

High Court of Madhya Pradesh

Case No. WP 3022/2005

Narmada Bachao Andolan

vs.

Narmada Hydro-electric Development Corporation & others

Writ Petition No. 3022/2005

1.7.2005:

Shri N.S. Kale, Senior Advocate for the petitioner

Shri D. Sharma, Asstt. S.G. for respondents 5, 6 & 7(i) to 7(vi)

Shri R.N. Singh, Advocate General for respondents No. 1, 2, 3 & 4

Order Relating to Interim Prayer:

We have heard Sri N.S. Kale and Ms. Chittaroopa Palit (of Narmada Bachao Andolan) for petitioner on 29.6.2005, 30.6.2005 and today in regard to the interim prayer.

2. Indira Sagar Project is the mother dam of all down stream Projects including Sardar Sarovar Dam in the Narmada Complex. The work relating to the said Project started in November 1987 by the State Government through the Narmada Valley Development Authority. Under a Memorandum of Understanding dated 16.5.2000 the Government of Madhya Pradesh and the National Hydro-Electric Power Corporation Ltd., formed a joint venture to take up the task of completing and running the power project of Indira Sagar Project and accordingly, a new Company known as "Narmada Hydro-electric Development Corporation" (for short 'NHDC') was formed.

3. The crest level of Indira Sagar Dam is 245.13 metres and the height of Gates is 17 metres thereby achieving the Full Reservoir Level (FRL) of 262.13 metres. If the gates are closed the reservoir is likely to achieve FRL towards the end of forthcoming monsoon.

4. 91 villages will be submerged at FRL when the water rises from crest level (245.13 m) to FRL (262.13 m). The State Government issued the impugned Notification dated 31.12.2004 notifying the residents/land holders of the said 91 villages to vacate their houses/lands by 30.4.2005 as they will come under submergence during the Monsoon of 2005.

5. The petitioner contends that the State and NHDC cannot, without fulfilling their statutory/contractual/legal obligations relating to rehabilitation and resettlement of the residents of the 91 villages, increase the level of the dam from 245.13 metres to 262.13 metres. The petitioner contends that the gates should be kept open so that water does not rise above the crest level until the fulfillment of the rehabilitation and resettlement measures relating to the 91 villages, as required by (a) Narmada Water Dispute Tribunal Award; (b) decisions of the Supreme Court; (c) conditions stipulated in the clearances granted by the Ministry of Environment & Forest and the Planning Commission; (d) Memorandum of Understanding dated 16.5.2000 between the Government of Madhya Pradesh and the NHDC; and (e) rehabilitation and resettlement policy of the Madhya Pradesh Government.

6. According to the petitioner, all entitlements of the villagers/oustees (compensation, grants etc.) should be disbursed and rehabilitation and resettlement process should be completed at least six months before submergence. It is contended that the R&R package should include grant of land for agricultural purposes and plots for construction of houses in new townships/villages with infrastructure facilities like water, electricity, sewer line, drains, hospital, educational institution. It is pointed out that as many as 40% of the land acquisition awards were passed subsequent to 31.12.2004 and process of disbursement of compensation is not yet completed and therefore the villagers cannot be required to vacate their houses and lands. The petitioner alleges that without fulfilling their obligations, NHDC with the help of Police and the backing of the State Government, is trying to drive out the villagers from 91 villages by force before the onset of the monsoon. The several contentions urged by the petitioner give rise to the following questions for consideration: (a) what are obligations/requirements/conditions to be fulfilled by the State Government and NHDC before it can require the villagers of 91 villages to vacate their houses/lands; (b) whether such obligations/requirements/conditions have been fulfilled; (c) if there is non-fulfillment, whether it seriously prejudices the interests (and right to life) of the residents of 91 villages.

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

affected and re-examine the entire matter with reference to the rehabilitation and re-settlement measures.

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

9. Recording the said undertakings on behalf of the State Government and NHDC, the matter is adjourned to 18.7.2005 for further hearing on the interim prayer. It is however open to NHDC to proceed with the disbursement of compensation, allotment of sites or other resettlement measures.

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

- (i) list of residents of 91 villages.
- (ii) Particulars of lands/sites available for allotment to oustees.
- (iii) The date of printing of the M.P. Gazette Extraordinary dated 31.12.2004, the number of copies printed and the date it was made available to public (by means of an affidavit of Director of Printing in charge of the M.P. Gazette).

C.C. as per rules.

(Signed)

R.V. Raveendran

Chief Justice

(Signed)

Shantanu Kemkar

Judge