



International Environmental
Law Research Centre

HIGH COURT OF MADHYA PRADESH
Narmada Bachao Andolan

vs.

State of Madhya Pradesh and Ors.

ORDER OF 21 AUGUST 2008

*This paper can be downloaded in PDF format from IELRC's website at
<http://www.ielrc.org/content/c0802.pdf>*

Case Note: The petitioner has filed a PIL alleging irregularities and corruption in implementation of measures for resettlement and rehabilitation project and further prayed for investigation by Central Bureau of Investigation. The Court held that they can appoint commissions for purpose of gathering facts and data in regard to a complaint of breach of fundamental right made on behalf of weaker Sections of society. The Commission appointed and directed to fix time and place of its sittings by public notice and it will afford opportunity of hearing to all persons against whom commission is likely to record finding including opportunity to produce any evidence in his defence.

Equivalent Citation: 2009(1)MPHT99

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Decided On: 21.08.2008

Narmada Bachao Andolan

Vs.

State of Madhya Pradesh and Ors.

Hon'ble Judges:

A.K. Patnaik, C.J. and Sanjay Yadav, J.

ORDER

A.K. Patnaik, C.J.

1. The petitioner is an organization of farmers, adivasis, labourers, fish workers and other people from the Narmada Valley affected by the construction of the Sardar Sarovar Project on Narmada River and has filed this writ petition as a Public Interest Litigation alleging various irregularities and corruption in implementation of measures for resettlement and rehabilitation of the project affected persons of the Sardar Sarovar Project in the State of Madhya Pradesh and has prayed for an investigation into the allegations by an independent agency such as the Central Bureau of Investigation (CBI).

2. The facts briefly are that the Sardar Sarovar Project is an Interstate Project involving the States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan and to resolve the disputes between these States, the Narmada Water Disputes Tribunal (for short 'the Tribunal') was set up in the year 1969 under the Interstate Water Disputes Act, 1956. In year 1979, the Tribunal made an award (hereinafter referred to as 'the Narmada Award') which inter alia stipulated measures for resettlement and rehabilitation (R & R) of the Project Affected Persons (for short 'the PAPs') of the Sardar Sarovar Project in Gujarat, Madhya Pradesh and Maharashtra. The R & R measures inter alia stipulated that (i) every Project Affected Family (PAF) whose 25% or more land was submerged by the Project would be offered a minimum of two hectares of cultivable land; (ii) every house of PAP likely to be affected by submergence will be acquired under the Land Acquisition Act, 1894, and compensation will be awarded to the concerned PAPs; (iii) every PAP of the age of 18 years on the date of notification under Section 4 of the Land Acquisition Act, 1894 will be eligible to receive all the R & R benefits; and (iv) the Government shall

establish rehabilitation villages for R & R of the PAPs with civic amenities including roads, drainage, Panchayat Bhawan, Schools, Dispensaries, Seed Stores etc. besides the land for cultivation by the PAPs. The Narmada Control Authority (for short 'the NCA') was constituted to monitor inter alia the implementation of the R & R measures stipulated in the Narmada Award for the benefit of 40,000 PAFs residing in 193 villages in Madhya Pradesh in terms of the Narmada Award. In the judgment dated 18-10-2000 in the first Narmada Bachao case reported in (2000) 10 SCC 664 and in the judgment dated 15-3-2006 in the second Narmada Bachao case reported in (2005) 4 SCC 32, the Supreme Court has held that R & R measures must ensure that PAPs/PAFs were better off even after their displacement and their rights to life under Article 21 of the Constitution of India were not violated.

3. The petitioner has alleged in the writ petition that although crores of rupees have been spent by the State Government through the Narmada Valley Development Authority (for short 'the NVDA') to implement the aforesaid R & R stipulations in the Narmada Award, the benefits of the R & R stipulations in the Narmada Award have not been actually received by the PAPs/PAFs on account of large scale irregularities and corruption as detailed in the writ petition. The irregularities and corruption as detailed in the writ petition broadly can be categorised under the following heads:

(A) Fake Registration of sale-deeds:

The Narmada Award stipulates that each and every cultivator and his adult son whose more than 25% of land holding is submerged, will be entitled to a minimum five acres cultivable and irrigable land which will be made available by the State of Madhya Pradesh. The State of Madhya Pradesh however introduced a Special Rehabilitation Package (for short 'SRP') whereunder each PAF was to receive Rs. 5,58,000/- in two instalments in cash for purchase of this five acres of land. The first instalment was to be received by the PAF before registration of sale-deed and the second instalment was to be received by the PAF only after registration of the sale-deed. The petitioner has alleged that fake registrations of sale-deeds have taken place under the SRP during the last one & half years which would show that in some cases land is not in existence, in some cases land has been sold by persons who do not exist, in some cases Government land has been shown to have been sold, in some cases land already acquired by the Government for some other project is shown to have been sold, in some cases land has been sold not by the real owners but some other persons without the knowledge of the real owners and in some cases the same area of land has been sold to more than one PAF. The petitioner has stated that the Tehsildar Manwar Tehsil, District Dhar, has submitted a report dated 14-9-2007 to the Land Acquisition Officer, Narmada Valley Development Authority (for short 'NVDA') providing details of 57 instances of fake registration of sale-deeds under the SRP and has recommended that the NVDA should file FIRs against the accused persons. Similarly, the Naib Tehsildar, Badwani District, has submitted a report dated 25-5-2007 about a number of fake registration of sale-deeds for the purpose of receiving the second instalment under the SRP.

(B) Rampant corruption in payment of compensation for houses acquired under the Land Acquisition Act, 1894:

Under the Narmada Award, every house likely to be affected by submergence was to be acquired under the Land Acquisition Act, 1894 and compensation was to be

awarded to the PAPs/PAFs but because of rampant corruption by land acquisition officials, middlemen and officials of the NVDA crores of public money have been siphoned off in the name of compensation. After the notification issued under Section 4 of the Land Acquisition Act, 1894, some houses were constructed and were included in the list of houses likely to be submerged only for the purpose of receiving compensation. The same houses were listed as two separate houses and the compensation disbursed twice. Even persons from outside submergence areas have constructed houses in submergence villages only with the intention to get some compensation. The petitioner has alleged that all this was possible with the help of corrupt officials and middlemen. The petitioner has also alleged that in Village Chhotta Barda, 135 houses have been included for compensation even though these houses were constructed after the issuance of notification under Section 4 of the Land Acquisition Act, 1894 and the houses were constructed only for the purposes of receiving compensation and although the residents of the village made complaints to the District Collector, Badwani, no action was taken because the corrupt officials have received their shares of compensation as well.

(C) Corruption in the process of declaration of PAPs:

Under the Narmada Award, every affected person above the age of 18 years on the date of notification under Section 4 of the Land Acquisition Act, 1894, was eligible to receive the rehabilitation benefits as per entitlement. The petitioner has alleged that several ineligible persons have been declared as PAPs and given R & R entitlement and the benefits have been shared between the corrupt officials and the ineligible persons. The petitioner has alleged that this kind of corruption has taken place mainly in Villages Khedi and Piplud in Tehsil and District Badwani where lakhs of rupees have been disbursed to ineligible persons and minors.

(D) Corruption at R & R sites:

The petitioner has alleged that in the R & R sites, civic amenities including roads, drainage, Panchayat Bhavan, Schools, Dispensaries, Seed Stores etc. were to be constructed and crores of rupees were spent on such civic amenities on account of an unholy nexus between the contractors and the officials, the quality of construction of the amenities has been very poor and crores of rupees have been siphoned off in the bargain. The petitioner has further alleged that house-plots once allotted to the poor in R & R sites have been re-allotted to the rich and powerful in alliance with the corrupt officials. The petitioner has stated that the Comptroller Auditor General (for short 'the CAG') in the audit report for the State Government for the year ending 31st March, 2004 has confirmed such corruption by the NVD A in rehabilitation works in the Madhya Pradesh.

4. The respondents have filed a common return stating that the issue of fake registrations has been discussed by the R & R Sub Group of NCA in its 68th meeting held on 13-2-2007 and 69th meeting held on 16-4-2007 at New Delhi and it was decided that all the registrations so submitted by the Project Affected Families (PAFs) in reference to SRP must be examined. The respondents have further stated in return that again in the 78th meeting of NCA held on 3-5-2007 at New Delhi, the issue was discussed in detail and the Government of Madhya Pradesh has instructed the Collectors to verify the genuineness of all the registrations submitted by the PAFs and on 24-7-2007 the Chief Secretary of the Madhya Pradesh took a meeting of NVD A

Officials and the Collectors and instructed them to expedite the ongoing process of verification of all the registrations and also to take strict action against the persons found guilty with a strict caution and alertness in new registrations.

5. The respondents have stated in the return that on 11-9-2007 the Divisional Commissioner, Indore, issued detail instructions to Collectors and Superintendents of Police on the procedure to be followed for inquiry including filing of FIRs, submitting challan before the Competent Courts and taking action against Government Officials/Stamp Vendors etc. Examples of action taken by the State Government so far have also been detailed in the return and it is contended in the return that all these actions taken by the State Government confirm the commitment of the State Government to tackle the issue legally and administratively with utmost seriousness and to punish all guilty persons. In the return, it is thus contended that there is therefore no need of an inquiry by an independent agency.

6. Regarding allegations of corruption, the respondents have contended that these allegations are sweeping allegations and have been made without any cogent evidence and on the basis of only newspaper reports which may not have any truth. The respondents have also contended in the return that the allegations, which are not factual and false, have also been raised in the writ petition using strong language without any factual basis whatsoever.

7. The respondents have also stated in the return that the Grievance Redressal Authority (for short 'the GRA') under the Chairmanship of Retired Justice Shri N.G. Karambelkar is functioning and the GRA is organizing hearing camps even at tehsil headquarters and so far 12674 complaints have been registered in the GRA and out of these, 10251 complaints have been redressed and hence it is not correct to say that the GRA is not functioning well. The respondents have further contended in the return that the Supreme Court in its order dated 9-9-2002 in W.P. No. 328/2002 has held that the GRA having been put in place, there is no reason for the Court to interfere and if an oustee or a person affected by the project has any grievances, it is open to him to approach the GRA. The respondents have accordingly contended that the present Writ Petition No. 14765/2007 which covers not only corruption but also the implementation of R & R stipulations under the Narmada Award, should be returned to the petitioner to agitate the matter before the GRA as per the order dated 9-9-2002 of the Apex Court in W.P. No. 328/2002.

8. The respondents have stated in the return that for making an analysis of 686 complaints of fake registration, informations were sought from the PAFs. 23% PAFs replied that they have been cheated, 35% PAFs did not reply or were not available in the concerned villages, 20% PAFs said that they have done the fake registration for personal reasons and 5% PAFs said that they did it to purchase residential houses and/or utilize the money for adopting new occupation/business whereas 13% PAFs stated that they were still in search of genuine land to purchase whereas 4% PAFs said that they did so because prices of land in the vicinity were high. The respondents have further stated in the return that in each and every case of fake registration, payment has been made to the PAFs through account payee cheque or Intra-Bank money and it is for this reason that the Government decided in filing FIRs against all the accused including PAFs, but thereafter the Government decided that before filing FIR against a PAF, the PAF must be given an opportunity of hearing so that he may submit his defence/claim.

9. The respondents have filed an additional return stating that considering the number of complaints which were received from the representatives of the petitioner organisation and considering that 686 fake registrations have been alleged under the SRP, the State Government has by notification dated 18-7-2008 issued under Section 3 of the Commissions of Inquiry Act, 1952, appointed Shri N.C. Nagraj, a Retired District & Sessions Judge as a single man Commission of Inquiry, to make an inquiry into the allegations of preparation and submission of fake registration in Badwani, Dhar, Khargone and Dewas Districts mainly in the year 2006-07 under the SRP for PAFs/PAPs of Sardar Sarovar Project. Respondents have further stated in the additional return that the headquarters of the Commission has been fixed at Indore and the Commission has been asked to complete the enquiry and submit the report to the State Government within a period of six months from the date of publication of notification.

10. When the case was taken up for hearing on 22-7-2008, Ms. Medha Patkar appearing for the petitioner submitted that in Writ Petition (C) No. 328/2002 pending before the Supreme Court, the question of fake registration of sale deeds under SRP, corruption in payment of compensation for houses acquired under the Land Acquisition Act, 1894, corruption in the process of declaration of PAPs and corruption at R & R sites have not been raised and it will be clear from the order dated 10-3-2005 of the Supreme Court in I.A. No. 18-35/2006 in W.P. No. 328/2002 that the Supreme Court has taken note of the fact that the present writ petition is pending before this Court on the question of fake registration of sale of land. She submitted relying on the rejoinder filed by the petitioner that the GRA has not taken any action on the complaints made by the petitioner with regard to fake registrations and other corruption and irregularities in the implementation of R & R stipulations of the Narmada Award because the GRA was of the view that these are matters outside its authority. She submitted that in the first Narmada Bachao case (supra), the Supreme Court has held that persons who are displaced by the construction of the dam must be rehabilitated and resettled in a manner which will make them better off so that their fundamental right to life guaranteed by Article 21 of the Constitution, is not affected and therefore, this Court should direct an independent investigation by the CBI to find out whether the benefits as per the Narmada Award have actually been received by the PAPs/PAFs.

11. She submitted that the one man Commission of Shri N.C. Nagraj retired District & Sessions Judge, has been appointed by the Government with undue haste ignoring the provisions of Section 3 of the Commissions of Inquiry Act, 1952, under which the Commission can be appointed only by a resolution passed by the State Legislature. She submitted that the State Government has appointed Shri N.C. Nagraj, a Retired District & Sessions Judge, during the pendency of the writ petition only to derail the purpose of this PIL. She argued that since serious allegations against very powerful persons of the Government have been made in this writ petition, the Court should direct the CBI to investigate into the allegations and in case there are legal barriers in directing the CBI investigation, the Court should direct appointment of a Multi Member Judicial Commission under the Chairmanship of a Retired Supreme Court Judge or at least a High Court Judge and a special investigation team for unearthing hidden evidence and assisting the Multi Member Judicial Commission should be constituted. She further argued that the Court should specify the terms of reference elaborately for the Commission and should fix a time limit within which the Commission should submit the report. She submitted that the petitioner has filed I.A.

No. 4447/2008 for directing suspension of all cash disbursements except in accordance with the Narmada Award, Supreme Court judgments and the State Policy.

12. Mr. R.N. Singh, learned Advocate General appearing on behalf of the respondents, on the other hand, submitted that in the return the respondents have stated that there are serious allegations of fake registrations of sale-deeds and a number of FIRs have been lodged and the authorities have been instructed to take strict action in the matter. He very fairly submitted that the State Government does not want to shield anybody and is determined to take action against whoever is found guilty. He further submitted that since the investigations are being carried out pursuant to the FIRs already lodged and the one man Commission of inquiry under the Commissions of Inquiry Act, 1952 has been appointed by the State Government, the Court should not direct an investigation by the CBI.

13. Mr. Dharmendra Sharma, learned Counsel appearing for the NCA, submitted that no relief whatsoever has been claimed against the NCA. He further submitted that the minutes of the various meetings of the NCA annexed to the writ petition would show that there are complaints of large number of fake registration of land in Kukshi and Manawar Tehsils of District Dhar and Badwani and Thikri Tehsils of District Badwani. He also referred to the said minutes of the meetings of NCA to show that the Government of Madhya Pradesh has been asked to inform the latest progress of an investigation done and legal action taken into the various cases of fake registration.

14. We are unable to accept the contention of the respondent raised in the return of the respondents that the remedy of the petitioner is to approach the GRA and not this Court under Article 226 of the Constitution because we find that despite the fact that the GRA under the Chairmanship of a retired High Court Judge has been functioning, there are more than 600 complaints of fake registrations of sale-deeds under the SRP and also allegations of other irregularities committed at the time of implementation of R & R measures stipulated in the Narmada Award and these complaints have also been brought to the notice of the NCA and the NCA has asked the Government of Madhya Pradesh to look into the complaints. Had the GRA been dealing with these complaints, it would not have been necessary for the NCA to ask the State Government to look into the complaints and take necessary action in accordance with law. Presumably, the GRA may not have entertained the complaints with regard to fake registrations and corruption and irregularities on the ground that these complaints are outside its authority and it does not have the powers to deal with such complaints.

15. We do not however, think that on the materials placed before us, we can direct an investigation by the CBI as prayed for in the writ petition because as rightly apprehended by the petitioner there are legal barriers to an investigation by the CBI. A plain reading of Section 157 of the Code of Criminal Procedure, 1973 shows that if, from information received or otherwise, an Officer in Charge of a Police Station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot, to investigate the facts and circumstances of the case.

16. Unless, therefore, the information received or otherwise discloses commission of offences, the CBI should not be directed to investigate. In the instant case, we find

that there are references to a number of complaints of fake registration as well as to the statistics of FIRs filed in different police stations alleging fake registration and there are also reference to allegations of other irregularities and corruption, but the FIRs or the complaints are not before the Court. On the basis of the information furnished in the writ petition, replies and rejoinder along with annexures thereto, it is difficult for us to hold that there is reason to suspect the commission of offences under the Indian Penal Code or any other law. It is only when more facts and more materials come to light through a fact finding inquiry that the Court can take a view whether there is reason to suspect the commission of offences under the Indian Penal Code or any other law. At this stage, therefore, we cannot direct investigation by the CBI as prayed for in the writ petition.

17. In *State of Karnataka v. Arun Kumar Agarwal and Ors.* AIR2000SC411 , various allegations were made in the writ petition in respect of allotment of power project by the Karnataka Electricity Board to Mangalore Power Corporation and a prayer was also made by the petitioners seeking investigation by appropriate agencies into the allegations and seeking initiation of criminal proceedings against the guilty persons as per law and the High Court of Karnataka directed the State of Karnataka to get an FIR registered with the CBI under the provisions of Delhi Special Police Establishment Act for various cognizable offences without naming any person or group of persons as accused and further directed that the Director General of the CBI shall direct the investigation to be conducted by an officer under the supervision and control of an officer not below the rank of Deputy Director General of the CBI. The State Government of Karnataka carried the matter to Supreme Court in a Special Leave Petition and the Supreme Court while setting aside the order made by the High Court and allowing the appeal observed:

The acts of persons will not be subject of criminal investigation unless a crime is reported to have been committed or reasonable suspicion thereto arises. On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be reasonable basis at all for starting a criminal investigation. However, condemnable be the nature or extent of corruption in the country, not all acts could be said to fall in that category. The attempt made by the High Court in this case appears to us to be in the nature of blind shot fired in the dark without even knowing whether there is a prey at all. That may create sound and fury but not result in hunting down the prey.

18. The respondents have however stated in their additional return that the General Administration Department has already issued a notification dated 18-7-2008 appointing Shri N.C. Nagraj, a Retired District & Sessions Judge, as a single man Commission of Inquiry to inquire into the allegation of preparation and submission of fake registration in Badwani, Dhar, Dewas and Khargone Districts in the year 2006-07 under the SRP for P AFs/P APs of Sardar Sarovar Project in exercise of powers under Section 3 of the Commissions of Inquiry Act, 1952. The contention of Ms. Patkar that an appointment of the Commission under Section 3 of the Commissions of Inquiry Act, 1952, can only be pursuant to the resolution of the Legislature of the State, is not correct. Section 3 of the Commissions of Inquiry Act, 1952 (for short 'the 1952 Act'), is quoted hereinbelow:

Section 3. Appointment of Commission.- (1) The Appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making any inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter-

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the Appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

(3) The Appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The Appropriate Government shall cause to be laid before each House of Parliament or as the case may be, the Legislature of the State, the report, if any, of the Commission on the inquiry made by the Commission under Sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the Appropriate Government.

19. It will be clear from Sub-section (1) of Section 3 of the 1952 Act that the Government may, if it is of opinion that it is necessary so to do, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and the Government shall, if a resolution in this behalf is passed by each house of the Legislature of the State, also appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance. Hence, even where a resolution is not passed by each house of the State Legislature for appointment of a Commission, the Government may appoint a Commission if it is of opinion that it is necessary to do so for the purpose of making an inquiry into any definite matter of public importance, but where a resolution is passed in that behalf in each house of the State Legislature, the Government shall appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance.

20. Sub-section (4) of Section 3 of the 1952 Act, however, would show that-after the inquiry is made, the Government shall cause to be laid before each House of Legislature of the State, the report, if any, of the Commission of Inquiry altogether

with a memorandum of the action taken thereon within a period of six months of the submission of report by the Commission to the Government. Thus, the report, if any, submitted by the one man Commission of Inquiry Shri N.C. Nagraj, a Retired District & Sessions Judge, will have to be placed before the Legislature of the State along with memorandum of action taken on the report. The facts found by the Commission appointed under Section 3 of the 1952 Act in other words, are for information of and action by the State Government and for information of the houses of the State Legislature. Hence, the High Court will have virtually no role to play on the report of the one-man Commission appointed by the State Government under Section 3 of the 1952 Act by the notification dated 18-7-2008 if and when submitted.

21. By the two judgments of the Supreme Court in the first and second Narmada Bachao's cases (*supra*), the Supreme Court has held that rehabilitation and resettlement of oustees of the Sardar Sarovar Project is part of their fundamental right to life guaranteed under Article 21 of the Constitution of India, and through the R & R measures, the oustees must be better off after displacement. For this reason, the R & R measures in the Narmada Award *inter alia* stipulate that (i) every affected family whose 25% or more land is submerged by the Project would be offered a minimum of two hectares of cultivable land; and (ii) the Government shall establish rehabilitation villages for R & R of the PAPs with civil amenities including roads, drainage, Panchayat Bhawan, Schools, Dispensaries, Seed Stores etc., besides the land for cultivation by the PAPs. If a large number of PAFs whose 25% or more land was submerged has not actually been able to get a minimum of two hectares of cultivable land and the civic amenities in the R & R sites are of substandard quality because of large scale corruption, then the High Court whose duty is to ensure enforcement of fundamental right in exercise of powers under Article 226 of the Constitution cannot remain indifferent. The High Court will have to find out through a Commission on which it has confidence and trust that the oustees have not been duped by fake registrations of sale-deeds for purchase of land for cultivation and the public money spent for construction of civic amenities in the R & R sites have not been misused for extraneous purposes.

22. In *Bandhua Mukti Morcha v. Union of India and Ors.* (1984) 3 SCC 461, an organisation motivated to release bonded labourers in the country addressed a letter to a Judge of the Supreme Court complaining that in two named stone quarries in Faridabad District there were a large number of labourers from different States working under inhuman conditions and many of whom were bonded labourers and prayed for issuing a writ for proper implementation of constitutional and statutory provisions. The Supreme Court treated the letter as a writ petition under Article 32 of the Constitution and issued notice and appointed two advocates as Commissioners to visit the stone quarries and to interview each of the persons whose names were mentioned in the letter of the petitioner as also a cross-section of the other workers with a view to finding out whether they were willing to work in those stone quarries and also to inquire about the conditions in which they were working.

23. One of the preliminary objections raised by the respondents Union of India was that in the proceedings under Article 32, the Court was not empowered to appoint any commission or an investigating body to inquire into the allegations made and make a report to the Court on the basis of inquiry to enable the Court to exercise its power and jurisdiction under Article 32 of the Constitution. Rejecting the preliminary objections, P.N. Bhagwati, J., as he then was, observed:

Now it is obvious that the poor and the disadvantaged cannot possibly produce relevant material before the Court in support of their case and equally where an action is brought on their behalf by a citizen acting pro bono publico, it would be almost impossible for him to gather the relevant material and place it before the Court. What is the Supreme Court to do in such a case? Would the Supreme Court not be failing in discharge of its constitutional duty of enforcing a fundamental right if it refuses to intervene because the petitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the Court. If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged Sections of the community are concerned. It is for this reason that the Supreme Court has evolved the practice of appointing Commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker Sections of the society.

These observations of P.N. Bhagwati, J. of the Supreme Court equally apply to the exercise of jurisdiction of the High Court under Article 226 of the Constitution for enforcement of fundamental rights.

24. We therefore appoint Shri Justice S.S. Jha, a retired Judge of this Court, as a Commission to inquire into and submit a report on the following matters:

(i) Whether there have been fake registrations of sale-deeds under the SRP for rehabilitation and resettlement of PAFs/PAPs of the Sardar Sarovar Project in the districts of Badwani, Dhar, Jhabua, Khargone and Dewas and, if so, the details of such fake registrations of sale-deeds and the persons responsible for such fake registrations of sale deeds ?

(ii) Whether the civil amenities in the R & R sites such as road, drainage, panchayat bhawan, schools, dispensaries, seeds stores, etc. are of substandard quality as compared to the expenditure incurred by the State Government or the NVDA and, if so, the persons responsible for such constructions of substandard quality.

25. Though the petitioner has alleged that persons who are not entitled to receive compensation for houses under the R & R stipulations of the Narmada Award and the Policy of the State Government have received compensation and persons who are not eligible as PAP's of the Sardar Sarovar Project have received benefits under the R & R stipulations of the Narmada Award and the Policy of the State Government, we do not think that the Commission should inquire into these matters because the disputes in such matters are likely to be very complex and the findings of the Commission on such disputes may affect a large number of persons who have received the compensation and other R & R benefits and who may not be now available to be heard by the Commission. It may not also be practically feasible for the Commission to inquire into these matters as compensation must have been paid for houses and other R & R benefits must have been given in as many as 193 villages of Madhya Pradesh affected by the Sardar Sarovar Project. Moreover, in such matters, there is no violation of the fundamental rights of persons as such which need to be enforced by the High Court.

26. In the course of hearing, Ms. Medha Patkar submitted that considering the large number of complaints of fake registrations of sale-deeds, the Court should direct suspension of cash disbursements under the SRP so that there are no more fake registrations of sale-deeds, but we are not inclined to direct such suspension of cash disbursements under the SRP as it will affect the R & R process and delay the rehabilitation and resettlement of the P AFs/PAPs. We however, direct that all fresh registrations of sale-deed will only be made after clearance from the Commission to be appointed pursuant to this order.

27. The Commission will by public notice fix the time and place of its sittings. The Commission will afford opportunity of hearing to all persons against whom the Commission is likely to record a finding including an opportunity to produce any evidence in his defence. The Commission may allow witnesses to be examined before it and will afford an opportunity for cross-examination of such witnesses to persons against whom the witnesses make statement. The Commission may regulate the procedure of inquiry on all other matters consistent with the principles of natural justice.

28. It is the responsibility of the respondent No. 1 to ensure implementation of the R & R measures for the oustees of the Sardar Sarovar Project in Madhya Pradesh and therefore the respondent No. 1 will bear the costs and expenses of the inquiry by the Commission. Hence, the respondent No. 1 will issue an order appointing Shri Justice S.S. Jha as Commission initially for a period of six months on the pay and allowances as are admissible to a High Court Judge less pension received by Shri Justice Jha. The respondent No. 1 will provide a full time Secretary and two full time English Stenographers to the Commission. The respondent No. 1 will also provide to the Commission the assistance of such Police Officers, Revenue Officers and P.W.D. Engineers as the Commission may approve for the inquiry.

29. The respondent No. 1 will of course provide office space, infrastructure and transport for the work of the Commission. The respondent Nos. 1, 2, 4, 5, 6 and 7 will produce all the records before the Commission and will cooperate with the Commission in all respects. The Commission will try and complete the inquiry within six months from the date of issue of the order by the respondent No. 1 appointing the Commission and submit a report to this Court. The Registry will forthwith send copies of this order, the writ petition, replies filed by the respondents, rejoinder filed by the petitioner and all other applications and affidavits filed by the parties and all the annexures to the pleadings to Shri Justice S.S. Jha within a week from today.

30. Since we have appointed Shri Justice S.S. Jha as Commission to inquire into the matter, the State Government may, if it is of the opinion that the one man Commission of Inquiry of Shri N.C. Nagraj, retired District & Sessions Judge constituted by the State Government by notification dated 18-7-2008 is now unnecessary, issue a notification under Section 7(1) of the 1952 Act specifying that the one man Commission of Shri N.C. Nagraj has ceased to exist.

31. List the matter after the report of the Commission is received or after six months whichever is earlier.