

SUPREME COURT OF INDIA

State of M.P. & Anr.

Vs.

Medha Patkar & Ors.

C.A.No.6229 of 2011

(J.M.Panchal,J., Deepak Verma and B.S.Chauhan,JJ.,)

02.08.2011

JUDGMENT

Dr. B.S.Chauhan, J.,

SLP(Civil) No.34065 of 2009

1. Leave granted.

2. This appeal has been preferred by the State of Madhya Pradesh and instrumentality of the State against the judgment and order dated 11.11.2009 in Writ Petition (C) No.6056 of 2009 of the High Court of Madhya Pradesh at Jabalpur, whereby the High Court has restrained the State of Madhya Pradesh or any other statutory authority of further acquisition of land or for any excavation or any construction of the canal network for the command areas of the Indira Sagar and Omkareshwar projects till the Command Area Development plans (hereinafter called CAD Plans) submitted to the Government of India, Ministry of Environment and Forest (hereinafter called MoEF) are scrutinized by the committee of experts and clearance is granted by the said Ministry. The appellant-State Government has further been directed to provide rehabilitation and resettlement benefits under the Rehabilitation and Resettlement Policy (hereinafter called R&R Policy) for Narmada Valley Projects to the canal affected persons/families of Indira Sagar and Omkareshwar projects and the Narmada Control Authority (hereinafter called NCA) has been directed to ensure implementation of the aforesaid directions.

3. The facts and circumstances giving rise to this appeal are:

“A. That after completing the procedure prescribed for establishment of dams and irrigation projects, the project reports for Indira Sagar and Omkareshwar projects were prepared and submitted for clearance. The environmental clearance for Indira Sagar project was granted by MoEF on 24.6.1987 by an administrative order. The Planning Commission

also approved investment to be made in Indira Sagar project on 6.9.1989.

B. The R & R Policy of 1989 was introduced by the State of Madhya Pradesh for the oustees of submerged area in Narmada Valley projects. Land acquisition proceedings were initiated in year 1991 for canal construction under Indira Sagar project. A comprehensive CAD plans for Omkareshwar project were sent to MoEF for clearance. Environment Impact Assessment and Environment Management Plan reports were also submitted for Omkareshwar project to MoEF which also contained the R & R plan for the affected persons of the Omkareshwar project. It provided that the persons whose land was to be acquired for establishment of canals were not to be included in R & R plans.

C. The Ministry of Welfare, Government of India accorded clearance to the R & R plan of Omkareshwar project on 8.10.1993. Similarly, by an administrative order environmental clearance for Omkareshwar project was granted by MoEF on 13.10.1993.

D. The MoEF issued statutory notification under Section 3(2) of Environment (Protection) Act, 1986 (hereinafter called the Act 1986) read with Rule 5(3) of the Environment (Protection) Rules 1986 requiring environmental clearance for development of project on 27.1.1994. The canal construction in Indira Sagar project started on 30.5.1999. The NVDD vide order dated 14.8.2000 amended the definition of "Displaced person" adding in clause 1(a) the following words:

".....or is required for the project-related canal construction and construction of the Government Project Colony."

The Planning Commission granted approval in respect of Omkareshwar project on 15.5.2001. The R & R policy stood materially changed vide amendment dated 1.9.2003 as from the definition of "displaced person" the words "which is required for project related construction of canals or the Government project colony" stood deleted. The Amendment to the Rehabilitation Policy was made by the Narmada Control Board (NCB) on the recommendation of the NVDA on 2.7.2003 as per Business Rules of Narmada Control Board Part II Special Procedure for Emergency Sanction and not under the Government of Madhya Pradesh Business Rules.

E. The dam construction of Indira Sagar project stood completed in year 2005 and the High Court, in a pending litigation, permitted the State of Madhya Pradesh to raise water level of Indira Sagar Dam upto 260 meter against the full reservoir level of 262.13 meters vide order dated 8.9.2006. The High Court further clarified that NCA had no role to play regarding the Indira Sagar project i.e. intra-State project as its role was confined to inter-State Project, i.e. Sardar Sarovar Project.

F. The Omkareshwar dam stood completed in year 2007. In order to set up canals, land acquisition proceedings were initiated in year 2009 and in some cases after

conclusion of the proceedings, compensation under the provisions of Land Acquisition Act, 1894 (hereinafter called the Act 1894) has been paid. However, in some cases acquisition proceedings are still in progress.

G. The respondents preferred Writ Petition (C) No.6056 of 2009 before the High Court of Madhya Pradesh at Jabalpur on 18.6.2009 challenging the acquisition of land for excavation of canals; execution, excavation and construction of canal on various grounds, inter-alia; the CAD Plans had not been submitted by the State and not approved by the MoEF; there had been no compliance of Panchayats (Extension of Scheduled Areas) Act, 1996 (hereinafter called PESA Act) which required consultation with office bearers of Panchayats before initiation of land acquisition proceedings; the canal affected persons were also entitled for the full benefit of R & R Policy including the allotment of land in lieu of the land acquired as per R & R policy, which had not been provided for.

H. The State of M.P., appellant herein contested the case contending that land acquisition proceedings could not be challenged at a belated stage i.e. after dispossession of the tenure holders; authorities had submitted the CAD Plans and acted on the same after being approved by the MoEF. Canal affected person could not be treated at par with an oustee of the submerged area of the dam, rather he would be given benefit as per the policy prescribed for such a class of persons.

4. The High Court after considering the rival submissions held as under:

“(I) The CAD Plans of Indira Sagar and Omkareshwar projects were required to be prepared and submitted to the authority entrusted with the responsibility of monitoring, planning and implementation of environmental safeguards and this was to be done before the commencement of the canals so that such authority could ensure that the environmental safeguards and mitigative measures had been properly planned and could be implemented *pari passu* with the construction of the canal project.

(II) If land is acquired and excavated before preparation and submission of CAD Plans to such monitoring authority, environmental safeguards could not be implemented *pari passu* with the construction of canal project. Rather, if the main canals and branch canals are constructed without keeping in mind the environmental requirements then there may be immense problem of water logging and salinity disturbing the environmental plans and the authority entrusted to ensure the environmental safeguards may not be able to reverse the acquisition of land.

(III) There was an intelligible differentia in making the classification between the oustees of submerged areas of dam and canals but have no rationale nexus with the object to achieve so far as the rehabilitation was concerned. Thus, the persons affected by canal work were entitled to the same benefit as that of submergence affected persons.

(IV) In view of the provisions of Sections 3 and 4(i) of PESA Act, the State Legislature was not competent to make any law under Part IX of the Constitution of India inconsistent with the basic features of the Gram Sabha or Panchayats at the appropriate level requiring consultation for land acquisition in the scheduled area for the development projects. Therefore, it was not permissible for the court to issue direction to the authorities to consult Gram Sabha before acquisition of land.

(V) Challenge to the acquisition of land could not be entertained at a belated stage as the possession of the land had been taken long back.

(VI) The clearance from MoEF requires the agents to monitor the environmental protection measures.

In view of the above, the High Court issued directions as explained in para 2 hereinabove. Hence, this appeal.”

5. Shri T.R. Andhyarujina, learned senior counsel appearing for the appellants has submitted that CAD Plans have been submitted by the authorities from time to time to the ministries of the Central Government and have got the clearances and the work had been executed giving strict adherence to those clearances. Even at present, the revised CAD Plans have been submitted and are being considered by the Expert Committee of the MoEF, wherein the respondent-Ms. Medha Patkar has also been heard. As voluminous documents have been submitted by her and this Court had been issuing directions from time to time, the MoEF has yet to take the final decision. The State authorities are bound to proceed in accordance with the final decision taken by the MoEF and in case the CAD Plans are not found to be appropriate or complete and the MoEF issues certain directions or asks for some variations etc. the State Government would proceed accordingly. Therefore, according to Mr. Andhyarujina, the issue of submission and clearance of CAD Plans should not be decided at this stage by the court. It is further submitted by Mr. Andhyarujina that in case a party is aggrieved by the order to be passed by MoEF, it would be open to it to challenge the said order before the appropriate forum. So far as the issue of rehabilitation is concerned, it has been canvassed on behalf of the State that question of putting the canal affected persons at par with submergence affected persons does not arise. This Court in *Narmada Bachao Andolan v. Union of India & Ors.*, (2000) 10 SCC 664, (hereinafter called "Narmada Bachao Andolan I") has categorically held that both classes are different and cannot be put on equal footings. The canal affected people may rather be benefited because of the canals while the submergence affected persons may suffer permanently or temporarily. Therefore, to that effect, the High Court was not justified in issuing direction to treat both the classes at par.

6. On the other hand, Ms. Medha Patkar, respondent-in-person and Mr. Sanjay Parikh, learned counsel for the respondents have submitted that there is no difference in the sufferings of the persons, whether they are submergence affected persons or canal affected persons. No rationale nexus can be found to treat them differently. Therefore, the High

Court's finding to that extent does not require any interference. The CAD Plans submitted by the State authorities are not complete and are being examined by the Expert Committee of the MoEF. Therefore, the High Court has rightly directed the authority not to proceed with excavation or establishment of canals etc. The facts of the case do not warrant any interference by this Court. Appeal lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

8. Though, a large number of issues have been agitated before the High Court and dealt with, some of them have not been agitated before us. The issue of consultation with the Gram Sabha or Panchayats before acquisition of land and validity of the acquisition proceedings had been dealt with by the High Court against the writ petitioners and the same has not been challenged before us. Thus, only two issues survive, i.e. submission of CAD Plans before the MoEF and requirements of its clearance; and entitlement of the canal affected persons.

9. So far as the first issue is concerned, this Court vide order dated 25.2.2010 after taking note of the directions issued by the High Court and in view of the fact that the CAD Plans etc. were being considered by the Expert Committee of the MoEF and for many years excavation and construction of canal work and acquisition of land for that purpose had been done to a great extent and the High Court order brought the same to a standstill, passed the following order:

"In the above circumstances, excavation or construction of the canal work and acquisition of land may go on for the time being, however, it would be subject to approval of the MoEF of the revised plans submitted on 16th October, 2009. The State would be at liberty to file further details regarding the Command Area Development Plans to the MoEF and if such details regarding the Command Area Development Plans are filed, the same may be referred to the Expert Committee for consideration. The Expert Committee to take a decision within a period of six weeks and as soon as the Report is available to MoEF, the MoEF to take decision within a further period of four weeks thereafter."

10. Mr. Mohan Jain, learned Additional Solicitor General appearing for the MoEF has supported the case of the State contending that the State authorities had always been submitting the CAD Plans from time to time and the same had also been cleared by the statutory authorities. References have been made to the decision dated 10.2.2011 taken by Dr. Pandey's Committee on CAD Plans and all other subsequent decisions taken on 29th/30th April, 2011 on the CAD Plans submitted by the State Government. Mr. Jain assured the Court that the decisions would be taken by the MoEF strictly in accordance with law considering the report of the Expert Committee. Time is being taken in view of the order dated 11.5.2011 passed by this Court directing MoEF to proceed with the draft minutes prepared by the Environment Appraisal Committee after providing the opportunity of personal hearing to the writ petitioner- Ms. Medha Patkar. Though the hearing stood

concluded, a large number of documents submitted by Ms. Patkar yet require to be considered. The final decision shall be taken within 4 weeks.

11. While considering the reliefs, which could be given to the canal affected persons, this court on 5.5.2010 passed the following order :

"The State of Madhya Pradesh shall consider the "hardship cases"; those cases wherein land of a Khatedar is in excess of 60% or above is acquired for canal, those affected parties may be given land as far as possible in the near vicinity or in the canal command area of the project and if it is not possible, the land may be given from the Land Bank. The Khatedars who have already received compensation, should return the Government 50% of the compensation amount already taken by them as land value and the remaining amount may be refunded to the Government in 20 interest free annual installments. If the Khatedars are not willing to take land from the land bank, they may be given the compensation as per the present market value plus 30% solatium thereof. Those who are not coming in the category of hardship cases, compensation is to be paid under the Land Acquisition Act with 30% solatium Any grievance in respect of these affected parties may be placed before the Grievance Redressal Authority for Narmada Water Basin Project which has been set up by the State Government. Land Bank should, as far as possible, give cultivable land and also basic infrastructure such as school, primary health centre, communication facilities etc. shall be provided."

12. While entertaining I.A. No.9 of 2011, on 21.7.2011 the aforesaid order was modified as under:

"50% of the cash compensation already received by the Khatedars have to be refunded to the Government as land value of land allotted and the remaining cost of the land will be paid in 20 interest free annual installments." While hearing the matter, this court further clarified the order dated 5.5.2010 to the extent that 30% solatium as mentioned in the order dated 5.5.2010 meant as provided under the Act 1894 and not over and above the same to make it 60%. Therefore, the question remains as what are the other reliefs that can be granted to the canal affected persons and as to whether they can be put at par with the oustees of submergence area.

13. The Narmada Water Dispute Tribunal Award 1979 defined 'oustees' as well as provided for rehabilitation:

"Oustee- An "Oustee shall mean any person who since at least one year prior to the date of publication of the notification under section 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."

Provision for Rehabilitation: According to the present estimates the number of oustee families would be 7,366 spread over 173 villages in Madhya Pradesh, 467 families

spread over 27 villages in Maharashtra. Gujarat shall establish rehabilitation villages in Gujarat in the irrigation command of the Sardar Sarovar Project on the norms hereinafter mentioned for rehabilitation of the families who are willing to migrate to Gujarat. For oustee families who are unwilling to migrate to Gujarat, Gujarat shall pay to Madhya Pradesh and Maharashtra the cost, charges and expenses for establishment of such villages in their respective territories on the norms as hereinafter provided."

Thus, it is evident from the above that the definition of `oustee' does not take within its ambit the "canal affected person". However, the said award does not apply to the present projects as it was meant only for Inter-State projects like Sardar Sarovar Project.

14. So far as the Indira Sagar Project is concerned, it was given clearance on 24.6.1987 and did not have any specific direction for rehabilitation. Similarly, for Omkareshwar Project, clearance was granted on 13.10.1993 and part (vii) thereof, provided that the rehabilitation programme would be extended to landless labourers and people affected due to canal by identifying and allocating suitable land "as permissible". The words "as permissible" have been interpreted by this Court in *Narmada Bachao Andolan v. State of M.P.*¹, that addition of such terms while granting clearance did not create a right in favour of such persons as the rehabilitation is to be made in accordance with the terms of R & R Policy. Thus, we do not see any reason to reconsider the issue afresh.

15. The general R & R Policy of the State of Madhya Pradesh defines `displaced person' in para 1.1 as a person in an area likely to come under submergence because of project or which is required by the project. The R & R Policy was amended by the State of Madhya Pradesh on 14.8.2000 which included the persons whose land was likely to come under submergence or was required for the project related canal construction.

16. This Court in *Narmada Bachao Andolan I* (supra) considered a similar issue, but made the distinction between canal affected persons and persons affected by submergence in para 169 which reads as under:

"Dealing with the contention of the petitioners that there will be 23,500 canal-affected families and they should be treated on a par with the oustees in the submergence area, the respondents have broadly submitted that there is a basic difference in the impacts of the projects in the upstream submergence area and its impacts in the beneficiary zone of the command area. While people, who were oustees from the submergence zone, required resettlement and rehabilitation, on the other hand, most of the people falling under the command area were in fact beneficiaries of the projects and their remaining land would now get relocated with the construction of the canal leading to greater agricultural output. We agree with this view and that is why, in the award of the Tribunal, the State of Gujarat was not required to give to the canal- affected people the same relief which was required to be given to the oustees of the submergence area." (Emphasis added)

17. In view of the above, the State of Madhya Pradesh amended R & R Policy on 1.9.2003 deleting the words "which is required for project related constructions of canal or government project colony." Thus, in view of the above, the State of M.P. does not give the same R & R package to the canal affected persons as those affected by submergence.

18. This Court has taken a view that the canal affected persons cannot be put at par with the submergence affected persons, thus, it is not possible for the court to put the canal affected persons at par with the submergence affected persons. In view of the fact-situation, it was not permissible for the High Court to take a view contrary to the view taken by this Court, particularly, when the High Court came to the conclusion that there was a reasonable differentia between the two.

19. Be that as it may, this Court vide an interim order dated 5.5.2010 has also taken care of "hardship cases" in canal affected areas. Mr. Andhyarujina, learned senior counsel appearing for the State has graciously agreed that in order to give more benefit to canal affected persons, the court may award some more benefits. The State has suggested that in order to achieve the purpose, date of Section 4 Notification in all the cases, irrespective of the actual date of Section 4 Notification in relation to all canal affected persons be shifted (postponed) to the date of this judgment and direct to re-determine the market value according to the provisions of the Act 1894 as early as possible making the supplementary awards and giving the opportunity to such oustees further for filing reference under Section 18 of the Act 1894.

20. The State has come forward with most appropriate and valuable suggestion, thus, we accept the same. In view of the above, Land Acquisition Collector is directed to reconsider the market value of canal affected persons as if Section 4 Notification in respect of the same has been issued on date, i.e. 2.8.2011 and make the supplementary Awards in accordance with the provisions of the Act 1894. Such concession extended by the State would be over and above the relief granted by this Court vide order dated 5.5.2010 as clarified/modified subsequently, as explained hereinabove and it is further clarified that further canal work would be subject to clearance/direction which may be given by MoEF.

21. In view of the above, appeal stands disposed of. No order as to costs.

Judgment Referred.

¹AIR 2011 SC 1989