion is expected to produce 1450 MW of power and supply water for irrigation and drinking purposes to areas not only in the riparian States including Kutch in the State of Gujarat but even in areas belonging to non-riparian State like Rajasthan.

The multiple project by way of construction of a dam over the River Narmada began its journey in 1961. A large number of residents of the States of Madhya Pradesh, Maharashtra and Gujarat are affected by the said construction.

The Government of India in exercise of its power conferred upon it under s.4 of the Inter-State Water Disputes Act, 1956, constituted a Tribunal and made the following reference to it:

> *"In exercise of the powers conferred by sub-section (1) of s.5 of the Inter-State Water Disputes Act, 1956 (33 of 1956), the Central Government hereby refers to the Narmada Water Disputes Tribunal for adjudication of the water dispute regarding the inter-State River Narmada, and the river-valley thereof, emerging from Letter No.MIP-5565/C-10527-K dated 6.7.1968, from the Government of Gujarat."*

Another reference by the Government of India was made on 16.10.1969.

The state of Gujarat before the Tribunal admittedly made an offer that the oustees can be resettled and rehabilitated in the State of Gujarat wherefor a rehabilitation package would be granted if they opt therefore and in the event the outstees opt to stay back in their home state, the entire expenses for the purpose of rehabilitation shall be borne by the State of Gujarat.

An award was made by the said Tribunal in terms of s.5 (2) read with s.5(4) of the Inter-State Water Disputes Act, 1956 on 16.8.1978. Several references thereafter were filed by the concerned States. As regard relief and rehabilitation, the award inter alia contained mandatory provisions containing Clause XI sub-clause (IV)(6)(ii) stating that no submergence of any area would take place unless the oustees are rehabilitated. In terms of its award, the Tribunal directed constitution of an Inter-State Administrative Authority known as 'Narmada Control Authority' (NCA) for the purpose of securing compliance with and implementation of the decision and directions of the Tribunal. The NCA in its turn constituted one or more sub-committees including one relating to resettlement and rehabilitation.

II. WRIT PETITION

The Narmada Bachao Andolan (NBA), a Non-Governmental Organisation which has been in the forefront of the agitation against the construction of the Sardar Sarovar Dam filed a writ petition before this Court raising several issues including relief and rehabilitation.

Before this Court a grievance was raised as regard the attitude on the part of the State of Madhya Pradesh as it made an attempt to wriggle out of its responsibilities to provide rehabilitation facilities to the oustees by offering them cash compensation. A contention was further raised that since offers to oustees affected at the 90 metres of the height of the dam to be settled in the State of Madhya Pradesh had not been made, further construction should not be permitted till one year after the resettlement of these project-affected families (PAFs) at 90 metres.

III. DECISION OF THIS COURT

A three-Judge Bench of this court by a judgment and order dated 18.10.2000 in Narmada Bachao Andolan v. Union of India and others [(2000) 10 SCC 664] disposed of the said writ petition upon issuing various directions. The court inter alia opined that:

(i) displacement of the tribals and other persons would not per se result in violation of their fundamental or other rights;
(ii) on their rehabilitation at new locations they would be better off than what they were;
(iii) at the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets; and
(iv) the gradual assimilation in the mainstream of the society would lead to betterment and progress.

This Court in its judgment noticed that the award provided that every displaced family whose more than 25% of agricultural landholding is acquired, would be entitled to be allotted irrigable land of its choice to the extent of land acquired subject to the prescribed ceiling of the State concerned with a minimum of two hectares land. Furthermore, the PAFs will be allotted a house/plot free of cost. The court noticed that the State Governments have liberalized the policy with regard to resettlement and have offered packages more than what was provided for in the award of the Tribunal. Such liberalized policy included those PAFs who were even encroachers, landless/ displaced persons, joint-holders, tapu-land (island) holders and major sons (18 years old). The court noticed various measures taken by the States of Madhya Pradesh, Maharashtra and Gujarat for sustainable development as regard preserving the socio-cultural environment of the displaced persons in these States. This Court noticed that although in terms of the award those sons of the oustees who had become major one year prior to the issuance of the notification for land acquisition were entitled to be allotted land; the State of Gujarat made a relaxation thereto so as cover all those who became major up to 1.1.1987. Before us it is contended that the State of Madhya Pradesh also extended the cut off date to the date of issuance of notification. The Court noticed that R&R Group and the Grievance Redressal Authority (GRA) having been established, a system had come into force for ensuring satisfactory resettlement and rehabilitation of the oustees. The Court furthermore noticed that at the instance of GRA, PAFs were being issued sanads for the lands allotted to them which will ensure provisions of a proper legal document in their favour. The Court also noticed that the sites had been identified by the State of Madhya Pradesh with a view to arrange resettlement of PAFs and out of 92 sites for resettlement of PAFs which were required to be established and out of these; 18 were stated to be fully developed, development in 23 sites was in progress; 18 sites were such where location and identification of land although was complete but development work had not started and 33 sites were such where location of land for the development was to be decided by the task force constituted for the said purpose. Noticing the variance between the rehabilitation package offered by the State of Madhya Pradesh and Gujarat this Court opined:

> *"... The impression which one gets after reading the affidavit on behalf of the State of Madhya Pradesh clearly is that the main effort of the said State is try and convince PAFs that they should go to Gujarat whose rehabilitation package and effort is far superior to that of the State of Madhya Pradesh. It is, therefore, not surprising that a vast majority of PAFs of Madhya Pradesh have opted to be resettled in Gujarat but that does not by itself absolve the State of Madhya Pradesh of its responsibility to take prompt steps so as to comply at least with the provisions of the Tribunal's award relating to relief and rehabilitation. The State of Madhya Pradesh has been contending that the height of the dam should be lowered to 436 ft. so that lesser number of people are dislocated but we find that even with regard to the rehabilitation of the oustees at 436 ft. the R&R programme of the State is nowhere implemented. The State is under an obligation to effectively resettle those oustees whose choice is not to go to Gujarat. Appropriate directions may, therefore, have to be given to ensure that the speed in implementing R&R picks up. Even the interim report of Mr. Justice Soni, GRA for the State of Madhya Pradesh, indicates lack of commitment on the State's part in looking to the welfare of its own people who are going to be under the threat of ouster and who have to be rehabilitated. Perhaps the lack of urgency could be because of lack of*

resources, but then the rehabilitation even in Madhya Pradesh is to be at the expense of Gujarat. A more likely reason could be that, apart from electricity, the main benefit of the construction of the dam is to be of Gujarat and a lesser extent to Maharashtra and Rajasthan. In a federal set up like India, whenever any such inter-State project is approved and work undertaken the States involved have a responsibility to cooperate with each other. There is a method of settling the difficulties which may arise amongst there like, for example, in the case of inter-State water dispute the reference of the same to a Tribunal. The award of the Tribunal being binding, the States concerned are duty-bound to comply with the terms thereof."

The Court issued inter alia, the following directions:

"(2) As the Relief and Rehabilitation Subgroup has cleared the construction up to 90 metres, the same can be undertaken immediately. Further raising of the height will be only pari passu with the implementation of the relief and rehabilitation measures and on the clearance by the Relief and Rehabilitation Subgroup. The Relief and Rehabilitation Subgroup will give clearance for further construction after consulting the three Grievance Redressal Authorities.

(5) The reports of the Grievance Redressal Authorities, and of Madhya Pradesh in particular, show that there is a considerable slackness in the work of identification of land, acquisition of suitable land and the consequent steps necessary to be taken to rehabilitate the project oustees. We direct the States of Madhya Pradesh, Maharashtra and Gujarat to implement the award and give relief and rehabilitation to the oustees in terms of the packages offered by them and these States shall comply with any direction in this regard which is given either by NCA or the Review Committee or the Grievance Redressal Authorities.

(7) NCA will within four weeks from today draw up an action plan in relation to further construction and the relief and rehabilitation work to be undertaken. Such an action plan, will fix a time frame so as to ensure relief and rehabilitation pari passu with the increase in the height of the dam. Each State shall abide by the terms of the action plan so prepared by NCA and in the event of any dispute or difficulty arising, representation may be made to the Review Committee. However, each State shall be bound to comply with the directions of NCA with regard to the acquisition of land for the purpose of relief and rehabilitation to the extent and within the period specified by NCA."

IV. THE PRESENT PROCEEDINGS

As the directions of this Court were not implemented in letter and spirit, applications were filed by the petitioners herein for directing the Respondents to rehabilitate each of them in accordance with the NWDTA and the orders of this Court, as also for a direction that the orders passed by the GRA be set aside and not acted upon.

The petitioners in I.A.No.4 of 2004 who are 23 in number, are residents of village Picchodi and the petitioners in I.A.No.11 of 2004 who are 14 in number, are residents of village Jalsindhi. In these applications, the petitioners had prayed for a direction upon the Respondents not to proceed with further construction by raising the height of the dam till all affected people at the height of 110 metres are rehabilitated in all respects.

As GRA had been constituted by the Stat of Madhya Pradesh, this Court without going into the merit of the matter by orders dated 16.4.2004 and 23.7.2004, directed the parties to agitate their grievances at the first instance before it.

V. CONTENTIONS

The contention of the Applicants herein is that having regard to the fact that they are Project Affected Families (PAFs) and, thus, being oustees within the meaning of the award made by Narmada Water Dispute Tribunal (NWDT), each one of them was entitled to the benefits of the rehabilitation package envisaged therein. Such entitlement, according to the applicants, must be extended to:

(i) all major sons of the land holders;
(ii) those who had also been temporary affected; and
(iii) the heirs of land holders who died prior to the date of notification.

It was further contended that in the event, those who had been temporarily affected as also the major sons of the original land holders are held entitled to the benefits of the rehabilitation package, the State of Madhya Pradesh be directed to allot suitable cultivable lands in their favour as the lands situated at Khajuri and measuring 13.40 hectares only would not be sufficient for that purpose.

VI. PROCEEDINGS BEFORE THE GRA

The State contended that every oustee is offered land out of the land bank developed by it as per norms set out in NWDT Award and in the event any oustee does not intend to avail the same and finds the Special Rehabilitation Package (SRP) more attractive, he may do so. It was urged that the Government had adopted an uniform policy for all the oustees and, thus, the claim for individual preferences cannot be acceded to. It was urged that it was not possible to allot or procure land for allotment as per choice of the applicants as the same is not required to be done under NWDT Award. It was submitted that it is not possible for the State to procure the land suggested by the oustees and as such either they should accept the land allotted to them or avail the benefit of SRP.

Before the GRA, an owner of land in question, viz., Shri Mahesh Tiwari appeared and stated that he and his brothers were ready and willing to sell their landholdings admeasuring 116 acres situated at village Devla, at a market value which may be determined by the Narmada Valley Development Authority (NVDA) according to the procedure laid down in the Land Acquisition Act.

Before the GRA, the parties appeared. A piece of land measuring about 13.40 hectares situated at village Khajuri was proposed to be allotted by the State. The petitioners of I.A.No.11 in I.A.No.7 consented thereto.

The GRA, however, by reason of an order dated 11th September 2004 having regard to the availability of farm land at Khajuri which was offered by NVDA for rehabilitation of eligible oustees directed the State, having regard to the settlement arrived at by and between the parties to proceed to rehabilitate the applicants at the appropriate stage in the light of the judgment dated 18.10.2000 passed by this Court by allotting agricultural lands to the eligible applicants from out of the farm land at Khajuri, according to their entitlement along with house sites at R&R side nearby and providing the civil amenities as mandated by the Award and other reliefs due to them according to the provisions of the Award and the R.R. Policy of the State. The State of Madhya Pradesh, however, allotted only 5 land pattas and 7 house plots out of 23 applicants of village Picchodi and 5 land pattas and 14 house plots pattas to the 14 oustees of village Jalsindhi.

The applicants of both the interlocutory applications are, thus, before us.

VII. ADMITTED FACT

It is neither in doubt nor in dispute that applicants herein are PAFs within the meaning of the Award of the Tribunal. It is also not in dispute that acquisition of the land took place, so far as village Jalsindhi is concerned, in terms of the provisions of the Land Acquisition Act in the year 1991 whereas in respect of village Picchodi, it took place in 2000. It is furthermore not in dispute that the applicants belonging to both villages Picchodi and Jalsindhi come within the purview of the PAFs, at the height of 95 metres to 100 metres of construction of the dam. It also stands admitted that present height of the dam is 110 metres.

Indisputably, the State although intended to make a distinction between the temporary and permanent oustees but in its affidavit dated 6.5.1999 filed before this Court no such distinction was made and in fact it was emphasized that even temporary submergence even for a short period can affect the oustees badly and, thus, no distinction should be made between temporary and permanent PAFs.

Clause XI of the Award indisputably pertains to the directions regarding submergence, land acquisition and resettlement and rehabilitation of displaced persons which would include both permanently and temporarily affected persons.

VIII. RELEVANT CLAUSES OF THE AWARD

Clauses II(1), IV(2)(i), IV(2)(iv), IV(6)(ii), IV(7) and V(3)(iii) of Clause XI of the Award read as under:

> "II(1). Madhya Pradesh and Maharashtra shall acquire for Sardar Sarovar Project under the provisions of the Land Acquisition Act, 1894, all lands of private ownership situated below the FRL + 138.68 m (455') of Sardar Sarovar and all interests therein not belonging to the respective States. If on the basis aforesaid, 75 per cent or more land of a contiguous holding of any person is required to be compulsorily acquired, such person shall have the option to compel compulsorily acquisition of the entire contiguous holding.
>
> II(2). Madhya Pradesh and Maharashtra shall also acquire for Sardar Sarovar Project under the provisions of the Land Acquisition Act, 1894, all buildings with their appurtenant land situated between FRL+138.68 m (455') and MWL + 141.21 m (460') as also those affected by the back water effect resulting from MWL+141.21 m (460').
>
> IV(2)(i). According to the present estimates the number of oustee families below RL 106.68 metres (RL 350') would be 30 spread over 20 villages in Madhya Pradesh and 250 families spread over 20 villages in Maharashtra. Within six months of the publication of the decision of the Tribunal in the Official Gazette, Gujarat, Madhya Pradesh and Maharashtra shall determine by mutual consultation the location of one or two rehabilitation villages in Gujarat to rehabilitate oustees from areas below RL 106.68 metres (RL+350'). Gujarat shall acquire necessary lands for the rehabilitation villages and make available the same within two years of the decision of the Tribunal. Within six months of the decision of the location of the rehabilitation villages in Gujarat, Madhya Pradesh and Maharashtra shall intimate to Gujarat the number of oustee families from areas below RL 106.68 metres (RL 350') willing to migrate to Gujarat. For the remaining oustee families, Madhya Pradesh and Maharashtra shall arrange to acquire lands for rehabilitation within the respective States.
>
> IV(2)(ii). Madhya Pradesh and Maharashtra shall set up adequate establishments for land acquisition and rehabilitation of oustee families. Gujarat shall deposit within three months of the decision of the Tribunal Rupees ten lakhs each with Madhya Pradesh and Maharashtra in advance towards cost of establishment and rehabilitation in these States to be adjusted after actual costs are determined. Madhya Pradesh and Maharashtra shall start land acquisition proceedings for

areas below RL 106.68 metres (RL"350') within six months of the decision of the Tribunal and convey the lands to Gujarat for project purposes within three years of the decision of the Tribunal. Within 18 months of the decision of the Tribunal, Gujarat shall make an advance payment of Rs.70 lakhs to Madhya Pradesh and Rs.100 lakhs to Maharashtra towards the compensation of land, to be adjusted after actual costs are determined.

IV(2)(iv). Gujarat shall acquire and make available a year in advance of the submergence before each successive stage, irrigable lands and house sites for rehabilitation of the oustee families from Madhya Pradesh and Maharashtra who are willing to migrate to Gujarat. Gujarat shall in the first instance offer to rehabilitate the oustees in its own territory.,

IV(6)((ii). In no event shall any areas in Madhya Pradesh and Maharashtra be submerged under the Sardar Sarovar unless all payment of compensation, expenses and costs as aforesaid is made for acquisition of land and properties and arrangements are made for the rehabilitation of the oustees the reform in accordance with these directions and intimated to the oustees.

IV(7). Allotment of Agricultural Land – Every displaced family from whom more than 25 per cent 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 families 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 not be less than six months before submergence. They must vacate the area by the notified date."

The provisions of the Award are required to be read along with the definitions of "*oustee*" and "*family*" contained in sub clauses 1(1) and 1(3) thereof which read as under:

> *""Oustee" An 'oustee' shall mean any person who since at least one year prior to the date of publication of the notification under s.4 of the Act, has been ordinarily residing or cultivating land or carrying on any trade, occupation, or calling or working for gain in the area likely to be submerged permanently or temporarily.*
>
> *"Family" (i) A family shall include husband, wife and minor children and other persons dependent on the head of the family, e.g., widowed mother, (ii) Every major son will be treated as a separate family."*

IX. SUBMISSIONS

The learned counsel appearing on behalf of the applicants submitted that for the purpose of grant of benefit of rehabilitation package, no distinction can be made between temporary and permanent affected people and in this connection our attention has been drawn to the stand taken by the respondent State in the earlier proceedings as also the award. It was submitted that the major sons of the PAFs being included in the definition of "family" and treated to be a separate family, they are entitled to allotment of a separate unit in terms of the award as also the judgment of this Court.

The learned counsel would further contend that those applicants who were adults on the cut-off date and whose fathers have passed away are also entitled to the benefit of the rehabilitation package. It was contended that the applicants must be given a choice as regard the site of the irrigable and cultivable lands.

The submission of Mr.C.S. Vaidyanathan, learned senior counsel appearing on behalf of the respondents, on the other hand, is that the Award contemplates grant of benefits of rehabilitation package only to such persons who were affected by reason of raising of height of the dam and, thus, all the PAFs are not entitled to grant of land for land. Further contention of Mr. Vaidyanathan is that the entire family has to be treated as a unit and the adult sons of a landholder are not entitled to a separate unit unless they were themselves land holders. This question, according to Mr. Vaidyanathan, had not so far been specifically considered by this Court.

According to the learned counsel, Sub clause IV (7) of Clause XI of the Award clearly specifies the persons who would be entitled to grant of alternative land. The Award, Mr. Vaidyanathan would argue, makes a distinction between permanently affected persons and temporarily affected persons.

X. POINTS FOR CONSIDERATION

(i) Whether there exists a distinction between temporarily and permanently affected persons in the NWDT Award as well as the judgment of this Court?

(ii) Whether adult sons are entitled to a minimum of 2 hectares of land as per NWDT Award and judgment of this Court?

(iii) Whether those adult sons who became landholders since their fathers passed away, are entitled to the benefit of alternate lands, in place of the acquired lands standing in the names of their deceased fathers?

XI. DETERMINATION

Permanent and Temporary Affected Families

Sub-clause IV (6)(ii) of Clause XI makes it imperative that submergence would not be allowed to take place until complete settlement and rehabilitation of oustees is done which in view of the definition of 'oustees' would mean both permanently and temporarily affected persons.

It has been the consistent stand on the State of Madhya Pradesh that temporary affected persons would come within the purview of the expression PAFs and there exists no distinction between permanent affected and temporary affected persons.

We may, at this juncture, notice the pattern of rehabilitation of affected families in Sardar Sarovar Project from the following chart relied on by the Applicants:

Rehabilitation of Sardar Sarovar Project Affected Families A Game of Numbers: MP's Diminishing PAF List

Status of R&R at Dam Height EL 95 Mts of MP PAFs								
Date	Total no. of PAFs	Claimed as Resettled			Balance	Option of Balance		Source of information
		In MP	In Guj	Total		MP	Gujarat	
Aug 29, 2001	5397	1182	2385	3567	1830	1378	452	Agenda of 50th Meeting of R&R Sub Group
Nov 11, 2001	5379	1394	2381	3775	1603	782	821	RCNCA (CMs) meeting
Dec 08, 2001	5397	1399	2418	3817	1580	1217	363	Agenda of 51st meeting of R&R Sub Group
Jan 07, 2002	5397	1466	2691	3157	1240	1150	90	Minutes of 41st meeting of R&R Sub Group
Feb 08, 2002	5397	1466	2691	4157	1240	1150	90	Agenda of 52nd meeting of R&R Sub Group
May 14, 2002	1883			1873	10			Minutes of 53rd Meeting of R&R Sub Group
June 31, 2002	1883*	967	916	1883	0	0	0	Quarterly Status Report, NCA
Dec 31, 2002	1883*	967	916	1883	0	0	0	Half yearly Status Report, NCA

* The GoMP has resettled only those PAFs (i) whose agricultural land is coming under permanent submergence and (ii) whose habitation is coming under permanent or temporary submergence due to a 1 in 100 year flood. (end notes are taken directly from NCA documents).

Status of R&R at Dam Height EL 95 Mts of MP PAFs								
Date	Total no. of PAFs	Claimed as Resettled			Balance	Option of Balance		Source of information
		In MP	In Guj	Total		MP	Gujarat	
Aug 29, 2001	7913	1327	2584	3911	4002	2554	1448	Agenda of 50th Meeting of R&R Sub Group
Nov 11, 2001	7913	1587	2684	4271	3570	1902	1668	RCNCA (CMs) meeting
Dec 08, 2001	7913	1670	3360	5030	2883	2693	190	Agenda of 51st meeting of R&R Sub Group
Jan 07, 2002	7913	1670	3360	5030	2883	1693	190	Minutes of 41st meeting of R&R Sub Group
Feb 08, 2002	7913	1670	3360	5030	2883	2693	190	Agenda of 52nd meeting of R&R Sub Group
June 31, 2002	3071*	1990	1036	3026	45	45	0	Quarterly Status Report, NCA
Nov 14, 2002	3071*	1990	1036	3026	45	45	0	
Dec 31, 2002	3071*	1990	1036	3026	69	69	0	Half yearly Status Report, NCA
May 13, 2003	3692*	2434	1258	3692	0	0	0	Minutes of 55th Meeting of R&R Sub Group
June 31, 2003	3692*	2434	1256	3692	0	0	0	Half yearly status report, NCA

* PAFs whose land are temporarily under submergence due to 1 in 100 have not been considered for R&R.

Status of R&R at Dam Height EL 95 Mts of MP PAFs								
Date	Total no. of PAFs	Claimed as Resettled			Balance	Option of Balance		Source of information
		In MP	In Guj	Total		MP	Gujarat	
Aug 29, 2001	12681	1809	2802	4611	8070	5489	2581	Agenda of 50th Meeting of R&R Sub Group
Nov 11, 2001	12681	2005	2896	4601	7708	5288	2420	RCNCA (CMs) meeting
Feb 08, 2002	12681	2079	3653	5732	6949	5219	1730	Agenda of 52nd meeting of R&R Sub Group
Nov 14, 2002	12681*	2175	3628	5803	6878	5425	1453	Minutes of 54th Meeting of R&R Sub Group
May 13, 2003	5607**							Minutes of 55th Meeting of R&R Sub Group
June 31, 2003	8406***	5893	2016	7909	497	191	206	Half Yearly Status Report, NCA

* This number may change after declaration of AQ awards. PAFs whose lands are temporarily submerged due 1 in 100 year flood have not been considered for R&R

** tentative

*** This number may change due to addition of genuine PAFs likely to be included after declaration by GRA and passing of land acquisition award.

The contents of the aforementioned chart, are not denied or disputed. They are said to be supported by documents.

It is also relevant to notice the gazette dated 31st December 2001 issued by the State of Madhya Pradesh which is as under:

> *"No.4-73-27.2.2001-1414 – It is informed that because of water level in SSP for the monsoon of 2002 the villages shown in list 1 will be affected and the oustees shown in list 2 will be affected with respect to their lands, houses and other property. These oustees will be able to make use of submergence affected property till the 31st of December 2001. After that they will have to relinquish this property; all families included in earlier notifications are also included in this notification.*

S.N.	Name of village	No. of PAFs including adult sons	Total effect due to submergence of Sardar Sarovar Project		Effect of submergence in monsoon of 2002		Details
			No. of houses	Agricultural land (in ha)	No. of houses	Agricultural land (in ha)	
1	Picchodi	428	104	123.497	104	123.497	

The names of all the 23 applicants of village Picchodi find place in the gazette published by the State, the details whereof are as under:

S.N.	Name of PAF and father's name	Land Holder/ Adult son	Total effect due to submergence of Sardar Sarovar Project		Effect of submergence in monsoon of 2002		Details
			No. of houses	Agricultural land (in ha)	No. of houses	Agricultural land (in ha)	
12	Mangilal S/o Madia	Adult Son	--	3.569	--	3.569	
34	Ramesh S/o Kalu	LH	--	--	--	--	Co-sharer of 34
36	Badrilal S/o Klya	LH	--	--	--	--	Co-sharer of 34
37	Jagan S/o Kalya	LH	--	--	--	--	Co-sharer of 34
38	Sagar W/o Kalya	LH	--	--	--	--	Co-sharer of 34
39	Vediya S/o Dariyav	LH	1	--	1	--	Co-sharer of 34
54	Shankar Rukhadiya	LH	1	1.154	1	1.154	--
55	Sonibai Rukhadiya	LH	--	--	--	--	Co-sharer of 34
56	Shambu Motia	LH	--	0.664	--	0.664	--
216	Pratap Tersingh	LH	--	1.056	--	1.056	--
278	Pokhar Girwar	LH	1	3.152	1	3.152	--
279	Punya Girwar	LH	1	--	--	--	--
281	Buda Banga	LH	1	0.615	1	0.615	--
282	Babu Banga	LH	1	--	1	--	Co-sharer of 281
283	Dhamibai Banga	LH	--	--	--	--	Co-sharer of 281
284	Ratansingh Ranchod	LH	1	4.078	1	4.078	--
285	Radheshyam Ratan	Adult son	--	--	--	--	--
286	Sitaram Ratan	Adult Son	--	--	--	--	--
287	Govind Ramsingh	LH	1	1.13	1	1.13	--
288	Sitaram Govind	Adult Son	--	--	--	--	--
364	Lanka Pokhar	LH	--	0.243	--	0.243	--

The names of the applicants of village Picchodi, thus, except Rajaram Pratap, who is an adult son of Pratap Tersingh are contained in the gazette. Similar is the position of the applicants of village Jalsindhi whose names also appear in the gazette issued by the State of M.P. wherein it was categorically stated that they would be affected by submergence in the monsoon of 2002 when the dam height was raised to 95 m. Their names also appear in the Action Taken Report of the State of Madhya Pradesh and the NVDA as was submitted to the Narmada Control Authority with a view to obtaining permission for raising the height of the dam from 90 m to 95 m and then from 95 m to 100 m. In fact, the State had claimed that most of the applicants had already been rehabilitated.

It is difficult to accept the contention of Mr. Vaidyanathan that the residents of Picchodi village had not been affected at the dam height of 110.64 metres or the house of Pratap Tersingh is not affected. We have noticed hereinbefore that the lands of Picchodi village stood affected at 95-100 nm. No material has been placed before us that the oustees of the said village were not affected due to permanent or temporary submergence at the dam height of 110.64 m. No such contention has been raised even before the GRA. Furthermore, it has not been explained that as to how 5 of them were given the benefit of land for land and house plots.

R&R Status of the PAFs at Sardar Sarovar Dam Height EL 95 m as on 31.12.2001 is as under:

State	No. of villages affected	Total PAFs	PAFs resettled/ allotted agricultural land/ paid cash compensation				Balance PAFs to be resettled		
M.P.	70	5397	2691*	0	1466	4157	90**	In Home State 1150	Total 1240

* includes Ex-parte allotment to 253 MP PAFs at EL 95.0 m.

Status of Land Acquisition Awards in the State of Madhya Pradesh at EL 95 m is as under:

"(i) For Agricultural Land

S.N.	Tehsil	No. of Villages	Awards declared	No. of villages balance for Awards	Notification issued under			Remarks
					S.4	S.6	S.9	
3	Barwani	20	16	4	4	4	4	

(ii) For Abadi Land

S.N.	Tehsil	No. of Villages	Awards declared	No. of villages balance for Awards	Notification issued under			Remarks
3	Barwani	16	12	4	4	4	3"	

Despite the same, the State now contends:

> *"14.1 That the allegations in the application (I.A.4) is that Government of M.P. is arbitrarily drawing distinction between temporary and permanent submergence and is not doing rehabilitation as mandated in NWDTA, and the directions given in the judgment of this Hon'ble Court. According to sub-clause II(1) (Chapter IX, Clause XI of NWDTA), only such lands of private ownership have to be acquired which fall below FRL (138.68 M). Agricultural lands affected by backwater (afflux) are not to be acquired. As per sub-clause II(2), ibid, only buildings with their appurtenant land between FRL (138.68 M)_ and MWL (141.21 M) shall be acquired."*

The contention of the State of Madhya Pradesh, however, is based on sub-clause II(1) of Clause ZI of Chapter IX of NWDT Award in terms where of allegedly only such lands of private ownership have to be acquired which fall below FRL 138.68 m and agricultural lands affected by backwater (afflux) are not to be acquired.

It was further contended that in terms of the judgment dated 18.10.2000 of this Court rehabilitation has to be done pari passu with the construction of the dam.

It is also relevant to mention that the stand of the State of Madhya Pradesh in terms of the award was that PAFs should be resettled as a village unit as per the stipulation of the NWDT Award as far as possible and upon taking practical aspects of the matter into consideration.

In terms of NWDTA Award, the irrigable lands and house sites were required to be made available to the PAFs one year in advance of the submergence and requisite amenities were also to be provided. Further, the notices for vacation of the lands are to be given after completion of the R&R of the PAFs on or before 31st December, i.e., 6 months before actual submergence (likely on the 1st of July of the next year). In terms of these stipulations, raising of the dam which would cause submergence would not be permitted unless rehabilitation programme is carried out. Even in the stipulations of the NWDT decision, which has been accepted by the State of Madhya Pradesh, no distinction was made between permanently affected and temporarily affected families.

The Award does not make any distinction between permanently affected families and temporarily affected families. Had it been so, the definition of the 'oustees' would not have been so worded.

It is evident that in the award of the Tribunal no distinction was made between permanently affected and temporarily affected oustees. The State, as noticed hereinbefore, in its affidavit filed before this Court in the writ petition not only failed and/ or neglected to raise such a contention but as pointed out in the Rejoinder Affidavit filed by the petitioners to the affidavit filed by the State that in fact the State in its affidavits filed before this Court had taken a firm stand that permanent oustees and temporary oustees stand on the same footing. The State in support of the aforementioned contention had also relied upon documents including the views of several committees and their reports. Furthermore, the State had adopted a policy of rehabilitation of oustees, in terms whereof contentions had been raised and a judgment has been obtained and in that view of the matter it is now not open to it to raise a contention which would run counter thereto or inconsistent therewith. The submission of Mr. Vaidyanathan to the effect that some of the applicants herein had been granted only house sites as they were not affected by permanent submergence, cannot, therefore, be accepted. It may be true that the award makes a distinction between those whose agricultural land had been taken over and those who were in the fringe area and who would face the problem of residence only. However, the applicants herein do not fall in the said category.

The award, as noticed hereinbefore, contained two sub-clauses relating to the directions on the State Government for compulsory acquisition of the land by the State of Madhya Pradesh and Maharashtra under the provisions of the Land Acquisition Act. This obligation on the part of the State to acquire land is, thus, neither in doubt nor in dispute. The additional directions are that those persons whose 75 per cent or more land of a continuous holding is required to be compulsorily acquired, will have an option to compel compulsory acquisition of the entire contiguous holding; and acquisition of buildings with their appurtenant land situated between FRL + 138.68 metres (455') and MWL + 141.21 (460') as also those affected by the backwater effect resulting from MWL + 1451.21 metres. The submergence due to maximum water level and backwater would take place only after it reaches full height.

In the Action Taken Reports (ATRs) of 90-95 m and 95-100 m, the applicants have been shown as PAFs having been rehabilitated in Gujarat purported to be on the basis of allotment of land made behind their back. The ATR being a document pursuant whereto or in furtherance whereof permission for increasing the height of the dam was given cannot be ignored and, thus, the State cannot be permitted to turn round and contend that the applicants are not entitled to be rehabilitated at this stage. It is evident that the State took a different stand at the earlier stage of the proceedings on the assumption that these oustees would go to Gujarat and as such there entitlements were acknowledged, but as soon as they made it clear that they will prefer rehabilitation in the State, their rights are being denied. This attitude on the part of the State, as has been observed in the main judgment, cannot but be deprecated.

Sub-Clause IV (6)(ii) of Clause XI of the Award states that no kind of submergence in the States of Madhya Pradesh and Maharashtra shall be permitted unless arrangements are made for rehabilitation of the oustees in terms of the directions contained therein. Thus, complete resettlement and rehabilitation of oustees was a condition precedent for submergence.

From the following excerpts of the Report of the Narmada Control Authority (NCA) which is the highest authority in the matter of implementation of the Award, it is clear that no such distinction can be made:

> *"Further, it was decided as per decision in the last meeting of the Sub-group all possible arrangements for R&R should be made by the concerned State Govts. For completing the same in all respect both in regard to oustees affected by the permanent as well as temporary submergence six months ahead from submergence. Actual allotment of land, house plot and payment of compensation etc. and not merely offer of such facilities as per the R&R package should be made in respect of all PAFs (both categories of affected by permanent and temporary submergence) except in the case of hardcore PAFs who refuse to accept the package and unwilling to shift."*

> *"Temporary submergence even for a short period can affect the oustees badly and that it is desirable to keep this in mind while rehabilitating the oustees."*

> *"In the light of earlier decision by NCA on this subject, there should not be any distinction between temporary and permanent PAFs and will be pre-requisite for the purpose of further raising of the dam."*

The submission of Mr. Vaidyanathan on interpretation of Sub-clauses II(1) and II(2) of Clause XI of NWDT Award that such a distinction is implied, is for the foregoing reasons rejected. The said clause applies only to the matter relating to land acquisition at the full height of the dam, i.e., 138.68 metres. This Court did not say in the main judgment that pari passu principle applies only to permanently affected families. If the lands of the applicants are acquired, they are entitled to rehabilitation.

This Court in its judgment in Narmada Bachao Andolan (supra) permitted construction of the dam up to 90 metres and opined that further raising of the height would be only pari passu with the implementation of the relief and rehabilitation measures.

In Black's Law Dictionary, 5th Edn., the term 'pari passu' has been defined to mean: "By an equal progress; equably, ratably; without preference."

The expression 'pari passu', therefore, has a direct nexus with raising of the height vis-à-vis implementation of relief and rehabilitation progress both of which must proceed 'equably' or 'ratably' which would mean that relief and rehabilitation measures must be undertaken as and when the height of the dam is further raised. The said expression should be construed in a meaningful manner.

The applicants herein became affected with the raising of the dam at 90 metres and remained affected by further arising thereof up to 100 metres and, thus, in terms of the directions contained in the award as also the judgment of this Court, it is beyond any cavil that the applicants herein, irrespective of the fact as to whether they are permanently affected or temporarily affected, were entitled to the benefit of the rehabilitation package. We are not oblivious of the fact that the river valley of Narmada is shaped like an inverted cone and the area of submergence increases exponentially for each metre of height raised. We are also not unmindful of the fact that before this Court it was contended by the original writ petitioners that whole land up to 138 metres should be acquired, people immediately be resettled and all requisite studies be done up to that level before permitting the dam height to be raised. It is only in that context this Court used the expression 'pari passu'.

We may notice that an observation has been made by the Chairman of R&R Sub-group in the meeting held on 11.4.1994 that temporary submergence even for a short period can affect the oustees badly and it is desirable to keep this in mind while rehabilitating the oustees. In the meeting held on 18.12.1998, it was observed:

> *"In the light of earlier decision by NCA on this subject, there should not be any distinction between temporary and permanent PAFs and will be pre-requisite for the purpose of further raising of the dam."*

Our attention has been drawn to various orders of the GRA to the effect that a distinction has been made between the temporary affectees and permanent affectees. We do not subscribe to the said view.

We are of the opinion that all the applicants who were both permanently and temporarily affected by submergence by reason of raising of the dam to the present height would be entitled to the benefit of the rehabilitation package.

XII. MAJOR SONS

The definition of family indisputable includes major sons. A plain reading of the said definition clearly shows that even where a major son of the land-holder did not possess land separately, he would be entitled to grant of a separate holding. The State of Gujarat, it is trite to notice, has extended this facility even to unmarried daughters.

The definition of '*family*' has to be read along with that of the "*oustee*". We may notice that "*oustee family*" and "*displaced family*" have interchangeably been used in the Award. They, thus, carry the same meaning.

In paragraph 152 of the main judgment, this Court noticed that every affected family must be allotted land, a house plot and other amenities. In paragraph 176 thereof, it was noticed:

> *"According to the Tribunal's award, the sons who had become major one year prior to the issuance of the notification for land acquisition were entitled to be allotted land."*

It is now well-settled that when the interpretation clause used an inclusive definition, it would be expansive in nature.

In G.P. Singh's "Principles of Statutory Interpretation", Ninth Edition – 2004, at page 166, it is stated:

> *"The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such thing as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include…"*

[See also Godfrey Phillips India Ltd., and another v. State of U.P. and Others 2005 AIR SCW 613]

Once major son comes within the purview of expansive definition of family, it would be idle to contend that the scheme of giving 'land for land' would be applicable to only those major sons who were landholders in their own rights. If a person was a landholder, he in his own right would be entitled to the benefit of rehabilitation scheme and, thus, for the said purpose, an expansive definition of family was not necessarily to be rendered. Furthermore, if such a meaning is attributed as has been suggested by Mr. Vaidyanathan, the definition of 'family' would be to an extent would become obscure. As a major son constitutes 'separate family' within the interpretation clause of 'family', no meaning thereto can be given.

In I.A.No.11 of 2003, there is no dispute as regard the age of the concerned applicants. In that case, two of the landholders Athiya and Khatriya died even prior to the issuance of the notification. This Court in paragraphs 152 and 176 of the main judgment specifically referred to the entitlement of the major sons (18 years old). The major sons, therefore, cannot be denied the said benefit. A half-hearted contention was raised on behalf of the State that those who had not been granted land might not have become major on the date of notification. Such a contention had not been raised before the GRA. We at this stage cannot permit a new plea to be raised and that too without any pleading and supporting material brought on records in that behalf.

Each of the 8 applicants were, thus, in reality a landholder in their own right since their fathers Athiya and Khatriya died even prior to issuance of the notification under s.4 of the Act. They, therefore, could not have been directed to be given only a house plot on the ground that they were adult sons of the landholders. The applicants, Athia Dhoklia and Khatria Peecha, not only had asked for allotment of land in the State of Madhya Pradesh, they had filed these applications long back. It is to be noticed that Noorjiya S/o Mahariya had not been given the benefit of allotment of land although his brother Bunda and his mother Kajli had been recognized as eligible for allotment of agricultural land to the extent of 2 hectares each. There is, thus, no ground to deny the said benefit to Noorjiya.

Several contentions involving factual dispute had, we may notice, not been raised before the GRA. The GRA had been constituted with a purpose namely, that the matters relating to rehabilitation scheme must be addressed by it at the first instance. This Court cannot entertain applications raising grievances involving factual issues raised by the parties. The GRA being headed by a former Chief Justice of the High Court would indisputably be entitled to adjudicate upon such disputes. It is also expected that the parties should ordinarily abide by such decision. This Court may entertain an application only when extraordinary situation emerges.

XIII. CHOICE OF LAND

In a case of this nature we do not accept the contention raised on behalf of the applicants herein that the oustees are entitled to opt for land of their choice and the State is bound to acquire or purchase lands for the said purpose. The State has constituted a land bank. Normally, those lands which are available from the land bank should be allotted and in relation thereto, the parties may have a choice. But they cannot reject such land only unless it is shown that the land are not irrigable or cultivable or otherwise unsuitable. In view of the dicta of this Court that the oustees would be better off at the rehabilitated place, they should be offered lands which are really cultivable or irrigable. They are also entitled to the basic civil amenities and benefits specified in the Award. In this view of the matter, if and when necessary the GRA would be entitled to consider the matter in accordance with law and pass a suitable directions.

This Court in the main judgment did not say that the oustees are to be relocated as a community. The question of rehabilitation inevitably would arise as and when they become entitled thereto.

XIV. EXTENT OF LAND

It is not in dispute that the award provided that every displaced family, whose 25% or more agricultural land-holding has been acquired, shall be entitled to be allotted irrigable land to the extent of land acquired subject to prescribed ceiling of the State with a minimum of two hectares of land.

It is, however, not in dispute that the lands offered by NVDA, a State Forum, have been found acceptable by the applicants belonging to Village Jalsindhi. We direct the respondents to allot such lands immediately to them. Having regard to the fact that the farm lands available at village Khajuri would be insufficient for allotment to the applicants of I.A.No.11, the matter may be considered afresh by the GRA. We agree with the opinion of the GRA that the applicants therein would not be entitled to allotment of land of their choice but the land offered to them should be irrigable and cultivable in terms of the judgment of this Court as well as the award of the Tribunal. We hope and trust that the parties hereto shall render all cooperation with the GRA for the purpose of finding out suitable irrigable and cultivable lands for allotment thereof to the applicants of village Picchodi at an early date and preferably within a period of three months from the date of communication of this order.

XV. CONCLUSION

These applications are disposed of with the aforementioned directions. In the facts and circumstances of the case, there shall be no order as to costs.

…….J

[Y.K. Sabharwal]

…….J

K.G. Balakrishnan]

…….J

[S.B. Sinha]

New Delhi

15 March 2005