

To

The Justice V.N.Khare
Hon'ble Chief Justice of India
Supreme Court of India
New Delhi

October 2, 2003

Dear Hon'ble Justice Khare,

We are concerned citizens of this country, who are agonised and disturbed with what is happening to the people of Narmada Valley. We would like to bring to your notice the blatant violation of the Supreme Court Judgement in the Narmada case. While upholding the right of the governments to construct the Sardar Sarovar dam, in no uncertain terms the judgment had upheld the right to land-for-land based rehabilitation of the people to be displaced by the dam. Since nearly 3 lakh people (about 30 to 40,000 Project Affected Families) are being displaced, the violation of the rehabilitation clauses of the judgement by the State Governments and the Narmada Control Authority, is of considerable seriousness.

Thousands of adivasis and farmers of the Narmada Valley (in Gujarat, Maharashtra and Madhya Pradesh) fell in the submergence zone and hundreds of them either faced submergence of agricultural lands and houses, or both. During last monsoon, the waters entered many houses and few hundred hectares fields, surrounding and threatening them from all sides. This includes little children in their boarding schools in remote hills (the Jeevan shala schools that the Narmada Bachao Andolan runs, the only schools that exist in the region). The people stand starving, having lost their year's crop and their shelter. Many of them have been facing it since 1990's when the dam was only 80 - 85 metres height. But they stand tall with dignity of having

fought in India's highest court of justice and in the moral court of the common Indian, through the non-violent Satyagraha inspired by Mahatma Gandhi. Almost 100% of the presently affected belong to adivasi (tribal) communities. Hungry they are, for justice that's being denied. We urgently appeal to you to take suo moto action to ensure implementation of the SC judgment of October 2000 and prevent destitution of these simple Narmada valley dwellers, and uphold their right to life and livelihood.

In the judgment of Oct 2000, the Supreme Court ruled that:

1. The Narmada Water Disputes Tribunal Award is binding on the states and the people. The Hon. Court also stated, "State of Gujarat has a right to construct a dam upto the height of 455 ft. and, at the same time, the oustees have a right to demand relief and resettlement as directed in the Award."
2. Construction of the dam is to continue as per the Award of the Tribunal. The SC also stated, "Further raising of the height will be only pari passu with the implementation of the relief and rehabilitation and on the clearance by the Relief and Rehabilitation Sub-group."

It follows that if the pari passu implementation of R&R is not happening, then the dam's height cannot be further raised. The actual implementation of R&R is a necessary pre-condition for raising the dam height, not merely the clearance on paper by the R&R Sub-Group.

Since Oct 2000, the dam height has been raised by 5 metres every year -- from 85 to 90 m in 2000-01, from 90 m to 95 m in 2002 and from 95 m to 103 m (including 3 m humps) in 2003. Each time, the clearance for raising the height was obtained by rehabilitation pari passu with the construction and submergence schedule. However the promises made every year that have not been kept. Thousands of families already affected or to be affected at 103 m dam height are still in the Narmada Valley, hundreds facing submergence every monsoon, seeing houses and fields being washed away, seeing school children being trapped in the silt. Some of these tribal children and adult women, not only cattle, have died trapped in the silt accumulating due to the dam. The region is very remote but many concerned people

of India, eminent personalities and press reporters have visited the valley and have come back with documentary evidence of submergence without rehabilitation in the form of photographs, videos and their personal experiences.

In May 2002 when the clearance for 95 m was given, the people of the Narmada valley approached the Court for halting the work on the dam. The Maharashtra government supported the people's petition that rehabilitation was not done. By the time the vacation bench of June could sit and look into the issue, the dam was constructed to 95 m and the case was taken up by Chief Justice Kirpal who once again guaranteed to the people "land-for-land rehabilitation" but dismissed the petition leaving the only way as to individual oustees to approach the Supreme Court. Maharashtra has seen submergence without rehabilitation, hence the government paid a compensation worth more than Rs 37 lakh, for people to buy food-grains due to submergence of their crops during 1999-2002 -- the people could survive for one more year but faced submergence again this year since as their rehabilitation is not done. The Gujarat and Madhya Pradesh governments have not even given this minimal humanitarian relief, let alone rehabilitate people. In 2003 once again the clearance to 103 m was granted on May 13th, by the Narmada Control Authority when the Supreme Court was on vacation, the dam was constructed and submergence of an even bigger scale occurred and adivasi people remained stranded, having to face severe loss as well as torture. This has been aired on many television stations including the Doordarshan, Mumbai.

It is pertinent to recall that the Narmada Water Dispute Tribunal Award, which is binding on all state and central governments, has the following rehabilitation clauses:

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)(i): In the event of Gujarat being unable to resettle the oustees or the oustees being unwilling to occupy the area offered by Gujarat, Madhya Pradesh and

Maharashtra shall make such provisions for rehabilitation, civic amenities etc. on the lines mentioned in Clauses IV (1) to (4) above.

Gujarat shall, in that event, be liable to pay all such expenses, costs etc., arising out of or in connection with rehabilitation and provision of civic amenities for the oustees including the cost of all acquisition proceedings and payment of compensation etc., as per the Land Acquisition Act, for the land allotted to oustees, for cultivation and habitation.

In the October 2000 judgment the honorable Supreme Court assured the people that "An important mandatory provision regarding rehabilitation was the one contained in Clause XI sub-clause IV(6)(ii) which stated that no submergence of any area would take place unless the oustees were rehabilitated."

Thus it is quite clear that the SC has directed actual rehabilitation of the oustees and not merely the promise of rehabilitation, or rehabilitation on paper. The binding clauses of the Tribunal that require arrangements of rehabilitation to be completed a year before submergence as well as the stipulation that rehabilitation is to be completed six months before submergence, which is the provision that the Supreme Court has emphasized as being "mandatory", stands violated by the concerned state governments.

Today as we write this letter 21 families in Chimalkhedi village (Maharashtra) are homeless, their houses being ruthlessly demolished by the police, after they were put in the jail. They were arrested for asking proper rehabilitation and not leaving their houses till their demands are met. To force them to leave their houses, the police chopped off the pillars, threw their food grains and belongings in the reservoir and razed the houses from the ground. Small children and women included, they are left in the open, with nothing to eat. If there was indeed a rehabilitation site for the Chimalkhedi people then they would have been taken there. It is sad that those who are affected or those who are speaking in their favour are being imprisoned but the government officials and Narmada Control Authority authorities who are violating the Supreme Court judgment are going scot-free.

Families in villages such as Manibeli, Dhankhedhi, Danel, Bamani, Nimgavan, Surung, Domkhedi in Maharashtra, and Jalsindhi, Anjanwara, Kakrana, Jhandana in Madhya Pradesh, and Hapeshwar, Antras, Mukhadi in Gujarat and many, are getting affected. They have not been granted all rights and due entitlements, especially agricultural land as per the Tribunal Award and the Supreme Court Judgement. Thousands of families- adivasi and non- adivasi, dalit and OBCs, small and marginal farmers to landless- are to be affected at the highest levels of rainfall, at the present height itself.

While the Supreme Court has relied upon the Narmada Control Authority (NCA) and Grievance Redressal Authority (GRA) for monitoring rehabilitation, and ensuring compliance before submergence, the fact remains that these two agencies are neither equipped nor capable of fulfilling this responsibility requiring continuous field work and family-wise assessments. Only in Maharashtra, the government appointed a joint (with Government and Narmada Bachao Andolan) Task Force in response to the people's struggle and demand but not in other states. Hence, there are wide differences between what they claim / accept and what the ground reality is. The appointment of the Task Force was to be followed up by the government by improving and updating the records, estimating the land requirement per village based on that, and then locating and allocating land to the PAFs which has not happened, rather is avoided.

With all this pending, submergence has occurred in violation of law and in contempt of the apex court's directives. This proves that the monitoring authorities are inefficient. In Madhya Pradesh, where scale of submergence is enormous and number of PAFs many times that of Gujarat and Maharashtra, no such process of updating land records have occurred. Hence, there is no master plan, no land located in the state, leading the state government to take a position utterly against the Tribunal policy.

We appeal to you urgently to exercise the authority and powers vested with the Supreme Court to prevent utter injustice and destitution of tribal people and farmers of Narmada valley by taking suo-moto action to:

1. To appoint an independent body to inquire into the situation of compliance or otherwise and, report back to your Hon'ble self, on the ground reality of the Narmada valley today. To verify the claims of rehabilitation by the state governments and the Narmada Control Authority.

2. Ensure rehabilitation of all families in the village communities affected at 103 metres height, carry out rehabilitation with house-plots, agricultural land and civic amenities.

3 To direct the concerned governments and authorities not to permit or carry out any further dam construction until this is completed.

4. Direct the concerned governments to take action against the officials or Minister's responsible for giving clearance to the dam height without ensuring rehabilitation. Also send a clear signal to all concerned that it is the responsibility of the governments to rehabilitate people before construction and submergence due to the dam and that the adivasis and farmers of India, who are self-sufficient and have dignity, are fully entitled to the land-based rehabilitation and should not be required to run around begging at every door for it.

5. Set up an independent mechanism that reports directly to the Supreme Court, every quarter of a year, to ensure full compliance with the Narmada Tribunal Award and the SC judgment, with regard to resettlement and rehabilitation.

6. Direct the Governments, to establish an interdisciplinary body to review the status of resettlement compliance with the policies.

7. Direct all the three state governments to compensate the actual loss, to the families who are not rehabilitated since 1993-94 when the submergence began which would include participation in rehab planning also.

We request you to appreciate the urgency of the matter and to give appropriate directions at the earliest.

Thanking you.

Sincerely yours,

Jst. (Retd) Venkatchallaih
Former Chief Justice of
India, Bangalore

Jst. (Retd) Daud
Retired High Court Judge,
Mumbai

Jst. (Retd) H. Suresh
Retired High Court Judge,
Mumbai

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Social Activist, Gandhi
Peace Prize winner,
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Aruna Roy
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