REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3726 OF 2011

Narmada Bachao Andolan ... Appellant

Versus

State of Madhya Pradesh ...Respondent

SUPREME COURT OF INDIA

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 16.12.2010 passed by the Madhya Pradesh High Court, Jabalpur in Writ Petition No. 1360 of 2009.

JUDGMENT

2. Facts and circumstances giving rise to this appeal are as under:

A. In the year 1972, the State of Madhya Pradesh conceived a dam to provide irrigation facilities to farmers of Khargone district. The dam, on filling upto full, would cause submergence of

1258.59 hectares of land, out of which 1037.715 is private and 206.635 is government and 14.24 hectares is forest land.

B. On 10.1.1992, a detailed Project Report was prepared and submitted to the State Government and the Final Project Report was approved by Technical Committee of Central Water Commission vide order dated 6.5.1997. Clearance to the project was given by the Government of India. It was on 10.10.2002 that the project was accorded Environmental and Forest clearance.

C. The Cabinet of Ministers in its meeting dated 4.10.2002 approved payment of Special Rehabilitation Grant (hereinafter called SRG) to be paid to oustees, who would not ask for land in lieu of land acquired. As a consequence thereof, order dated 28.12.2002 was issued to the same effect in the name of the Governor of the State of Madhya Pradesh.

D. On 23.5.2004, construction of dam site commenced and was completed upto crest level in the year 2008; only gates were required to be installed so as to achieve full reservoir level of 317 metres. Subsequent thereto, Notification dated 5.3.2008 was issued regarding submergence of four villages, namely, Sonud, Nimit, Bedhaniya and Khamid.

E. Appellant approached the High Court by filing writ petition No. 1360 of 2009 claiming various reliefs, *inter-alia,* to stop further construction which may cause submergence so that displaced families are resettled and rehabilitated in 6 months before the submergence; to direct State Government to provide irrigated agricultural land to eligible oustees including encroachers and landless labourers; to declare the order dated 7.6.1991 passed by Narmada Valley Development Department (hereinafter called NVDD) amending para 5.1 of the Re-settlement and Rehabilitation Policy, 1991 (hereinafter called R & R Policy) to be ultra vires and unconstitutional, being arbitrary and mala fides.

F. The State Authorities opposed the writ petition contending that the validity of the R & R Policy had already been upheld by the courts; landless labourers were not entitled for allotment of agricultural land; the writ petition was filed at much belated stage, i.e. after completion of the dam; appellant had an alternative efficacious remedy before the Grievance Redressal Authority (hereinafter called GRA); amendment in para 5.1 of the R & R Policy was only procedural, and carried out legally and was thus valid; even otherwise the amendment to para 5.1 was inconsequential because the allotment of land for the oustees is

provided under Clause 3 of the R & R Policy and amendment carried out in Clause 3 of the Policy at subsequent stage had not been challenged by the appellant.

G. The High Court considered the rival submissions advanced on behalf of the parties and held that challenge to the validity of the amendment dated 7.6.1991 was belated and could not be entertained. The alternative remedy before the GRA was efficacious and no extraordinary situation prevailed warranting the High Court to interfere at such a stage. The landless labourers were not entitled for allotment of agricultural land. The oustees had been offered grant; the value of their land had also been assessed under the Land Acquisition Act, 1894 (hereinafter called `the Act 1894'). Person aggrieved, if any, can approach the GRA if he is not satisfied with the reliefs granted to him in terms of the R & R Policy. After taking the aforesaid view, the High Court issued various directions including: to install radial gates, block sluice gates and to fill up dam upto 310 metres; when canal network is ready, the Government could approach the Court to fill up the dam to 317 metres; the Government would ensure that land oustees were given benefits to which they are entitled under the R & R Policy within four

weeks; and that persons aggrieved, if any, were at liberty to agitate the grievances in respect of reliefs before the GRA.

Hence, this appeal.

3. Ms. Chittaroopa Palit, representative of the appellant, has raised before us all the issues which had been agitated before the High Court, including the right of oustees for allotment of land in lieu of land acquired and non-compliance of R&R Policy is violative of fundamental rights of the oustees enshrined in Article 21 of the Constitution. It has further been submitted by her that the amendment in Clause 5.1 of the R & R Policy was null and void as it has not been carried out in accordance with the procedure prescribed under Section 21 of the General Clauses Act, 1897 as well as the provisions of Article 166(2) and (3) of the Constitution of India. Clause 5.1 of the R & R Policy could not be amended in violation of Rule 7(viii) of Part II of the Business Rules. And that since the Ministry of Welfare, Government of India, has accorded clearance to the project with a clear understanding that landless labourers would also be allotted agricultural land and as the same has not been complied with, the High Court's judgment requires interference.

4. On the contrary, Mr. P.S. Patwalia, learned senior counsel appearing for the respondents has vehemently opposed the appeal contending that Clause 5.1 of the R & R Policy deals with procedure only. Entitlement for allotment of land is provided under Clause 3.2 of the R & R Policy and as the amendment to the said clause was not challenged, amendment to Clause 5.1 remains inconsequential. Dam construction started in year 2004 and compensation for land acquired had been determined much ago. By December 2002, the benefit of SRG had also been given to the oustees. The writ petition was filed in year 2008 after the dam stood fully constructed. At the time of filing the writ petition there was no challenge to Clause 5.1 of the R & R Policy, rather it was challenged seeking amendment by filing an application dated 11.5.2010. Amendment to Clause 5.1 of R & R Policy has been in conformity with the Business Rules of the Government and all the orders in this respect had been passed in the name of the Governor. The Council of Ministers had delegated the power to the NVDD and to the Hon'ble Minister for Rehabilitation and in case there was any difference between the said two Hon'ble Ministers, the matter would be referred to the Hon'ble Chief Minister. The law permits delegation of power to make routine changes in subordinate legislation. Therefore, no

fault can be found with the procedure adopted for amendment of Clause 5.1 of the R & R Policy.

Mr. Patwalia further asserts that so far as the entitlement of relief in favour of landless labourers etc. is concerned, this Court has dealt with the issue in **Narmada Bachao Andolan v. State of M.P.**, AIR 2011 SC 1989 (hereinafter called "Narmada Bachao Andolan III") and all the issues agitated in this appeal have been answered in the said judgment. The appeal lacks merit and is liable to be dismissed.

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

6. This Court in **Narmada Bachao Andolan III** (supra) has dealt elaborately with most of the issues agitated in this appeal, particularly, the issues of delay and laches, availability of alternative remedy, entitlement of major sons and daughters of oustees/as well as the landless labourers for allotment of agricultural land. The issues of land acquisition, rehabilitation and resettlement of oustees considering their fundamental and constitutional rights under Articles 21 and 300-A of

the Constitution of India have been dealt with elaborately therein. This Court held:-

> *"These cases are to be decided giving strict adherence to the R & R Policy, as amended on 3.7.2002, further considering that special care is to be taken where persons are oppressed and uprooted so that they are better off. Our Constitution requires removal of economic inequalities and provides for provision of facilities and opportunities for a decent standard of living and protection of economic interests of the weaker segments of the society and in particular Scheduled Castes and Scheduled Tribes. Every human being has a right to improve his standard of living. Ensuring people are better off is the principle of socio-economic justice which every State is under obligation to fulfil, in view of the provisions contained in Articles 37, 38, 39(a), (b), (e), (f), 41, 43, 46 and 47 of the Constitution of India."*

Thus, the case in fact requires to be disposed of in terms of the said judgment.

7. Ms. Palit has submitted that as the High Court did not consider the issue of amendment of Clause 5.1 of the R & R Policy and the effect of non-compliance of the condition imposed by the Ministry of Welfare while granting the clearance for the project, this court must examine the said issues.

According to Ms. Palit, while making the amendment the procedure prescribed under Article 166 of the Constitution has not been followed and while granting the clearance, the Ministry of Welfare has added the clause that families of the landless labourers would be given agricultural land to the extent of 2 hectares which has not been given.

Thus, this appeal is being considered to be restricted to these two issues.

Amendment to Clause 5.1 of the R & R Policy:

8. The NVDD vide Resolution dated 18.11.1987 proposed liberal amended policy for the oustees of the Narmada Projects and submitted the same for approval to the Cabinet of Ministers, Government of Madhya Pradesh. The said proposal was approved by the Cabinet of Ministers, Government of M.P. on 25.11.1987. Subsequently, the NVDD vide Resolution dated 28.8.1989 proposed certain modifications in the rehabilitation policy and the summary of the same was submitted for the approval to the Cabinet of Ministers, Government of M.P. The said proposal specifically provided for delegation of power to the NVDD and Rehabilitation Department to make routine/general amendment in R & R Policy with the permission

of the Ministers-in-charge of the said two departments. The Council of Ministers vide resolution dated 1.9.1989 approved the said proposal.

9. Certain amendments were sought in R & R Policy vide resolution dated 5.9.1989. The NVDD, in consultation with the Rehabilitation Department and after seeking approval of the Ministers-in-charge of both the said Departments, amended Clauses 4.1, 5.1 and 8.3 of the R & R Policy and issued the amended policy on 7.6.1991 in the name of the Governor of the State. The copy of the said amendment order was issued to 44 officers concerned as is evident from the record. Clause 4.1 of the R & R Policy was amended to facilitate the tenure holders, who were voluntarily willing to sell their lands, "as far as possible" to alienate the same and further providing for procedure for determination of reasonable price of such lands. Clause 5.1 was amended to the effect that if an oustee family does not wish to obtain land in lieu of the submerged land and wishes full payment of the amount of compensation, it can do so by submitting an application to this effect in writing to the concerned Land Acquisition Officer. In such cases, the oustee families would have no entitlement over allotment of land and would be paid full amount of compensation. An option once exercised under this provision would be final, and no claim for

allotment of land, in lieu of the land, acquired could be made afterwards. If any oustee family belonging to the Scheduled Tribes submits such an application, it will be essential to obtain orders from the Collector, who would after necessary enquiry certify that it would not adversely affect the interests of the oustee family. Such applications of the Scheduled Tribes oustee families could be accepted only after the said certification by the Collector. Clause 8.3 was also amended changing the size of plots to be allotted to the oustees etc.

10. Subsequently on 24.10.2002, NVDD submitted the summary to Council of Ministers for approval of SRG for oustees of Narmada Projects, particularly in respect of those oustees who were not claiming land in lieu of the land acquired, and the said proposal was approved by the Cabinet of Ministers. As a consequence, the order dated 28.12.2002 was issued giving effect to the said amendment in the name of the Governor of the State of Madhya Pradesh .

11. On 27.4.2002, the amendment was made in Clause 3.2 of the R & R Policy putting the words "as far as possible" for allotment of agricultural land to the oustees in lieu of the land acquired.

12. The aforesaid chronological development of amendment of R & R Policy reveals that Clause 3 of the R & R Policy provided for entitlement of oustees to get land in lieu of the land acquired. Clause 5 prescribed only the procedure for allotment of land under Clause 3 of the R & R Policy. The amendment of R & R Policy on 7.6.1991 which is under challenge by the appellant only facilitates those oustees who were not willing to take the land in lieu of the land acquired. Such an amendment was brought on demand of the oustees as an alternative. However, it does not take away the right of the oustees to claim land in lieu of the land acquired, for the simple reason that there was no amendment in year 1991 to Clause 3.2 of the R & R Policy and the amendment to the said Clause 3.2 incorporated on 27.4.2002 is not under challenge. The amendment under challenge simply facilitated an oustee to claim compensation instead of land. This may be for the reason that oustee may be willing to settle in another State or in urban area or wants to adopt any other vocation/profession or wants to start any other business. However, it does not take away the right of any oustee to claim the land in lieu of the land acquired. Therefore, in our opinion, amendment to Clause 5.1 remains inconsequential so far as the right of an oustee to claim land in lieu of the land acquired is

concerned. Ms. Palit could not explain that in case her averment was accepted and the amendment to Clause 5.1 dated 7.6.1991 stood struck down, what benefit could an oustee derive from the same. In view of the above, we do not find any force in the submissions made on behalf of the appellant on this count.

13. In view of our conclusion reached herein that amendment to clause 5.1 of the R & R Policy was inconsequential so far as entitlement of allotment of agricultural land in lieu of land acquired was concerned, grievance of the appellant that procedure adopted for its amendment was not in conformity with the Statutory/Constitutional requirement becomes purely an academic issue, not required to be determined as Ms. Palit could not point out as what prejudice the said amendment could cause to an oustee. However, as we have heard the issue at length, it is desirable to decide the same also.

Procedure adopted for amendment:

14. Ms. Palit has submitted that the procedure adopted for amendment of Clause 5.1 of the R & R Policy is not in consonance with the provisions of Section 21 of the General Clauses Act, 1897 and Article 166 (2) and (3) of the Constitution. Rule 7 of the Business

Rules, Part II provided for the cases to be brought before the Council of Ministers. Clause (viii) thereof reads:-

> *"Proposals to vary or reverse a decision previously taken at meeting of the Council".*

15. In **Sampat Prakash v. The State of Jammu & Kashmir & Anr**., AIR 1970 SC 1118, this Court held:-

> *"This provision (S.21) is clearly a rule of interpretation which has been made applicable to the Constitution in the same manner as it applies to any Central Act or Regulation…… As an example, under Article 77(3), the President, and, under Article 166(3) the Governor of a State are empowered to make rules for the more convenient transaction of the business of the Government of India or the Government of the State, as the case may be, and for the allocation among Ministers of the said business. If, for the interpretation of these provisions, Section 21 of the General Clauses Act is not applied, the result would be that the rules once made by the President or a Governor would become inflexible and the allocation of the business among the Ministers would forever remain as laid down in the first rules. Clearly, the power of amending these rules from time to time to suit changing situations must be held to exist and that power can only be found in these articles by applying Section 21 of the General Clauses Act".*

16. As the issue raised is of great public importance and Ms. Palit was not able to render proper legal assistance, we requested Mr. Gourab

Banerjee, learned Additional Solicitor General who was present in the court to assist the court on two issues, namely:

(1) Whether the State Council of Ministers is, as a matter of law, permitted to delegate its power to a subordinate authority to amend its own decision.

(2) Whether such amendment is to be consistent with the Rules of Business framed under Article 166 of the Constitution of India.

17. Mr. Banerjee has made the submissions citing large number of judgments of this Court and contended that law permits the delegation of power for amending the subordinate legislation in view of the provisions of Articles 77 and 166 of the Constitution.

18. Even function or duties which are vested in a State Government by a statute may be allocated to ministers by the Rules of Business framed under Article 166(3). In the case of **The State of Bihar v. Rani Sonabati Kumari,** AIR 1961 SC 221, it was held as under:

> *"Section 3(1) of the Act confers the power of issuing notifications under it, not on any officer but on the State Government as such though the exercise of that power would be governed by the rules of business framed by the Governor under Art. 166(3) of the Constitution. But this does not*

afford any assistance to the appellant. The order of Government in the present case in expressed to be made "in the name of the Governor" and is authenticated as prescribed by Art. 166(2), and consequently "the validity of the order or instrument cannot be called in question on the ground that it is not an order or instrument made or executed by the Governor."

19. In the said judgment, it was also observed that the Governor remains responsible for actions of subordinates taken in his name:

"The only point canvassed is whether it was an order made by the Governor or by some one duly authorised by him in that behalf within Art.154(1). Even assuming that the order did not originate from the Governor personally, it avails the State nothing because the Governor remains responsible for the action of his subordinates taken in his name. In ***King Emperor v. Sibnath Banerjee & Ors.,*** *AIR 1945 PC 156 already referred to, Lord Thankerton pointing out the distinction between delegation by virtue of statutory power there and the case of the exercise of the Governor's power by authorised subordinates under the terms of S. 49(1) of the Government of India Act, 1935 corresponding to Art. 154(1), said:*

"Sub-section 5 of S. 2 (of the Defence of India Act, 1939) provides a means of delegation in the strict sense of the word, namely, a transfer of the power or duty to the officer or authority defined in the sub-section, with a corresponding divestiture of the Governor of any responsibility in the matter, whereas under S. 49(1) of the Act of 1935, the Governor remains responsible for the action of his subordinates taken in his name.

> *This last point is therefore without force and has to be rejected."*

(See also the decision of the Constitution Bench in **R. Chitralekha v. State of Mysore & Ors.,** AIR 1964 SC 1823).

20. The decision of any minister or officer under the Rules of Business made under Articles 77(3) and 166(3) of the Constitution is the decision of the President or the Governor respectively and these Articles do not provide for 'delegation'. That is to say, that decisions made and actions taken by the minister or officer under the Rules of Business cannot be treated as exercise of delegated power in real sense, but are deemed to be the actions of the President or Governor, as the case may be, that are taken or done by them on the aid and advice of the Council of Ministers. In **State of U.P. & Ors. v. Pradhan Sangh Kshettra Samiti & Ors.,** AIR 1995 SC 1512, this Court relied on the decision of the Seven-Judge Bench in **Samsher Singh v. State of Punjab & Anr.,** AIR 1974 SC 2192 and held as under:

> *"....Any action taken in the exercise of the executive power of the State vested in the Governor under Article 154(1) is taken by the Government of the State in the name of the Governor as will appear in Article 166(1). There are two significant features in regard to the executive action taken in the name of the*

Governor. First, Article 300 states, among other things, that the Governor may sue or be sued in the name of the State. Second, Article 361 states that proceedings may be brought against the Government of the State but not against the Governor. The reason is that the Governor does not exercise the executive functions individually or personally. Executive action taken in the name of the Governor is the executive action of the State. Para 48 of the said judgment explains the position of law in that behalf succinctly as follows:

"The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor."

21. Whether there can be further delegation by the minister to the officer subordinate to him depends on the provisions of the Rules of Business.

22. Rules of Business operate even when a statute does not authorise sub-delegation. In **King Emperor v. Sibnath Banerjee & Ors.** (supra)**,** the law was crystallised by the Privy Council holding that a provision permitting sub-delegation is merely supplementary and can be no ground for excluding the ordinary method by which the Government's executive business was carried on.

23. The requirement of the Rules of Business must be complied with in order to give validity to the action or decision taken. In **Smt. Godavari Shamrao Parulekar v. The State of Maharashtra & Ors.,** AIR 1964 SC 1128, a Constitution Bench of this Court considered whether an order of preventive detention under the Defence of India Ordinance could have been passed in terms of the Rules of Business. While upholding the order of detention, the court held that the preventive detention could only be ordered by the minister who had been allocated the relevant subject which was the basis of the detention order.

24. Earlier cases of this Court suggest that the Rules of Business are to be construed as directory so that substantial compliance with them would suffice to uphold the validity of the relevant order of the Government. (See: **State of Uttar Pradesh v. Om Prakash Gupta**, AIR 1970 SC 679)

25. Similarly, in **R. Chitralekha** (Supra), a Constitution Bench of this Court had observed that it is settled law that the provisions of Article 166 of the Constitution are only directory and not mandatory in character. In paragraph 4 it was held as under: _

> *".....This view has been reaffirmed by this Court in subsequent decisions: see **Ghaio Mal & Sons v.The State of Delhi & Ors.,** AIR 1959 SC 65 and it is, therefore, settled law that provisions of Art. 166 of the Constitution are only **directory and not mandatory in character** and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor."*
>
> (Emphasis added)

26. The judgment in **R. Chitralekha** (supra) has been subsequently cited for this proposition in **Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors.,** (2005) 1 SCC 625.

27. In **Dattatraya Moreshwar v. The State of Bombay & Ors.,** AIR 1952 SC 181, a Constitution Bench of this Court held that an omission to make and authenticate an executive decision in the form mentioned in Article 166 does not make the decision itself illegal, on the basis that its provisions were directory and not mandatory.

28. However, in the recent decision of **MRF Ltd. v. Manohar Parrikar & Ors.,** (2010) 11 SCC 374, a two-Judge Bench of this Court has sought to distinguish the above mentioned judgments and taken the view that in case there is non-compliance of Business Rules framed under Article 166(3) of the Constitution, the notification issued in violation of Business Rules is void *ab initio* and all actions consequent thereto are null and void. The court held:

> *"Thus, from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as has been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of the Business Rules framed by the Government of Goa under the provisions of Article 166(3) of the Constitution and the notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the notifications issued as a*

result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void."

29. On the other hand, in **M/s. Crawford Bayley & Co. & Ors. v. Union of India & Ors.**, AIR 2006 SC 2544, a two-Judge Bench has accepted that the Rules of Business framed under Article 77 of the Constitution, which is analogous to Article 166, are directory and not mandatory, with the following observations:

> *"It was next contended with reference to the Allocation of Business Rules that the Central Government in the Urban Department can appoint an Estate Officer but in the present case, the Finance Department has appointed an Estate Officer which is in violation of the Allocation of Business Rules, 1961. Though the Division Bench dealt with this aspect exhaustively in its judgment and held that the provisions of the Business Rules are not mandatory and will not vitiate the appointment, we fully agree that the Rules of Business are administrative in nature for governance of its business of the Government of India framed under Article 77 of the Constitution of India. In this connection, the Division Bench referred to the decision of this Court in* ***Dattatraya Moreshwar Pangarkar v. The State of Bombay, (1952) SCR 612.*** *There analogous Rules of Business framed by the State under Article 166 of the Constitution of India came up for consideration and it was observed that they are directive and no order will be invalidated, if there is a breach thereof....".*

30. We have considered the larger Bench judgment of this Court in **R. Chitralekha** (supra) and taken note of the fact that **MRF Ltd.** (supra) is distinguishable from the case at hand since that case dealt with rules pertaining to financial implications for which there were no provisions in the Appropriation Act, and so the rules required mandatory compliance. Here, there is no issue of financial repercussions. The issue here is whether the Council of Ministers is permitted to delegate the power to amend its decision to a Committee of Ministers consisting of the Ministers-in-charge of the Departments concerned and the Chief Minister, and whether such amendment needs to be consistent with the Rules of Business framed under Article 166 of the Constitution of India. The case law provides that delegation is permissible and that Rules of Business are directory in nature. In view of the above, we find that delegation of power is permissible. Submissions so made on behalf of the appellant in this regard are preposterous.

Land to landless labourers:

31. So far as the issue of non-compliance of the clearance of the terms incorporated by the Ministry of Welfare is concerned, the issue

has been elaborately dealt with by us in earlier judgment in **Narmada Bachao Andolan III** (Supra). However, Ms. Palit has submitted that certain issues could not be agitated in that case as the terms and conditions were incorporated by the Ministry of Welfare (Government of India), while granting the clearance dated 6.5.1997.

32. So far as the present appeal in respect of Upper Beda Project is concerned, the rehabilitation policy for the oustees provided that the displaced families would be rehabilitated maintaining existing structure of social groups as far as possible, in the command area or near the periphery of the affected areas in accordance with their preferences.

Relevant provisions of the R & R Policy read as under:

> *"3.1 xx xx xx*
>
> *3.2 (a) Every displaced family* ***from whom more than 25 per cent of its land is acquired in revenue villages*** *or forest villages shall be entitled to and be allotted land to the extent of land acquired from it, subject to provision in 3.2(b) below.*
>
> (b) *A minimum area of 2 hectares of land would be allotted to all the families* ***whose lands would be acquired*** *irrespective of whether government land is offered or private land is purchased for allotment.*

Where more than 2 hectares of land is acquired from a family, it will be allotted equal land, subject to a ceiling of 8 hectares.

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*9.1 Special efforts will be made for the effective rehabilitation of **landless displaced families**. Adequate arrangements will be made by the Narmada Valley Development Authority for the up-gradation of existing skills or impartment of new skills so as to promote full occupational rehabilitation. In this regard, new opportunities emerging as a result of the project will be fully used for the benefit of the displaced families. Suitable provisions will be incorporated in the tender document of Local Competitive Bidding (LCB) and other forms to ensure the employment of displaced persons. The Narmada Valley Development Authority will ensure appropriate arrangement for discharge of these responsibilities within a stipulated time frame. In the interim time, special financial assistance will be given to **supplement the income of the landless agricultural labourers and the landless scheduled castes and scheduled tribes oustee families for 3 years in descending order, which shall be in addition to the grant-in-aid mentioned in para 6.1. This period of 3 years will be calculated from the payment year of the grant-in-aid under para 6.1.** Thus, a landless oustee family will get a special income support amount of Rs. 2,250/-, Rs.5,500/- and Rs.2,750/- in the second, third and fourth year of displacement, respectively. In addition, a further sum of Rs.12,500/- shall be kept in reserve for every landless oustee family and for earning*

livelihood or for purchase of productive assets. The above poverty line and the amount to be kept in reserve is also linked with special support amount and the reserve shall also be proportionately increased accordingly. For other landless families special financial assistance of Rs.19,500/- will be given for the purchase of productive assets." (Emphasis added)

33. The policy makes it clear that there was no provision for allotment of agricultural land to the landless labourers. However, when the project was placed before the Ministry of Welfare, Government of India, it granted clearance on 6.5.1997 providing for allotment of minimum 2 hectares of land for all landless labourers.

34. Before the High Court the issue was raised and the State Authorities while filing the counter affidavit replied as under:

*"**Reply to para 5.4**: While the approval and sanction as mentioned in the para under reply are not disputed, it is submitted that in so far as the said clearance (Annexure P-3) proceeds on the basis that 2 hectares of land would be given to even a landless labour, the same was represented against by the State Government by its letter dated 5.4.1997…….. A bare perusal of the said letter would show **that the issue regarding the grant of minimum 2 hectares of land to all landless labourers was denied and it was pointed out that the State has no such policy.** It was also pointed out that such*

a policy was the prerogative of the State Government as "land" and "water" are State subjects appearing in entries 17 and 18 respectively of the State list of the VIIth Schedule of the Constitution of India. Thus, the State has the exclusive power to frame R&R policies. It is also pertinent to mention here that the said provision of allotment of 2 hectares of land to all the landless labourers neither finds mention in the R&R policy of the State nor in the NWDT Award nor even in the National Resettlement and Rehabilitation Policy, 2007. Thus, the petitioner's reliance on the letter dated 6.5.1997 is baseless and misconceived."

(Emphasis added)

35. Further vide letter dated 5.4.1997, the NVDD wrote to the Ministry of Welfare informing it that landless labourers had been proposed for giving them minimum 2 hectares of land as per its clearance but action in this respect **would be taken as per decision of the Government.**

36. We have also gone through the clearance letter dated 6.5.1997 issued by the Ministry of Welfare. The relevant part of the said letter on which Ms. Palit has placed strong reliance reads:

"In view of the fact that R&R Action Plan prepared is based on the R&R guidelines of N.V.D.A projects and since the R&R Action Plan has been modified ***to treat unmarried major daughters as separate entities for all R&R***

> ***packages and for allotting a minimum of 2 hectares of land for all landless labourers****, I am directed to initiate the clearance for the R&R Action Plan of this project by this ministry”*
>
> (Emphasis added)

It is impermissible in law to read a part of the document in isolation. The document is to be read as a whole. The letter of approval mentions *“allotting a minimum of 2 hectares of land for all landless labourers”* and says that unmarried major daughters would be treated as separate entities for that particular purpose, i.e. of allotting 2 hectares of land. Ms. Palit never pleaded the cause of unmarried major daughters to be treated as separate entities for allotment of land. As noted earlier, we have already dealt with and answered the issue of entitlement of major sons and daughters of oustees for allotment of land in negative in **Narmada Bachao Andolan III** (supra). Thereby, Ms. Palit mistakenly relied on the clearance letter by the Ministry of Welfare to say that granting land to landless labourers was in and by itself a precondition for granting clearance to the project.

37. Moreover, even if we regard the allotment of land to landless labourers as a condition, the Government of M.P. did not accept such a condition. The Ministry of Welfare’s clearance was not statutory, like

any other statutory clearance e.g. clearance granted by Environment and Forest Ministry. There is nothing in that clearance as to what would be the consequence for non-compliance with those conditions. More so, subsequent thereto, it is evident from the record that representations had been filed on behalf of the oustees before the Ministry of Welfare. However, no action had ever been taken by the Ministry of Welfare that the terms incorporated by it while granting clearance were not being adhered to and in spite of writing several letters, the Ministry of Welfare did not consider it proper to take any action or even to refer those letters to the State Government or to the NVDD. Thus, the said Authorities also treated the same as non-statutory.

In view of the above, we do not find any cogent reason to accept the submission made by Ms. Palit that landless labourers are entitled for allotment of agricultural land to the extent of 2 hectares. The said contention is devoid of any merit. Even otherwise, it does not appeal to us that landless labourer could be entitled for allotment of agricultural land admeasuring two hectares. Neither it had ever been contemplated nor it is compatible with R & R Policy. Nor such land had ever been allotted to this class of persons. The contention is hereby rejected.

38. In view of the above, appeal lacks merit and is accordingly dismissed. No order as to costs.

Before parting with the case, we record our deep sense of appreciation and thanks to Mr. Gourab Banerjee, learned Additional Solicitor General for India, for rendering assistance to the Court on our request.

……………………….J.

(J.M. PANCHAL)

……………………….J.

(DEEPAK VERMA)

..……………………...J.

(Dr. B.S. CHAUHAN)

New Delhi,
July 26, 2011