



International Environmental
Law Research Centre

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 319 OF 1994

NARMADA BACHAO ANDOLAN
(Petitioner(s))

VERSUS

UNION OF INDIA AND ORS.
(Respondent)

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Union of India & Others

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with

C.A. No. 6014/1994 W.P.(C) Nos. 345/94, 104/1997, S.L.P. (C) No. 3608/1985 & T.C.(C) No. 35 of 1995

J U D G M E N T

Bharuch, J.

I have read the judgment proposed to be delivered by my learned brother, the Hon'ble Mr. Justice B N Kirpal. Respectfully, I regret my inability to agree therewith.

I do not set out the facts here: they are detailed in Brother Kirpal's judgment.

I take the view that the Sardar Sarovar Project does not require to be re-examined, having regard to its cost effectiveness or otherwise, and that the seismicity aspect of the Project has been sufficiently examined and no further consideration thereof is called for. I do not accept the submission on behalf of the petitioner that those ousted by reason of the canals emanating from the reservoir in the Project must have the same relief and rehabilitation benefits as those ousted on account of the reservoir itself; this is for the reason that the two fall in different classes.

Having said this, I turn to the aspect of the environmental clearance of the Project. The Planning Commission accorded provisional sanction to the Project subject to the environmental clearance thereof being obtained. At the relevant time, the responsibility for giving environmental

clearance lay with the Department of Environment in the Ministry of Environment and Forests of the Union Government. The Department had in January, 1985 issued Guidelines for Environmental Impact Assessment of River Valley Projects. The Preface thereof stated that environmental appraisal was an important responsibility assigned to the Department. It involved the evaluation of the environmental implications of, and the incorporation of necessary safeguards in, activities having a bearing on environmental quality. While river valley projects were a basic necessity to a country whose economy was largely based on agriculture, over the years the realisation had dawned that river valley projects had their due quota of positive and adverse impacts which had to be carefully assessed and balanced for achieving sustained benefits. Therefore, it had been decided in the late 70s that all river valley projects should be subjected to a rigorous assessment of their environmental impact so that necessary mitigative measures could be duly incorporated therein at the inception stage. The Guidelines set out the procedure to be adopted for carrying out environmental impact assessments. In the Chapter headed Relevance of Environmental Aspects for River Valley Development Projects, the Guidelines stated, "Concern for environmental pollution is rather a recent phenomenon which has been triggered mainly by the backlash effect of accelerated industrial growth in the developed countries. The two major criteria - the project should maximise economic returns and it should be technically feasible - are no longer considered adequate to decide the desirability or even the viability of the project. It is now widely recognised that the development effort may frequently produce not only sought for benefits, but other - often unanticipated - undesirable consequences as well which may nullify the socio-economic benefits for which the project is designed." After reference to the strong feelings that were often expressed in favour of measures that would provide the provision of adequate food and shelter to the millions, the Guidelines stated, "Such strong feelings are easy to understand in the context of the prevailing economic stagnation. It does not, however, follow that the arguments advanced are valid. The basic flaw in these arguments is that they presume incompatibility between environmental conservation and the development effort." Apart from some selected cases where the uniqueness of the natural resources, like wildlife, flora and genetic pool, which demanded exclusive earmarking of a given region for their specific use, the majority of cases did not call for a choice between development projects and preservation of the natural environment; but in all cases there was great need to consider the environmental aspects along with other feasibility considerations. It was imperative to analyse whether the adoption of environmental measures was going to result in any short or long term social or economic benefits. A careful study of the direct costs involved, which would be caused by the absence of environmental mitigative measures on river valley projects, was an eye opener. These included effects on health, plant genetic resources, aquatic resources, water-logging and salinity of irrigated soils, deforestation and soil conservation. During the planning and feasibility assessment stages, several factors had to be taken into account, including short and long term impact on population and human settlements in the inundated and watershed areas, impact on flora and fauna (wildlife) in the vicinity, impact on wildlife, including birds, impact on national parks and sanctuaries, on sites and monuments of historical, cultural and religious significance and on forests, agriculture, fisheries and recreation and tourism. Requisite data for impact assessment was not readily available, this being relatively a new discipline, and it had to be generated through such field surveys as:

"- Pre-impoundment census of flora & fauna, particularly the rare & endangered species, in submergence areas;

- Census of animal population and available grazing areas;
- Land-use pattern in the area with details of extent & type of forest;
- Pre-impoundment survey of fish habitat and nutrients levels;
- Groundwater level, its quality, and existing water use pattern;
- Mineral resources, including injurious minerals, in the impoundment
- Living conditions of affected tribals/aboriginals etc.

The cost of proposed remedial and mitigative measures to protect the environment had to be included in the project cost. Mitigative measures included, among other things, compensatory afforestation. Only when the incorporation of environmental aspects in the project planning was made a part and parcel of all river valley projects would there be hope to protect and preserve “our natural environment and fulfill the objective of rapid economic development on the sustained basis while safeguarding the natural resources including the air, water, land, flora and fauna for the benefit of present and future generations.” The necessary data that was required to be collected for impact assessment was set out in the Guidelines. A chart of the impact assessment procedure was also contained in the Guidelines.

It appears that, though it ought rightly to have been taken by the Ministry of Environment and Forests, the decision whether or not to accord environmental clearance to the Project was left to the Prime Minister.

A Note was prepared by the Ministry of Water Resources in or about October, 1986 on the environmental aspects of the Sardar Sarovar and the Narmada Sagar Multi Purpose Projects. It stated that a decision on the clearance of these projects from the environmental angle and under the Forest Conservation Act, 1980 had become a matter of urgency. Delays had occurred which had been doing its best to expedite the process of examination and clearance “but have been finding the material submitted inadequate and unsatisfactory... ..”. While the State Governments had done their best to meet the requirements, “some of the information and action will necessarily take time and will have to proceed pari passu with the implementation of the project, which in any case will take a decade or more to complete.” The Note stated that the Ministry of Water Resources shared the concerns and anxieties of the Ministry of Environment and Forests, as also the sense of urgency of the Governments of Gujarat and Madhya Pradesh, who felt that it was urgently necessary to take a decision in regard to the clearance. Under the sub-heading, “Should the projects be taken up at all?”, the Note stated that the abandonment of the generation of 2450 MW of power and of the possibilities of economic development which that quantum of power would bring, as also increased agricultural production resulting from the creation of an irrigation potential of 2.041 million hectares. No effective alternatives to the two projects were available. Reference to the adverse environmental impact of the projects carried the implicit assumption that if the projects were not sanctioned the status-quo would remain and there would be no deterioration of the environment. Such an assumption was not warranted. Despite the submergence of land and displacement of people and livestock, there was no case for the abandonment of the projects. What needed to be done was to take appropriate and adequate counter measures to off-set the environmental impact of the projects. In respect of the flora and fauna, it said, “Extent of critically degraded area needing treatment to be identified”. Specifically in respect of the Sardar Sarovar Project, the Note said that for the area to be submerged in Maharashtra, the Maharashtra Government had proposed compensatory afforestation over an area of 6490 hectares and the Madhya Pradesh was preparing an action plan to reforest about 5500 hectares of the denuded forest in the impact area. In respect of fauna, the Note said that the Narmada Sagar Project authorities had commissioned a wildlife census of the areas by the Zoological Survey of India and were negotiating terms with the Indian Institute of Wildlife Management, Dehradun, for carrying out detailed wildlife studies for relocation purposes. They proposed to undertake all necessary steps to minimise the adverse impact of the Project on wildlife. Gujarat and Maharashtra were also taking similar action with the help of specialised agencies. In respect of the Projects’ flora, the Note said that the first preliminary survey in the area by the Botanical Survey of India was started in December, 1985 and it was estimated that the survey would take two to three years to be completed. In respect of catchment area treatment, the Note said that field surveys were likely to be started shortly. The Project authorities had identified three representative pilot project areas. The biological and engineering measures to be adopted in the treatment of the balance of the catchment area would be designed on the basis of the experience to be gained from these pilot projects. Under the sub-heading, “What still remains to be done”, the Note stated, “While some plans have been made,

studies undertaken and action initiated, it will be clear from the preceding paragraphs that much still remains to be done. Indeed, it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much, and that many matters are as yet in the early and preliminary stages." What was then set out was an enumeration of what remained to be done. The survey of flora, to assess if there were any rare or threatened plant species, had been assigned to the Botanical Survey of India, which was expected to be completed in a period of two years. The Wildlife survey undertaken by the Zoological Survey of India was also likely to take two years. The Indian Institute of Wildlife Management, Dehradun was to consider and assess the impact on wildlife of the destruction of their habitat, and to prepare a project report for their re-location. After all these reports became available, a master plan had to be prepared. Field surveys for the identification of the critically eroding areas was necessary and would take three years. Then, under the sub-heading, "Options in regard to the Clearance of the Projects", the Note stated:

"There are two options:

- I. As a number of studies, census, field surveys, mapping of areas, etc., are likely to take between 2 and 3 years, one possibility is that all these should be completed; detailed operational plans for catchment treatment, compensatory afforestation, rehabilitation and resettlement of affected population, and remedial or re-location measures for planned species, wildlife, etc., formulated; the responsibility for their implementation clearly identified; and then the projects should be given a clearance from the environmental and forest angles. This will mean a postponement of the clearance of projects by about 3 years.
- II. The other option is that the projects should be given the necessary clearance now, with clear conditions and stipulations in regard to the actions to be taken on the various environmental aspects and appropriate monitoring arrangements to ensure that the actions are taken in time-bound manner.

13.2 The arguments against a postponement of clearance by three years are very strong."

The postponement of the decision at this stage seemed, to the writers of the Note, "scarcely conceivable". A postponement would lead to substantial increases in project costs and the benefits expected from the projects would be delayed. Also the work that had already been done would be rendered infructuous. The deferment of clearance by three years would put the organisational set-up that had been built up into a state of uncertainty, retard the momentum that had been gathered, and sap the organisational morale and motivation. The Note added, "Finally, the numerous studies, surveys, data collection exercises, plans for remedial measures, etc., which have been enumerated earlier would involve time, money and organisational commitment. With the project decision postponed for three years, and with no assurance that at the end of that period, the decision will be positive, it is difficult to believe that all these studies, surveys and plans relating to the environmental aspects will be pursued with energy and enthusiasm, and the necessary resources devoted to them. In other words, the postponement of the decision in the interest of collecting the information relating to the environment aspects and completing the formulation of the necessary operational plans, may in fact prove to be self defeating exercise. On the other hand, if the project decisions are taken now, subject to firm conditions and stipulations regarding the environmental aspects, there is greater likelihood of these conditions being met..... A possible argument against the immediate clearance of the projects could be that once the projects are cleared, the management would concentrate on the engineering and construction aspects and would not pay adequate attention to the environmental and

human aspects. There seems to be no need for such apprehensions. It should be entirely possible to give a conditional clearance and ensure that the conditions are properly met through a process of clear assignment of responsibility and frequent monitoring..... Moreover, even assuming that the postponement of a decision by three years will improve the availability of detailed information and the state of preparedness on environmental matters, there can be no greater assurance at that stage than there is now regarding the whole-hearted and effective implementation of the remedial and ameliorative measures. We would still have to depend on proper monitoring.....". In conclusion, the Note urged that clearance from the environmental angle and under the Forest Conservation Act, 1980 be given immediately, subject to conditions and stipulations relating to the various environmental and related aspects outlined in the Note. (Emphasis supplied)

Another Note was prepared by the Ministry of Water Resources and forwarded to the Additional Secretary to the Prime Minister on 20th November, 1986. Insofar as catchment area treatment was concerned, it concluded that it was certain that the catchment area treatment programme could not be realistically formulated and assessed for at least another three years. Therefore, it was premature to comment on the efficacy or otherwise of the catchment area treatment programme which was still to be made available. The lining of the canal network and the digging of tubewells in the Command could not be considered to be adequate. A lot of field work and planning was needed to be done to arrive at a workable and effective Command area development Programme. As to compensatory afforestation, the land for the same was yet to be identified and procured before it could be evaluated for the purpose. In regard to the loss of flora and fauna, the following studies were considered absolutely essential to determine the adequacy or otherwise of the left over habitat to sustain wildlife:

"A wildlife census of the area" (ZSI will take at least 2-3 years to complete the survey);

- I. Preparation of a Master Plan showing all protected areas, National Parks, Wildlife Reserves, Reserve and Protected Forests, etc. on which should be superimposed the area to be taken up for various reservoirs, roads, canals, settlement colonies, etc.
- II. Study of the carrying capacity of the surrounding areas where the wildlife from the submergence area will disperse."

In the circumstances, it was not considered possible to assess the impact of the loss of habitat on the wildlife and the overall loss of biological diversity. The absence and inadequacy of data on the following environmental aspects persisted:

- I. Rehabilitation;
- II. Catchment Area Treatment;
- III. Command Area Development;
- IV. Compensatory afforestation; and
- V. Flora and Fauna."

Considering the magnitude of rehabilitation, involving a large percentage of tribals, loss of extensive forest area rich in biological diversity, enormous environmental cost of the project and considering the fact that the basic data on vital aspects was still not available “there could be but one conclusion, that the project(s) are not ready for approval.” “There were two options in regard to the clearance. As a number of studies, censuses, field surveys, mapping of areas etc. was likely to take between two and three years, one possibility was that all these should be completed; detailed operational plans for catchment treatment, compensatory afforestation, rehabilitation and re-settlement of affected population and remedial or relocation measures for plant species, wildlife, etc. formulated; the responsibility for their implementation clearly identified; and then the projects should be given clearance from the environmental and forest angles.” The other option was that the project should be given the necessary clearance with conditions and stipulations in regard to the actions to be taken on the various environmental aspects with appropriate monetary arrangements. The Note recommended the latter option. (Emphasis supplied)

On 19th December, 1986, the Ministry of Environment and Forests sent to the Secretary to the Prime Minister a Note on the environmental aspects of the Narmada Sagar and the Sardar Sarovar Projects. The Note stated that it covered the major environmental issues which included the rehabilitation of the affected population, catchment area treatment, Command area development, compensatory afforestation, and the loss of flora and fauna. It explained the then status of each of these aspects in terms of availability of data and plans and the readiness to execute them. It said that other components of the environmental aspects like the higher incidence of water borne diseases and loss of mineral reserves were important but were not dealt with in detail in the note. It stated that in respect of catchment area treatment, the requirement was of demarcation of critically degraded areas on the basis of aerial photographs, satellite imagery and ground checks; creation of a chain of nurseries of suitable species for biological treatment of the catchment area; and preparation of phased action programme for biological and engineering treatment of the degraded catchment area. Considering that catchment area treatment on an intensive scale was imperative, both to reduce silt load and to maintain ecological balance, and keeping in view the fact that the interpretation of the aerial photographs and satellite imagery would take at least one year for completion, to be followed by ground truth checks; the detailed land and soil surveys would take three years to be completed; the geo-morphological studies to suggest the engineering and biological treatment for the eroded areas were still to be taken up and the chain of nurseries needed to provide the necessary saplings in adequate quantity along with manpower and other infrastructure requirements were still to be mobilised, it was “reasonable to conclude that the catchment area treatment programme can be realistically formulated only after three years when these data become available”. Command area development was to achieve the prevention of water-logging and salinity, the optimisation of water utilisation and the maintenance of water quality. A detailed survey of the Command area was required on priority to prepare a package of the nature and quantity of development and drainage and on farm works to fully utilise the irrigation potential. An action programme was yet to be detailed. The Ministry of Water Resources was preparing an Evaluation Report covering the extent of likely water-logging and salinity problems and the effectiveness of measures proposed or likely to be proposed to combat these problems “as per the action programme to be formulated”. In so far as compensatory afforestation was concerned, the Project authorities had not been able to identify non-forest land for compensatory afforestation and had proposed to undertake afforestation on double the extent for degraded forest land, which proposal was fairly detailed and seemed satisfactory. In the matter of loss of flora and fauna the Note stated “that the forest area, specially affected by the Narmada Sagar Project, represents areas harbouring rich heritage of genetic resources as well as wildlife. The preliminary study carried out by the Environmental Planning and Coordination Organisation, Bhopal as well as the observations made by the World Bank clearly underlined the need for preparing a master plan showing not just the present status but also the ascertain the loss of biological diversity and implemented. The prime concern was to ascertain the loss of biological diversity and whether the wildlife would be able to sustain itself after the destruction of its habitat. The following studies were considered absolutely essential both to determine the loss of flora and the adequacy or otherwise of

the left over habitat to sustain the wildlife:

- A wildlife census of the area (ZSI will take at least 2-3 years to complete the survey);
- Preparation of a Master Plan showing all protected areas i.e. National Parks, Wildlife Reserves, Reserve and Protected Forests, etc. on which should be superimposed the areas cannot be taken up for various reservoirs, roads, canals, settlement colonies, etc;
- Study of the carrying capacity of the surrounding areas where the wildlife from the submergence area will disperse.

These studies are considered specially important in the case of NSP. The work initiated by BSI and ZSI at the request of the Project Authorities will be completed only by 1989. The other studies have not been initiated. Under the circumstances, it is not possible to assess the impact of the loss of habitat on the wildlife and the overall loss of biological diversity and genetic reserves.

Even if one were to assume that the forests to be destroyed do not contain genetic resources, which in any case cannot be valued, the simple loss of these forests would have an environmental cost estimated at several thousand crores of Rupees as per norms developed by the FRL. The environmental cost is thus colossal".

The Note concluded:

- 1) "Taking note of the fact that the project formulation has been in progress for more than three decades and the active interaction of the Project authorities with the Department of Environment has been going on for almost three years, the absence and inadequacy of data on important environmental aspects still persists.
- 2) In an objective sense, the NSP is not ready for clearance from the environmental angle. Even though SSP is in a fairly advanced stage of preparedness, it is neither desirable nor recommended that the SSP should be given approval in isolation on technical and other grounds.
- 3) The state of readiness in the case of NSP is such that it gives just an outline of the Intention Plan. The fact that this Intention Plan will be converted to an Action Plan and there be effectively implemented has to be taken on trust. In case of Sardar Sarovar Project (SSP), readiness to execute is reasonably good except on the issue of rehabilitation of oustees specially from MP and Maharashtra.
- 4) Holding up of the projects even for the next few months is not likely to improve the level of preparedness on most of the environmental aspects, specially in the case of NSP. In the meanwhile, further studies will not perhaps pick up speed and thus at no time will the requisite information be fully available.

- 5) A large amount of money has already been invested in SSP which is critically linked - on technical and operational aspects - to NSP. However, it may not be too late even now to modify some of the parameters of NSP and SSP to minimise environmental damage while at the same time ensuring optimal utilisation of water resources.
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The choice is difficult but a choice has to be made.” (Emphasis supplied)

A Note was prepared on 15th January, 1987, in the Prime Minister’s Office. It noted that the main issues on environmental concerns were the rehabilitation of the affected population, compensatory afforestation, treatment of the catchment area and Command area development, pertaining, particularly, to drainage, water logging and salinity. The Department of Environment and Forests had raised the point that the rehabilitation plan was not ready, land had not been surveyed, areas of land use capability and water availability had not been identified and land being suggested for rehabilitation, prima facie, appeared to be infertile. Detailed meetings with the State Governments revealed that they were seriously undertaking surveys, land identification and preparation of a rehabilitation plan, of which the first phase was more or less ready. The catchment area treatment would take time. A compensatory afforestation programme could be chalked out without difficulty. The issue was whether detailed plans should be made fully ready before giving environmental clearance or whether there could be a conditional clearance so that the Project could start. The Secretary to the Prime Minister had discussed the matter with the Secretary, Water Resources and the Secretary, Environment and Forests and it had been agreed that clearance might be given on the following conditions:

“Preparation in due time of detailed and satisfactory plans for rehabilitation, catchment area treatment, compensatory afforestation and Command Area Development.

Setting up of Narmada Management Authority with adequate powers and teeth to ensure that environmental plans are implemented pari passu with engineering and other works”.

Below the aforesaid Note, the Secretary to the Prime Minister sought his approval to conditional clearance of the Project from the environmental angle. The Project, she said, had been pending clearance for seven years and the Chief Ministers of Gujarat and Madhya Pradesh were keenly awaiting it. The Chief Minister of Gujarat had requested a “green signal” before 20th January, 1987.

On 19th January, 1987, the Prime Minister made a handwritten endorsement on the aforesaid Note, “Perhaps this is a good time to try for a River Valley Authority, Discuss”. But it appears that a River Valley Authority was not found feasible and the sanction to the project from the environmental angle was issued by the Ministry of Environment and Forests on 24th June, 1987.

The environmental sanction to the Project reads thus:

“ Office Memorandum,

Subject: Approval of Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat, from environmental angle.

1. The Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat have been referred to this Department for environmental clearance.
2. On the basis of examination of details of these projects by the Environmental Appraisal Committee for River Valley Projects and discussions with the Central and State Authorities, the following details were sought from the project authorities:
 - i. Rehabilitation Master Plan.
 - ii. Phased Catchment Area Treatment Scheme.
 - iii. Compensatory Afforestation Plan.
 - iv. Command Area Development.
 - v. Survey of Flora and Fauna.
 - vi. Carrying Capacity of surrounding area.
 - vii. Seismicity; and
 - viii. Health Aspects.
3. Field Surveys are yet to be completed. The first set of information has been made available and complete details have been assured to be furnished by 1989.
4. The NCA has been expanded and its terms of reference have been amplified to ensure that environmental safeguard measures are planned and implemented in depth and in its pace of implementation *pari passu* with the progress of work on the project.
5. After taking into account all relevant facts of Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat are hereby accorded environmental clearance subject to the following conditions:
 - i. The Narmada Control Authority (NCA) will ensure that environmental safeguard measures are planned and implemented *pari passu* with progress of work on projects.
 - ii. The detailed surveys/ studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment.
 - iii. The Catchment Area Treatment Programme and Rehabilitation plans be so drawn as to be completed ahead of reservoir filling.
 - iv. The Department should be kept informed of progress on various works periodically.
6. Approval under Forest (Conservation) Act, 1980 for diversion of forest land will be obtained separately. No work should be initiated on forest area prior to this approval.
7. Approval from environmental and forestry angles for any other irrigation, power or development projects in the Narmada Basin should be obtained separately.

Even in 1987, when the environmental clearance to the Project was given, it had been found necessary by the Union of India to rigorously assess the environmental impact of river valley projects.

This was to determine whether the uniqueness of the natural resources, like wildlife, flora and fauna and the genetic pool in the region, demanded its exclusive earmarking for that purpose, in which event the river valley project would not be accorded clearance. Even otherwise, it was imperative to consider the Project's environmental aspects, such as its effect on health, plant genetic resources, aquatic resources, water-logging and salinity of irrigated soils, deforestation and soil conservation. Its short and long term impact on population, on flora and fauna, on wildlife, on national parks and sanctuaries, on historical, cultural and religious monuments, on forests, agriculture, fisheries and recreation and tourism had to be taken in account. Field surveys were necessary for generating the requisite data for the impact assessment. The cost of the proposed remedial and mitigated measures had to be included in the project cost. The necessary data that was required to be collected for the purposes of the assessment of a project's environmental impact was set out in Guidelines for the purpose issued by the Ministry of Environment and Forests of the Union Government (which have been referred to above).

The contemporaneous Notes prepared by the Ministry of Water Resources and the Ministry of Environment and Forests, also referred to above, leave no manner of doubt that the requisite data for assessment of the environmental impact of the Project was not available when the environmental clearance thereof was granted. In the words of one of the Notes, "While some plans have been made, studies undertaken and action initiated, it will be clear from the preceding paragraphs that much still remains to be done. Indeed it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much and that many matters are yet in the early and preliminary stages". The Notes make clear that the studies, censuses, mapping of areas and field surveys for the collection of data for assessment of the environmental impact of the Project were likely to take a further 2 to 3 years. An environmental clearance based on next to no data in regard to the environmental impact of the Project was contrary to the terms of the then policy of the Union of India in regard to environmental clearances and, therefore, no clearance at all.

The environmental clearance of 24th June, 1987 stated that details had been sought from the Project authorities in respect of the rehabilitation master plan, phased catchment area treatment scheme, compensatory afforestation plan, Command area development, survey of flora and fauna, carrying capacity of surrounding area, seismicity and health aspects; field surveys had yet to be completed and complete details had been assured by 1989. Clearly, therefore, the necessary particulars in regard to the environmental impact of the Project, as required by the Guidelines, were not available when the environmental clearance was given, and it, therefore, could not have been given.

The conditions upon which the environmental clearance was given were that detailed surveys and studies would be carried out and the Narmada Control Authority, whose terms of reference had been amplified, would ensure that "environmental safeguard measures" were planned and implemented *pari passu* with the progress of work on the project. No further assessment of the environmental impact of the Project was contemplated by the environmental clearance, nor, indeed, was it ever carried out.

What the environmental safeguards measures the Narmada Control Authority was to ensure were, and what their cost would be, was not known when the environmental clearance was given. There was, therefore, no way in which this cost could be included in the cost of the Project, which was a requirement of the Guidelines.

While environmental safeguard measures were to be planned and implemented *pari passu* with the progress of the work on the project, the catchment area treatment programme and the rehabilitation plans were required to be “so drawn as to be completed ahead of reservoir filling”. This condition clearly required that before any water was impounded in the reservoir the catchment area treatment programme was not only to be drawn up but also to be completed; so also the rehabilitation plans. If as the Project authorities interpreted this clause, only the drawing of the catchment area treatment programme and the rehabilitation plans were to be completed ahead of reservoir filling, the clause would have read: “The catchment area treatment programme and the rehabilitation plans shall be drawn ahead of reservoir filling”. What the clause as drawn required was that the catchment area treatment and the rehabilitation works would be completed ahead of impoundment in the reservoir. This, plainly, was intended to off set, so far as was possible in the circumstances, the adverse effect of the impoundment of water in the reservoir upon the catchment and those who were required to be settled elsewhere. In fact, the impoundment began much before.

Learned counsel for the Union of India submitted that most of the necessary surveys and studies had been carried out in regard to the environmental impact of the Project before the environmental clearance was given, and he invited our attention to what had been done. The short answer to the submission on behalf of the Union of India is that the two concerned Ministries of the Union of India thought otherwise at the relevant time. To quote the Note of one Ministry again, “While some plans have been made, studies undertaken and action initiated, it would be clear from the preceding paragraph that much still remains to be done. Indeed it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much and that many matters are yet in the early and preliminary stages”.

The fact that the environmental clearance was given by the Prime Minister and not by the Ministry of Environment and Forests, as it would ordinarily have been done, makes no difference at all. Under its own policy, as indicated by the Guidelines, the Union of India was bound to give environmental clearance only after a) all the necessary data in respect of the environmental impact of the Project had been collected and assessed; b) the assessment showed that the Project could proceed; and c) the environmental safeguard measures, and their cost, had been worked out.

An adverse impact on the environment can have disastrous consequences for this generation and generations to come. This Court has in its judgments on Article 21 of the constitution recognised this. This court cannot place its seal of approval on so vast an undertaking as the Project without first ensuring that those best fitted to do so have had the opportunity of gathering all necessary data on the environmental impact of the project and of assessing it. They must then decide if environmental clearance to the Project can be given, and, if it can, what environmental safeguard measures have to be adopted, and their cost. While surveys and studies on the environmental aspects of the Project have been carried out subsequent to the environmental clearance, they are not, due to what are euphemistically called “slippages”, complete. Those who now examine whether environmental clearance to the Project should be given must be free to commission or carry out such surveys and studies and the like as they deem necessary. They must also, of course, consider such surveys as have already been carried out. Given that the construction of the dam and other work on the Project has already commenced, this factor must play a part in their deciding whether or not environmental clearance should be accorded. Until environmental clearance to the Project is accorded by them, further construction work on the dam shall cease.

The Union of India has issued a notification on 27th January, 1994 called the “Environmental Impact Assessment Notification called 1994 (and amended on 4th May, 1994). Its terms are not applicable to the present proceedings, but its provisions are helpful in so far as they prescribe who is to assess the environmental impact assessment reports and environmental management plans that are submitted by applicants for new projects, including hydro-electric projects. The notification says, “The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary, it may consult a Committee of Experts, having composition as specified in Schedule-III of this notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the IAA or such other body under the Central Government authorised by the IAA in this regard.....”.

Schedule III of the notification reads thus:

“COMPOSITION OF THE EXPERT COMMITTEES FOR
ENVIRONMENTAL IMPACT ASSESSMENT

1. The Committees will consist of experts in the following disciplines:
 - (i) Eco-System Management
 - (ii) Air/ Water Pollution Control
 - (iii) Water Resources Management
 - (iv) Flora/ Fauna Conservation and Management
 - (v) Land Use Planning
 - (vi) Social Sciences/ Rehabilitation
 - (vii) Project Appraisal
 - (viii) Ecology
 - (ix) Environmental health
 - (x) Subject Area Specialists
 - (xi) Representatives of NGOs/ Persons concerned with Environmental Issues.
2. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience.
3. The representative of IAA will act as Member - Secretary.
4. Chairman and members will serve in their individual capacities, except those specifically nominated as representatives.
5. The membership of a Committee shall not exceed 15”.

The Environmental Impact Agency of the Union Ministry of Environment and Forests shall now appoint a committee of experts composed of experts in the fields mentioned in Schedule III of the notification and that committee of experts shall assess the environmental impact of the Project as stated above.

When the writ petition was heard at the admission stage, this Court was most concerned about the distressing state of the relief to and rehabilitation of those ousted on account of the Project. The proper implementation of relief and rehabilitation measures was the aim of the Court at that time, but it was not contemplated that the other issues in the writ petition would not to be considered at the stage of its final hearing.

The many interim orders that this Court made in the years in which this writ petition was pending show how very little had been done in regard to the relief and rehabilitation of those ousted. It is by reason of the interim orders, and, in fairness, the co-operation and assistance of learned counsel who appeared for the States, that much that was wrong has now been redressed. The States have also been persuaded to set up Grievance Redressal Authorities and it will be the responsibility of these Authorities to ensure that those ousted by reason of the Project are given relief and rehabilitation in due course.

The States are lagging behind in the matter of the identification and acquisition of land upon which the oustees are to be resettled. Having regard to the experience of the past, only the Grievance Redressal Authorities can be trusted by this Court to ensure that the States are in possession of vacant lands suitable for the rehabilitation of the oustees. During the time that it takes to assess the environmental impact of the project, the States must take steps to obtain, by acquisition or otherwise, vacant possession of suitable lands upon which the oustees can be rehabilitated. When the Project obtains environmental clearance, assuming that it does, each of the Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra must certify, after inspection, before work on the further construction of the dam can begin, that all those ousted by reason of the increase in the height of the dam by 5 mts from its present level have already been satisfactorily rehabilitated and also that suitable vacant land for rehabilitating all those who will be ousted by the increase in the height of dam by another 5 mts is already in the possession of the respective states; and this process must be repeated for every successive proposed 5 mt increase in the dam height.

Only by ensuring that relief and rehabilitation is so supervised by the Grievance Redressal Authorities can this Court be assured that the oustees will get their due.

It is necessary to provide for the contingency that, for one or other reason, the work on the project, now or at any time in future, does not proceed and the Project is not completed. Should that happen, all oustees who have been rehabilitated must have the option to continue to reside where they have been rehabilitated or to return to where they were ousted from, provided such place remains habitable, and they must not be made at all liable in monetary or other terms on this account.

When the writ petition was filed the process of relief and rehabilitation, such as it was, was going on. The writ petitioners were not guilty of laches in that regard. In the writ petition they raised other issues, one among them being related to the environmental clearance of the Project. Given

what has been held in respect of environmental clearance, when the public interest is so demonstrably involved, it would be against the public interest to decline relief only on the ground that the Court was approached belatedly.

I should not be deemed to have agreed to anything stated in Brother Kirpal's judgement for the reason that I have not traversed it in the course of what I have stated.

In the premises,

- 1) The Environment Impact Agency of the Ministry of Environment and Forests of the Union of India shall forthwith appoint a Committee of Experts in the fields mentioned in Schedule III of the notification dated 27th January, 1994, called the Environmental Impact Assessment Notification, 1994.
- 2) The Committee of Experts shall gather all necessary data on the environmental impact of the Project. They shall be free to commission or carry out such surveys and studies and the like as they deem necessary. They shall also consider such surveys and studies as have already been carried out.
- 3) Upon such data, the Committee of Experts shall assess the environmental impact of the Project and decide if environmental clearance to the Project can be given and, if it can, what environmental safeguard measures must be adopted, and their cost.
- 4) In so doing, the Committee of Experts shall take into consideration the fact that the construction of the dam and other work on the Project has already commenced.
- 5) Until environmental clearance to the Project is accorded by the Committee of Experts as aforesaid, further construction work on the dam shall cease.
- 6) The Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall ensure that those ousted by reason of the Project are given relief and rehabilitation in due measure.
- 7) When the Project obtains environmental clearance, assuming that it does, each of the Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall, after such inspection, certify, before work on the further construction of the dam can begin, that all those ousted by reason of the increase in the height of the dam by 5 meters from its present level have already been satisfactorily rehabilitated and also that suitable vacant land for rehabilitating all those who will be ousted by the increase in the height of the dam by another 5 meters is already in the possession of the respective States.
- 8) This process shall be repeated for every successive proposed 5 meter increase in the dam height.
- 9) If for any reason the work on the Project, now or at any time in the future, cannot proceed and the Project is not completed, all oustees who have been rehabilitated shall have the option to continue to reside where they have been rehabilitated or to return to where they were ousted from, provided such place remains habitable, and they shall not be made at all liable in monetary or other terms on this account.

The writ petition is allowed in the aforementioned terms. The connected matters are disposed of in the same terms.

No order as to costs.

.....J.

(S.P.Bharucha)

New Delhi,

October 18, 2000

