



International Environmental
Law Research Centre

**HIGH COURT OF MADHYA PRADESH : JABALPUR
(Narmada Bachao Andolan)**

vs.

Narmada Hydro-electric Development Corporation & others

Writ Petition No. 3022 of 2005

CASE NO. WP 3022 OF 2005

ORDER

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Date 17.08.2005

Further order on interim prayer

This order on interim prayer shall be read in continuation of the interim prayer dated 27.07.2005 wherein the facts and reasons are more fully set out.

In our order dated 27.07.2005 we had stated that it was open to NHDC to proceed expeditiously with the rehabilitation measures as per the R&R policy of the State Government in respect of the Project Affected Families (PAFs for short) of the 91 villages. We had also directed the State Government to request the Grievance Redressal Authority to hold sittings at Indira Sagar Headquarters of the NHDC so that the grievances of the PAFs/oustees could be solved without delay.

2. The NHDC has filed a Third Status Report cum Compliance memo on 11.08.2005. In the said report, NHDC has stated that in the two weeks between 27.07.2005 to 10.08.2005, they had carried out resettlement and rehabilitation activities on a war footing and disbursed the following amounts (aggregating 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 the 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 grants	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 1 to 4 kms 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 the pendency of the litigation. It is submitted that the 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 filed the affidavits of its General Manager and the Chief Engineer about the detailed back water 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 (Fatehgarh, 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 that 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 :

S.No	Description of category	Numbers of families
1.	Houses acquired at FRL	At least 800 families from 5 villages. Many more from 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 Gazett 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 R7R 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. T 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 furnished as positive proof of the breach of the terms of the R&R policy by the 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 till to be paid. They reiterate 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 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 of families in the 91 villages. Be that as it may.

6. On another aspect that should be noted 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 more areas which is likely to 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 the area of submergence on account of back water effect, if the water level is permitted to be increased up to FRL of 262.13 m, is incomplete and inaccurate. This is evident from the figures given by the NHDC vis-vis the figures 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 monitoring 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 months 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 to 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 NHDC apart from reduction in the production of 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 will be no submergence of any of the 91 villages mentioned in the impugned notification dated 31.12.2004, even taking into account the backwater effect. 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 the end of this year (31.12.2005) so that they will have clear six months as breathing time for resettlement before the onset of the next monsoon from 1.7.2006. This period (up to 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 corresponding back water effect and to have a proper and fuller survey of the backwater 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 the 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 regard to the 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 onset of the 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 Compensatory Allowance of Rs. 21,000 to come back. It is also made clear that those families which will 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 only those who have been oustees 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 NHC to the PAF/oustees of the 91 villages.
- (vi) Nothing stated in our order dated 27.7.2005 or this orders all be construed as a final decision on the quantum of R&R entitlements of the PAFs.

List the matter for further orders in the third week of October 2005.

CC as per rules.

sd/
(R.V.Raveendran)
Chief Justice

sd/
(Shanatanu Kemkar)
Judge

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