

W.P. No.7941/2011 (PIL)

with

W.P. No.4205/2013 (PIL)

24/06/2014

Shri Dharmendra Chelawat, Advocate for the petitioner in W.P. No.7941/2011 (PIL).

Petitioner- Ms Medha Patkar, present in person in W.P. No.4205/2013 (PIL).

Shri Vivek Sharan, Assistant Solicitor General for the Union of India.

Shri Shekhar Bhargava, Senior Advocate with Shri Vivek Patwa, Advocate for the Narmada Valley Development Authority.

Mr. M.S. Dwivedi, Advocate for the Intervenors.

We had heard the arguments yesterday at length. At the end of the hearing yesterday, we suggested to the parties to meet and mutually agree on issues which are still not complied in terms of the observations made by this Court in the order dated 3rd January, 2014.

Today, counsel for the NVDA has handed in joint Note under the signature of the Chief Engineer, Indira Sagar Pariyojana (Canals), Sanawad and Chief Engineer,

Lower Narmada Project, Indore. That Note is taken on record and marked as “**Annexure A-1**”. This note refers to the issues which were discussed and consensus arrived at between the parties on those issues. Assurance is given on behalf of the NVDA through counsel that all efforts will be made by the duty-holders working on the Project to comply with the directions contained in the order dated 3rd January, 2014, in its letter and spirit, and including the left over issues referred to in the Note. That assurance is placed on record.

Ms Medha Patkar, appearing in person, has handed in a separate Note delineating the points, which according to her, need to be addressed by the Authorities/duty-holders. That Note is taken on record and marked as “**Annexure A-2**”.

After hearing the parties, we are in agreement with the submission of the petitioners that the Ministry of Environment and Forest (MoEF) must depute the team for inspection and survey of the site in the first week of July, 2014, before the Monsoon progresses further and may consider of making another visit in September, 2014, to assess the situation, on the basis of which appropriate

directions can be given to the NVDA and other duty-holders. The counsel for the MoEF, on instruction, submits that needful will be done in this regard and compliance report will be submitted to this Court, before the next date of hearing, at least in respect of the first visit made by the Committee for inspection and survey in the first week of July, 2014. We place that assurance on record.

The other issue raised by the petitioners is about non-furnishing of village level CAD Micro Planning Work Plan to the concerned Water Users Associations. According to the counsel for the NVDA, those plans have already been made over to the concerned Associations. In the event there is any doubt, the interested Association may collect the same from the appropriate Officer of the Authority. If such a request is made, the plans will be made over to the representative/authorized person of the said Water Users Associations forthwith. It is fairly accepted by the Authority that if any suggestion is received from the Water Users Association, that will be considered, at the appropriate stage, and suitable instructions will be issued, when necessary. In view of this assurance, nothing more is required to be done on this issue.

The other incidental issue brought to our notice is about non-compliance of directions given by the Apex Court regarding rehabilitation of affected persons. As regards this grievance, we accept the submission made on behalf of the Authority that if specific case is brought to the notice of the Commissioner, needful will be done in the matter. According to the Authority, all steps are being taken to comply with the directions of the Supreme Court in its letter and spirit, but, if there is any left over case, that may be due to inadvertence or mis-communication, which grievance will be attended with utmost dispatch.

Ms Medha Patkar also raised issue regarding health impact due to the Project and, in particular, spread of epidemic such as Malaria during or after Monsoon. It is however agreed that MoEF has already issued instructions in respect of health impact matters which all the duty-holders are obliged to comply with and report compliance to MoEF periodically. We hope and trust that the appropriate Authority of MoEF will ensure that those instructions are being complied with by the concerned duty-holders within the time frame mentioned in the directions issued by the said Department. In case of

reported non-compliance, suitable action should be taken against the concerned duty-holder, as per law. We also hope that if any suggestion or complaint is received from the stake-holders or the locals in this regard, that may be verified and, if required, suitable directions can be issued to the concerned duty-holder by the Regional Chief Conservator of Forest, MoEF at Bhopal. It will be open to the petitioners or the similarly placed persons to make representation directly to the Regional Chief Conservator of Forest, MoEF, Bhopal, if so advised.

The last but the crucial issue, that remains to be adverted, is about the payment of compensation to the affected persons, more particularly, on account of dumping of muck on the lands which have not been acquired by the Authority/State Government. In the past, complaints/claim petitions have been filed by the aggrieved persons before the Executive Engineer/Commissioner. We direct the Executive Engineer/Commissioner to decide those complaints/claim petitions expeditiously and not later than three months from today or within three months from the receipt of fresh complaint/claim petition, as the case may be. In case the Executive Engineer receives the complaint

and is not in a position to take a final decision thereon, must forward that complaint to the Commissioner, NVDA, Indore not later than 10 days from its receipt.

The next question is: in case of claim of damage, what principle should be applied? Our attention was invited to the Revenue Book Circular, 2006. It was submitted on behalf of the NVDA that the claim for damages can be determined by the appropriate Authority applying the principles stated therein. On plain reading of the said Rules of 2006, we agree with the submissions of the petitioners that the said Rules apply to entirely different situations and cannot be pressed into service for deciding the loss/damage that is caused on account of illegal and irresponsible act of muck disposal or any other act of commission or omission in respect of the land or destroying the standing crop of the farmer whose land has not been acquired by the Authority/State Government. Instead, the parameters and the factors delineated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, can be invoked and applied to such claims. For, Section 12 and Section 13 of the said Act provide for paying damages caused during

the survey of the land. Section 28 stipulates the parameters to be considered by the Collector for determination of award. Indubitably, it may not be enough to compensate the person affected by the act of commission and omission of the Contractor or the Authority by providing compensation specified under the Rules of 2006. Instead, the affected person whose land has not been acquired by the Authority/State Government must be compensated commensurate to the actual loss caused to him. The Authority deciding the claim petition for compensation may have to examine these aspects and decide the same by applying the principle underlying the provisions of the Act of 2013, in that regard. If the affected person is not satisfied with the said decision, may be free to take recourse to other appropriate legal remedy, including for claim for damages and tortuous claim, if so advised.

As in the case of Act of 2013, even with regard to the claim petition moved by the affected person on account of the Project, may approach the Collector of the concerned District and on receipt of the said claim petition, the Collector may take a final decision thereon, as expeditiously as possible, and not later than three months

from the date of its receipt by giving opportunity to all concerned. We may further observe that if the Collector accepts the claim of the affected person and determines the compensation amount, that amount shall be immediately disbursed by the Authority in the first place and can be recovered from the Contractor if the act of commission and omission is attributable to the Contractor.

We once again reiterate that all the duty-holders must work in tandem. In case the muck dumping is essential, the concerned duty-holders must ensure that the acquired land is identified and demarcated for that purpose. That would obviate any claim from the land owners for damages/compensation whose land has not been acquired.

During the course of argument, we did invite the attention of the Authorities as well as counsel for the NVDA and the MoEF that the Authorities must take immediate steps for complying with the obligations under the provisions of the Disaster Management Act, 2005. We have been assured that necessary instructions in that behalf will be issued forthwith by the Chief Secretary, including for setting up of District level Disaster Management Committees, if already not done, and in particular, covering

the Narmada Valley Project Area; and to direct the said Committees to ensure compliance of the mandate of the said Act and the Rules framed thereunder and report compliance in that behalf to the appropriate Authority periodically.

Awaiting further compliance report, we defer the hearing of these matters till **28th July, 2014**.

(A. M. Khanwilkar)
Chief Justice

(Shantanu Kemkar)
Judge

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