BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH,

NEW DELHI

Original Application No. 420/2023

IN THE MATTER OF:

Raju Saini ...Applicant

-Versus-

State of Uttarakhand & Ors. ...Respondents

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RESPONDENT NO. 4

THROUGH

KABIR DIXIT/KUSHAGRA KAUL

LINK LEGAL

AIWAN-E-GHALIB COMPLEX,

MATA SUNDRI LANE,

NEW DELHI – 110002

PH: 011-46511000/1099

(COUNSEL FOR RESPONDENT NO. 4)

PLACE: NEW DELHI

DATE: 25.01.2024

(2011) 7 Supreme Court Cases 639

(BEFORE J.M. PANCHAL, DEEPAK VERMA AND DR. B.S. CHAUHAN, JJ.)

Civil Appeal No. 2115 of 2011†

STATE OF MADHYA PRADESH . . Appellant;

Versus

NARMADA BACHAO ANDOLAN AND ANOTHER . . Respondents.

With

Civil Appeal No. 2116 of 2011

NARMADA HYDRO ELECTRIC DEVELOPMENT CORPORATION LIMITED . . Appellant;

Versus

NARMADA BACHAO ANDOLAN AND ANOTHER . . Respondents.

With

Civil Appeals Nos. 2083-97 of 2011

STATE OF MADHYA PRADESH . . Appellant;

Versus

NARMADA BACHAO ANDOLAN AND ANOTHER . . Respondents.

With

Civil Appeal No. 2082 of 2011

NARMADA BACHAO ANDOLAN . . Appellant;

Versus

STATE OF MADHYA PRADESH AND ANOTHER . . Respondents.

And

Civil Appeals Nos. 2098-2112 of 2011

NARMADA HYDRO-DEVELOPMENT CORPORATION . . Appellant;

Versus

NARMADA BACHAO ANDOLAN AND OTHERS . . Respondents.

Civil Appeals No. 2115 of 2011 with Nos. 2116, 2083-97, 2082 and 2098-2112 of 2011, decided on May 11, 2011

A. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — PIL — Omkareshwar Dam — Displaced persons/oustees — Land in lieu of acquired land — Extent of entitlement to, under rehabilitation/resettlement policy concerned — Rehabilitation and Resettlement (R&R) Policy of State of M.P. as amended on 3-7-2003 — Oustees of 25 villages not yet submerged — Under amendment agricultural land to be offered to oustees "as far as possible" — High Court's interim directions for mandatory allotment of agricultural land in lieu of land acquired made applicable even to oustees who had already withdrawn compensation if such oustees opted for such land and refunded 50% of compensation received by them — Sustainability of**

† From the Judgment and Order dated 21-2-2008 of the High Court of Judicature of Madhya Pradesh at Jabalpur in WP (C) No. 4457 of 2007 : **AIR 2008 MP 142**

— Held, issue has to be decided by strict adherence to amended R&R Policy — State Government devised a scheme: Special Rehabilitation Package (SRP)/(SRG) which provides benefits over and above R&R Policy — SRG came into operation after project affected families (PAFs) showed unwillingness to accept land from land bank as PAFs wanted complete freedom of getting land of their choice — SRG is an additional amount paid to an oustee to enable him to purchase land in command area to the extent of his land acquired — Thus, land for land option has not been exercised by PAFs, instead they preferred and accepted cash compensation — So land for land has not been allotted to PAFs as per R&R Policy — It is, however, erroneous to say that not a single PAF was allotted agricultural land because PAFs were empowered to purchase land of their choice by paying SRG — Relief granted by State to oustees as SRG is much more than amount of compensation/entitlement in amended R&R Policy — To a certain extent, it is in consonance with provisions contained in Cl. 5.4 of R&R Policy

— However, it is not possible to adjudicate upon individual claims or issue a direction of sweeping nature — But if an oustee feels aggrieved with what he has received, he may approach Grievance Redressal Authority (GRA) under R&R Policy — Hence, direction of High Court modified to the extent that displaced families who had not withdrawn SRG benefits/ compensation voluntarily and submitted applications for allotment of land before authority concerned, shall be entitled to allotment of agricultural land "as far as possible" in terms of R&R Policy — For that purpose, State must make some government or private land available for allotment to such oustees if they opt for such land and agree to ensure compliance with other terms and conditions stipulated therein — Further, in case suitable land is available in land bank, the same would be offered to such oustees — Dispute regarding suitability of land would be adjudicated upon and determined by GRA — Adjudications by GRA would be open to challenge before High Court — Authorities directed to render all possible assistance to oustees to purchase land by negotiations — Further directions issued — M.P. Pariyojana Ke Karan Visthapit Vyakti (Punahsthapan) Adhiniyam, 1985 (9 of 1985), S. 11(4)

B. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — PIL — Omkareshwar Dam Project — Displaced persons/oustees — Land in lieu of acquired land — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 to the effect that agricultural land would be offered to oustees "as far as possible" — Words "as far as possible" in, interpretation of — Held, words connote a discretion vested in prescribed authority — It is thus a discretion and not compulsion — Administrative Law — Administrative Action — Administrative or Executive Function — Exercise of Power/ Discretionary Power — Exercise of power "as far as possible" — Meaning of — Scope of judicial review**

C. **Doctrines — Doctrine of Impossibility — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 to the effect that agricultural land would be offered to oustees "as far as possible" — Words "as far as possible" in, interpretation of — Applicability of doctrine**

of impossibility — Held, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him — Even in such a circumstance however, the statutory provision is not denuded of its mandatory character because of the supervening impossibility — Maxims — *Lex non cogit ad impossibilia*: law does not compel a man to do what he cannot possibly perform — *Impossibilium nulla obligatio est*: law does not expect a party to do the impossible — *Impotentia excusat legem*: there is a necessary or invincible disability to perform mandatory part of the law or to forbear the prohibitory — *Nemo tenetur ad impossibilia*: no one is bound to do an impossibility — Contract Act, 1872 — S. 56

D. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — PIL — Omkareshwar Dam — Displaced persons/oustees — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — Lands of oustees of 5 villages already submerged — Entitlement to allotment of land in lieu of land acquired despite SRG already granted to them — Held, Grievance Redressal Authority (GRA) under R&R Policy is best forum to decide claims of such persons — No person should suffer from act of court — Hence to ensure that oustees of 5 villages which have already been submerged under orders of courts, do not face hostile discrimination at hands of authorities, they shall be entitled to relief to which other oustees are entitled to [Ed.: *See* relief granted in Shortnote *A*]**

E. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — PIL — Omkareshwar Dam — Displaced persons/oustees of — Inapplicability of Narmada Water Disputes Tribunal (NWDT) award made in Sardar Sarovar Project — Held, Tribunal therein was concerned only with resettlement of oustee families spread over 158 villages in State of Madhya Pradesh and did not take in its ambit any other future plan or project — There is nothing in said award which provides any benefit to oustees of Omkareshwar Dam or suggests that it is applicable in present case — Water and Water Resources — Inter-State Water Disputes Act, 1956 — S. 2(c)**

By the impugned judgment the High Court as an interim measure issued directions, inter alia, for allotment of agricultural land to the displaced persons in lieu of the land acquired for construction of Omkareshwar Dam in terms of the Rehabilitation and Resettlement Policy of the State of Madhya Pradesh ("the R&R Policy") as amended on 3-7-2003. The High Court direction applied even to those oustees who had already withdrawn compensation, if such oustees opted for such land and refunded 50% of the compensation amount received by them. The balance cost of the allotted land was to be deposited by the allottees in 20 equal yearly instalments as stipulated in Clause 5.3 of the R&R Policy. The other principal direction of the High Court was to treat a major son of the family whose land has been acquired as a separate family for the purpose of allotment of agricultural land.

The questions that arose before the Supreme Court were:

(*i*) Whether any of the findings recorded by the High Court on the issue of entitlement to land in lieu of land acquired, suffered from perversity and thus, warranted interference by the Supreme Court?

(*ii*) Whether the NWDT award provided for any entitlement of major sons to allotment of agricultural land, and if not, whether the judgment in *Narmada Bachao Andolan (1)*, (2000) 10 SCC 664 could have been considered as a precedent in *Narmada Bachao Andolan (2)*, (2005) 4 SCC 32, to ground the entitlement of every major son to get allotment of land as a separate family unit?

(*iii*) Whether the High Court had rightly interpreted the terms and conditions of the R&R Policy in holding that the R&R Policy provides that major sons of the oustees i.e. the "large landowning families" and those who had been "part of the bigger family" would be entitled for allotment of agricultural land as separate family units?

(*iv*) Whether landless oustees were entitled to allotment of agricultural land?

(*v*) Whether the NWDT award dated 12-12-1979 was applicable to the present project of Omkareshwar Dam?

(*vi*) Whether the oustees of five villages which had already been submerged, were entitled to allotment of land in lieu of land acquired, in spite of the fact that SRG had already been granted to them?

Disposing of the appeals in terms below, the Supreme Court

Held :

Omkareshwar Dam has affected the residents of 30 villages. Five villages had already been submerged. Before the High Court, the question arose as to whether the oustees of those 5 villages which have already been submerged, were entitled to the benefits of the R&R Policy and they had been awarded only the compensation/SRG and the area of these 5 villages has been submerged during the pendency of litigation before the High Court and the Supreme Court. The High Court decided the issue observing that as submerging of the 5 villages took place in view of the orders by the courts and the oustees had been paid compensation/SRG and the Supreme Court had passed the order not to submerge the remaining 25 villages till the completion of rehabilitation took place, it was not proper for the High Court to direct the respondents to restore the status quo ante for the 5 villages in issue. (Paras 122 and 123)

The issue of entitlement to land in lieu of land acquired has to be decided taking into consideration the totality of the circumstances. For deciding this issue, the terms and conditions incorporated in the Narmada Water Disputes Tribunal (NWDT) award cannot be taken into consideration for the simple reason that the Tribunal had been constituted under the provisions of the Inter-State Water Disputes Act, 1956 and the award had been given in a case where several States i.e. the States of Madhya Pradesh, Gujarat and Maharashtra were involved. The said award has no application in the instant cases *nor can it be a benchmark*. The High Court has rightly held that there is nothing in the NWDT award which provides any benefit to the oustees of Omkareshwar Dam or suggests that the award is applicable in the present case. More so, in the Sardar Sarovar Project, land for land was mandatory. These cases are to be decided by giving strict adherence to the R&R Policy of the State of Madhya Pradesh as amended on 3-7-2003, further considering that special care is to be taken where persons are oppressed and uprooted so that they are better off. (Para 44)

K. Krishna Reddy v. *Collector (LA)*, (1988) 4 SCC 163, *relied on*

The State Government after consultation with all concerned and approval by the Chief Minister of the State devised a scheme whereby a PAF is given substantial additional amount over and above the compensation for its land in order to enable it to purchase arable and irrigable land at the location of its choice. This scheme has come to be known as SRG or Special Rehabilitation Package (SRP). The offer of SRG is over and above the Rehabilitation Policy. SRG enables the PAF to purchase land suitable to it at a place of its choice as it is neither willing to accept the land offered by the Government nor to start the life at the new place by mortgaging the land for the loan. As the SRG comes into operation after the PAFs show unwillingness to accept the land from the land bank and the PAFs want complete freedom for getting the land of their choice, so the land for land option has not been exercised by the PAFs and instead they have preferred and accepted cash compensation. So land for land has not been allotted to PAFs as the policy. It is, however, erroneous to say that not a single PAF of Omkareshwar Project was allotted agricultural land because the PAFs were empowered to purchase land of their choice by paying SRG.

(Paras 54 and 55)

SRG is an additional amount paid to an oustee to enable him to purchase land in the command area to the extent of his land acquired. Normally, an oustee who loses land in the submergence area gets an amount determined under the Land Acquisition Act, 1894 (the 1894 Act). When a project is envisaged in an area, the sale and purchase in that area decrease and the prices also get depressed. Hence, it is difficult for an oustee to purchase land in the command area from the amount given to him under the 1894 Act. SRG is designed to nullify both the above effects and to enable the oustee to get an amount by which he can purchase land to the extent of his land acquired, in the command area. The aforesaid relief granted by the appellants to the oustees as SRG is much more than the amount of compensation or amount entitled in the R&R Policy as amended on 3-7-2003. In fact, to a certain extent, it is in consonance with the provisions contained in Clause 5.4 of the R&R Policy, wherein the State is under an obligation to meet the gap of amount between the amount of compensation and the value of the land purchased by the oustees. (Para 57)

The phrase "as far as possible" provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus a discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. Thus, it is evident that this phrase simply means that the applicable principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case. (Para 38)

Iridium India Telecom Ltd. v. *Motorola Inc.*, (2005) 2 SCC 145; *High Court of Judicature for Rajasthan* v. *Veena Verma*, (2009) 14 SCC 734 : (2010) 1 SCC (L&S) 452, *relied on*

When it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it,

the law will in general excuse him. Even in such a circumstance however, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein. (Paras 39 and 40)

Chandra Kishore Jha v. *Mahavir Prasad*, (1999) 8 SCC 266; *Hira Tikkoo* v. *UT, Chandigarh*, (2004) 6 SCC 765; *HUDA* v. *Dr. Babeswar Kanhar*, (2005) 1 SCC 191, *relied on*

The State has submitted that all the oustees have voluntarily accepted the SRG and withdrawn the amount and they stand fully satisfied. In the absence of appropriate pleadings and evidence on record, it is not possible for the Supreme Court to adjudicate upon the individual claims or issue a direction of sweeping nature. Thus, if an oustee feels aggrieved of what he has received, he may approach GRA. In case GRA, after adjudication of facts, comes to the conclusion that a particular oustee has not been granted the relief he is entitled to, GRA itself would grant the appropriate relief taking into account the provisions of the R&R Policy. In case either of the parties is aggrieved, it may approach the High Court for appropriate directions. However, in case of private person, the application/petition would be in the name of that individual person duly supported by his affidavit. (Paras 58, 183 and 45 to 53)

Thus, the direction given by the High Court is modified to the extent that the displaced families who have not withdrawn SRG benefits/compensation voluntarily and submitted applications for allotment of land before the authority concerned, shall be entitled to the allotment of agricultural land "as far as possible" in terms of the R&R Policy, and for that purpose, the State must make some government or private land available for allotment to such oustees if they opt for such land and agree to ensure compliance with other terms and conditions stipulated therein. In case suitable land is available in the land bank, the same would be offered to such oustees. In case dispute as to suitability of land is raised, it would be adjudicated upon and determined by GRA. The authorities must render all possible assistance to the oustees to purchase the land by negotiations. In case the land is not available, the State must ensure compliance with Clause 5.4 of the R&R Policy to the full extent in the cases of the Scheduled Castes/Scheduled Tribes and to the extent of 2 ha in case of other marginal farmers. In case the extent of the land acquired is more than 8 ha, the same shall be paid according to the provisions contained therein. The Government must continue to search for additional land than what is already available in the land bank and to find out the means of its purchase for allotment to the oustees. The Government should also ensure that the allocated land is not encroached upon by the unscrupulous persons. (Paras 99, 100 and 183)

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664; *State of Kerala* v. *Peoples Union for Civil Liberties*, (2009) 8 SCC 46; *K. Krishna Reddy* v. *Collector (LA)*, (1988) 4 SCC 163; *Gramin Sewa Sanstha* v. *State of M.P.*, 1986 Supp SCC 578, *relied on*

Murlidhar Dayandeo Kesekar v. *Vishwanath Pandu Barde*, 1995 Supp (2) SCC 549; *N.D. Jayal* v. *Union of India*, (2004) 9 SCC 362; *Ezra* v. *Secy. of State for India in Council*, (1904-05) 32 IA 93; *Santosh Kumar* v. *Central Warehousing Corpn.*, (1986) 2 SCC 343, *considered*

The record does not contain sufficient material to adjudicate upon the factual aspects involved regarding the claims of oustees of the five villages already submerged, either. GRA is the best forum to decide the claims of such persons. However, in view of the settled legal proposition that no person should suffer from an act of the court and to ensure that the oustees of the 5 villages which have already been submerged under the orders of the courts, do not face hostile

discrimination at the hands of the authorities, they shall be entitled to the relief (set out above) to which the other oustees are entitled. In case any of the oustees of these 5 villages is not satisfied with what he has been awarded by the State authorities and he approaches GRA in his personal name and establishes his case, he would also be entitled to the relief granted to the other oustees [of the 25 yet to be submerged villages]. (Paras 125 and 184)

On Narmada River, in the State of Madhya Pradesh, in all 29 major and minor projects are contemplated. Some of them have already been completed, but on account of stay order by the court/authority some projects could not be completed. It is unfortunate that in spite of the fact that a huge amount has been spent, yet no one is able to reap the fruits of investment. The State should take immediate steps to get the final verdict in such cases or stay vacated and start the project at the earliest. (Paras 186 to 188)

F. **Constitution of India — Arts. 21 and 300-A — Land acquisition and rehabilitation — Resettlement and rehabilitation of displaced persons/oustees on acquisition of their land — Entitlement if any, as a fundamental or constitutional right — Land acquired for construction of dam — Omkareshwar Dam**

— Reiterated, acquisition of land does not violate any constitutional/fundamental right of displaced persons — Plea of deprivation of right to livelihood under Art. 21 in case of land acquisition is also unsustainable — However, displaced persons are entitled to resettlement and rehabilitation as per policy framed for oustees of project concerned — But State cannot be compelled to provide alternate accommodation to oustees — It is for authority concerned to consider desirability and feasibility of providing alternative land considering facts and circumstances of each case — Further held, each State has a right to frame rehabilitation policy considering extent of its resources and other priorities — One State is not bound if in a similar situation, another State has accorded additional facilities even over and above the policy

— In certain cases, oustees are entitled to *rehabilitation* — Rehabilitation is meant only for those persons who have been *rendered destitute* because of a loss of residence or livelihood as a consequence of land acquisition — Cautioned, that in process of development, State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation — Land Acquisition Act, 1894 — Ss. 3 and 23 — Land Acquisition and Requisition — Rehabilitation and Resettlement

G. **Constitution of India — Arts. 21 and 300-A — Land acquisition and rehabilitation — Compensation and rehabilitation of oustees of acquired land — Extent of — Land acquired for construction of dam — Held, right of oustee is protected only to a limited extent as enunciated in Art. 300-A — Award of compensation to tenure-holder is limited to physical area of property acquired and this area cannot get expanded or reduced by any fictional definition of the word "family" — Rehabilitation has to be done to extent of the displacement — Rehabilitation is compensatory in nature with a view to ensure that oustee and his family are at least restored to status that was existing on date of commencement of proceedings under 1894 Act —**

Omkareshwar Dam — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — In present case, there was no intention on behalf of State to have awarded more land treating a major son to be separate family unit — Idea of rehabilitation was not to distribute largesse of State that may reflect distribution totally disproportionate to extent of land acquired — Land Acquisition Act, 1894 — Ss. 3 and 20 — Words and Phrases — "Rehabilitation"

H. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — Omkareshwar Dam — Displaced persons/oustees — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — Allotment of land in lieu of land acquired — High Court's direction that major sons of PAFs were entitled to allotment of agricultural land as separate family units — Unsustainability of — High Court's direction, held, is neither justified nor legally sustainable — Hence, a major son would not be entitled to anything additional as his separate share in the original holding and it will not get enhanced by the fictional definition adopted by High Court — A major son would, however, be entitled to his share in the area which is to be allotted to tenure-holder on rehabilitation in case he is entitled to such a share as per law applicable — Maxims — *A verbis legis non est recedendum*: from the words of law, there must be no departure — Applied — Precedents — Per incuriam decision (Paras 75 and 88 to 101 and 183)**

Held :

It is desirable for the authority concerned to ensure that *as far as practicable* persons who had been living and carrying on business or other activity on the land acquired, *if they so desire*, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case. (Para 26)

In certain cases, the oustees are entitled to *rehabilitation*. Rehabilitation is meant only for those persons who have been *rendered destitute* because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and *identification of alternative lands*. For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. The fundamental right of the farmer to cultivation is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in the social system". (Para 27)

However, in case of land acquisition, "*the plea of deprivation of right to livelihood under Article 21 is unsustainable*". Article 300-A is not only a constitutional right but also a human right, but acquisition of land does not violate any constitutional/fundamental right of the displaced persons. However,

they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned. (Paras 28 to 31)

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664; *Chameli Singh* v. *State of U.P.*, (1996) 2 SCC 549; *Samatha* v. *State of A.P.*, (1997) 8 SCC 191; *State of Kerala* v. *Peoples Union for Civil Liberties*, (2009) 8 SCC 46; *State of U.P.* v. *Pista Devi*, (1986) 4 SCC 251; *Narpat Singh* v. *Jaipur Development Authority*, (2002) 4 SCC 666; *Land Acquisition Officer* v. *Mahaboob*, (2009) 14 SCC 54 : (2009) 5 SCC (Civ) 297; *Mahanadi Coalfields Ltd.* v. *Mathias Oram*, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450; *Brij Mohan* v. *HUDA*, (2011) 2 SCC 29 : (2011) 1 SCC (Civ) 336; *Lachhman Dass* v. *Jagat Ram*, (2007) 10 SCC 448; *Amarjit Singh* v. *State of Punjab*, (2010) 10 SCC 43 : (2010) 4 SCC (Cri) 29, *relied on*

Jilubhai Nanbhai Khachar v. *State of Gujarat*, 1995 Supp (1) SCC 596, *considered*

In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The Court is not oblivious of the fact that social and economic reasons had caused disaffection, and thus, the tribal areas are today in the grip of extremism, as the tribal youths have become easy prey to the extremists' propaganda. (Para 52)

Compensation has to be understood in relation to the right to property. The right of the oustee is protected only to a limited extent as enunciated in Article 300-A. The tenure-holder is deprived of the property only to the extent of land actually owned and possessed by him. This is, therefore, limited to the physical area of the property and this area cannot get expanded or reduced by any fictional definition of the word "family" when it comes to awarding compensation. Compensation is awarded by the authority of law under Article 300-A read with the relevant statutory law of compensation under any law made by the legislature and for the time being in force, only for the area acquired. Hence, major sons could not have been made allotments of land as separate family units. (Paras 93 and 75, 88 to 101 and 183)

S.P. Gupta v. *Union of India*, 1981 Supp SCC 87; *P.K. Unni* v. *Nirmala Industries*, (1990) 2 SCC 378; *CIT* v. *Tara Agencies*, (2007) 6 SCC 429, *relied on*

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664; *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32, *held, per incuriam on this point*

Narmada Bachao Andolan v. *State of M.P.*, AIR 2008 MP 142, *partly reversed*

Rehabilitation on the other hand, is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under Article 300-A, brings within its fold the presence of the elements of Article 21. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves. This becomes necessary for the State when it relates to the rehabilitation of the already depressed classes like Scheduled Castes, Scheduled Tribes and marginal farmers in order to meet the requirements of social justice. (Para 94)

The rehabilitation has to be done to the extent of the displacement. The rehabilitation is compensatory in nature with a view to ensure that the oustee and his family are at least restored to the status that was existing on the date of the commencement of the proceedings under the 1894 Act. Each State has a right to frame the rehabilitation policy considering the extent of its resources and other priorities. One State is not bound if in a similar situation, another State has accorded additional facilities even over and above the policy. (Para 96)

I. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — R&R Policy of 1993 of State of M.P. for Omkareshwar Dam project — High Court directing allotment of agricultural land to major sons of project affected families (PAFs) as separate family units — Reliance upon decision in *Narmada Bachao Andolan (1)*, (2000) 10 SCC 664, which was decided on mistaken presumption that such right had been conferred by Narmada Water Disputes Tribunal (NWDT) award, and on *Narmada Bachao Andolan (2)*, (2005) 4 SCC 32 decided following *Narmada Bachao Andolan (1)* — Held, NWDT award did not provide for allotment of agricultural land to major sons of such oustees as separate family units — When the two earlier cases were being considered by Supreme Court, it had not been brought to its notice that NWDT award did not provide for such an entitlement — Mistake inadvertently committed by Supreme Court earlier, should not be perpetuated — Courts are not to perpetuate an illegality, rather it is duty of courts to rectify mistakes — Mistake is manifest and has a direct impact on procedure to be adopted for rehabilitation — Therefore, essential to rectify mistake — Hence direction of High Court granting such benefit to major sons of PAFs as separate units, set aside — Constitution of India — Arts. 141 and 14 — Precedents — Per incuriam decision**

Held :

Admittedly, the NWDT award did not provide for allotment of agricultural land to the major sons of oustees as separate family units. The States of Gujarat and Maharashtra had given concessions/relief over and above the said award. Thus, *Narmada Bachao Andolan (1)*, (2000) 10 SCC 664 has been decided with presumption that such a right had been conferred upon major sons by the NWDT award and *Narmada Bachao Andolan (2)*, (2005) 4 SCC 32 has been decided following the said judgment and interpreting the definition of "family" contained in the R&R Policy. When the two earlier cases were being considered by the Supreme Court, it had not been brought to its notice that the NWDT award did not provide for such an entitlement. In such cases, the issue is further required to be considered as to whether the mistake inadvertently committed by the Supreme Court earlier should be perpetuated. The courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. (Paras 65 to 69)

The view expressed earlier by the Supreme Court, inadvertently, on a wrong assumption may result in great public loss and would be against the larger public interest. There is no prohibition under the law on the Supreme Court to locate the error and adopt a correct approach if the Court is convinced that the error exists and its avoidance is necessary to prevent any baneful effect on the general interest of the public or the State. The mistake is manifest and has a direct impact on the procedure to be adopted for rehabilitation. The impact of allotment under a rehabilitation policy cannot be against public good and has to be balanced with an appropriate grant to the oustees. It is, therefore, essential to rectify the mistake. (Para 92)

Hotel Balaji v. *State of A.P.*, 1993 Supp (4) SCC 536; *Ministry of Information & Broadcasting, In re*, (1995) 3 SCC 619; *Nirmal Jeet Kaur* v. *State of M.P.*, (2004) 7 SCC 558 : 2004 SCC (Cri) 1989; *Mayuram Subramanian Srinivasan* v. *CBI*, (2006) 5 SCC 752 : (2006) 3 SCC (Cri) 83, *relied on*

Pierce v. *Delameter*, 1 NY 3 (1847); *Distributors (Baroda) (P) Ltd.* v. *Union of India*, (1986) 1 SCC 43, *referred to*

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664; *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32, *held, per incuriam on this point*

J. **Constitution of India — Art. 14 — Omkareshwar Dam — Denial of allotment of agricultural land to major sons as separate family units — Granted in *Narmada Bachao Andolan (1)* and *Narmada Bachao Andolan (2)* — Contention of hostile discrimination — Held, unequals cannot claim equality — Discrimination under Art. 14 must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify (Paras 72 and 73)**

Madhu Kishwar v. *State of Bihar*, (1996) 5 SCC 125; *Kathi Raning Rawat* v. *State of Saurashtra*, AIR 1952 SC 123 : 1952 Cri LJ 805; *Video Electronics (P) Ltd.* v. *State of Punjab*, (1990) 3 SCC 87 : 1990 SCC (Tax) 327, *relied on*

Vishundas Hundumal v. *State of M.P.*, (1981) 2 SCC 410; *Eskayef Ltd.* v. *CCE*, (1990) 4 SCC 680, *considered*

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664; *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32, *held, per incuriam on this point*

K. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — PIL — Omkareshwar Dam — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — Allotment of agricultural land — Landless oustees — Entitlement to — MoEF, GoI OM dt. 13-10-1993 — Condition in, imposed while granting environmental clearance that "rehabilitation programme should be extended to landless labourers and people affected due to canal, by identifying and allocating suitable land *as permissible*" — Implication of — Held, condition imposed by MoEF while granting clearance was qualified by words "as permissible" and thus was subject to any other law in force or government policy — Words "as permissible" cannot be given a complete go-by — More so, as R&R Policy itself provides a particular mode of retaining 50% of compensation amount and 50% to be recovered in 20 years — As landless labourers never had any land, they are not entitled to any compensation under LA Act, 1894 — Thus, question of allotment of land in lieu of land acquired, to them would not arise — Words and Phrases — "So far as permissible" and "as permissible" — Land Acquisition Act, 1894 — S. 23 — Constitution of India — Arts. 300-A and 21 — Administrative Law — Administrative Action — Administrative or Executive Function — Exercise of Power/Discretionary Power — Exercise of power "as permissible" — Meaning of (Paras 108 to 110, 115 and 184)**

Gurbax Singh v. *State of Punjab*, AIR 1967 SC 502; *Municipal Committee, Patiala* v. *Model Town Residents Assn.*, (2007) 8 SCC 669; *Jagjit Cotton Textile Mills* v. *Northern Railway*, (1998) 5 SCC 126, *considered*

L. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — PIL — Omkareshwar Dam — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — Lands in 5 villages which would be waterlogged and not submerged permanently except in exceptional flood situation — Acquisition of — Necessity — Acquisition proceedings already begun subsequently abandoned — Validity of — High Court directing State to rehabilitate oustees of such lands and invalidating withdrawal of acquisition proceedings — Sustainability**

— Held, no straitjacket formula can be laid down for mode of taking possession of land and it would depend upon facts of an individual case — As land in dispute was agricultural land and had 167 dwelling houses thereon, law requires taking over actual physical possession — From Court Commissioner's detailed report it was crystal clear that none of the tenure-holders had been evicted/dispossessed — High Court was thus not justified in entertaining their applications in this regard, without verifying factual aspects — As actual physical possession had not yet been taken by authorities and entries in revenue records, etc. are not conclusive proof of possession, therefore, State Government is entitled to abandon land acquisition proceedings in exercise of its power under S. 48 of LA Act, 1894 — Further, in view of expert opinions rendered by CWC and other materials on record, inescapable conclusion is that agricultural land of these five villages does not need to be acquired as it may only be under temporary submergence for a very short period — More so, as such acquisition is not in interest of State as land cannot be put to any use whatsoever, and there is a possibility that such land would be encroached upon by unscrupulous elements — However, withdrawal of acquisition proceedings shall not apply to 167 dwelling units on said land — Such persons whose dwelling units are acquired shall be entitled to benefit of R&R Policy to the extent provided therein — Water and Water Resources — Guidelines for Preparation of Project Estimates for River Valley Projects of CWC, March 1997 — Land Acquisition Act, 1894 — Ss. 14, 16 and 48 — Role of expert evidence in determining validity of withdrawal of acquisition — Property Law — Possession — Evidence Act, 1872 — S. 45

(Paras 129 to 132, 138, 147 to 152, 170, 179, 182 and 185)

Balwant Narayan Bhagde v. *M.D. Bhagwat*, (1976) 1 SCC 700; *State of T.N.* v. *Mahalakshmi Ammal*, (1996) 7 SCC 269; *Balmokand Khatri Educational & Industrial Trust* v. *State of Punjab*, (1996) 4 SCC 212; *P.K. Kalburgi* v. *State of Karnataka*, (2005) 12 SCC 489; *NTPC Ltd.* v. *Mahesh Dutta*, (2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375; *Nirman Singh* v. *Lal Rudra Pratab Narain Singh*, (1925-26) 53 IA 220 : AIR 1926 PC 100; *Sawarni* v. *Inder Kaur*, (1996) 6 SCC 223; *R.V.E. Venkatachala Gounder* v. *Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752; *Suman Verma* v. *Union of India*, (2004) 12 SCC 58, *referred to*

M. **Constitution of India — Arts. 32 and 226 — PIL — Observance of procedural law in — Absence of material facts/particulars disclosing cause of action — Held, strict rules of pleading may not apply in PIL, however, there must be sufficient material in petition on basis of which Court may proceed — PIL litigant has to lay a factual foundation for its averments on basis of which such a person claims reliefs — On facts, applicant petitioner created impression that drastic steps would be taken by authorities and urgent measures were required to be taken by Court to mitigate sufferings of displaced persons, in absence of material to substantiate such averments/allegations — Thus, as there were no pleadings before High Court on basis of which writ petition could be entertained, it was liable to be rejected at threshold**

(Paras 8 to 16)

Bharat Singh v. *State of Haryana*, (1988) 4 SCC 534; *Larsen & Toubro Ltd.* v. *State of Gujarat*, (1998) 4 SCC 387; *Atul Castings Ltd.* v. *Bawa Gurvachan Singh*, (2001) 5 SCC 133; *Rajasthan Pradesh Vaidya Samiti* v. *Union of India*, (2010) 12 SCC 609; *Ram Sarup*

Gupta v. *Bishun Narain Inter College*, (1987) 2 SCC 555; *Kalyan Singh Chouhan* v. *C.P. Joshi*, (2011) 11 SCC 687; *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504; *A. Hamsaveni* v. *State of T.N.*, (1994) 6 SCC 51 : 1994 SCC (L&S) 1277 : (1994) 28 ATC 240; *Ashok Kumar Pandey* v. *State of W.B.*, (2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865; *Prabir Kumar Das* v. *State of Orissa*, (2005) 13 SCC 452; *A. Abdul Farook* v. *Municipal Council, Perambalur*, (2009) 15 SCC 351, *relied on*

N. **Land Acquisition and Requisition — Rehabilitation and Resettlement — Land acquired for construction of dam — PIL — Delay/laches — Omkareshwar Dam — Displaced persons/oustees — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — Construction of dam started in 2002 and completed in 2006 — Writ petition filed thereafter in 2007 for injuncting authorities to close sluice gates of dam contending that resettlement and rehabilitation was not complete — Held, there was no explanation why Court had been approached at such belated stage — For redressal of any grievance regarding implementation of R&R Policy, oustees ought to have approached Grievance Redressal Authority (GRA) under R&R Policy — High Court ought not to have examined any issue other than relating to rehabilitation i.e. implementation of R&R Policy — Constitution of India — Art. 226 (Paras 17 and 20)**

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664; *State of Maharashtra* v. *Digambar*, (1995) 4 SCC 683, *relied on*

O. **Constitution of India — Art. 226 — Maintainability — Alternative remedy/Exhaustion of remedies — Filing of writ petition without approaching appropriate forum constituted for relief — Held, High Court ought to have directed oustees of dam construction to approach Grievance Redressal Authority (GRA) under Rehabilitation and Resettlement Policy of State — If any person was further aggrieved with directions issued by GRA, he could have approached High Court after full-fledged adjudication of factual issues by GRA (Para 21)**

Narmada Bachao Andolan v. *Union of India*, (2005) 4 SCC 32, *relied on*

P. **Constitution of India — Arts. 226 and 136 — Pleadings — PIL — Omkareshwar Dam — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — Writ petitioner neither raising challenge to said amendment nor it suo motu quashed by High Court nor raised in special leave petition — Held, relief not sought by party cannot be granted by court — It is not permissible for Supreme Court to deal with the issue — In such a situation, it was not desirable for High Court to make any comment on State's competence to amend the policy — Finding so recorded, set aside — Entire case decided by Supreme Court on basis that said amendment was valid (Paras 22, 23 and 102)**

State of Maharashtra v. *Ramdas Shrinivas Nayak*, (1982) 2 SCC 463 : 1982 SCC (Cri) 478; *Transmission Corpn. of A.P. Ltd.* v. *P. Surya Bhagavan*, (2003) 6 SCC 353 : 2003 SCC (L&S) 883; *Mount Carmel School Society* v. *DDA*, (2008) 2 SCC 141, *considered*

Q. **Constitution of India — Art. 226 — Policy/policy matters — Scope of judicial review — Wisdom of policy — Rehabilitation and Resettlement Policy of State of M.P. as amended on 3-7-2003 — Held, Court cannot strike down a policy decision merely because it feels another decision would have been fairer or more scientific or logical or wiser — Wisdom and advisability**

of policies are ordinarily not amenable to judicial review unless they contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power — Government has power and competence to change policy on basis of ground realities — Public policy can only be challenged where it offends some constitutional or statutory provisions

(Paras 36 and 37)

State of Kerala v. *Peoples Union for Civil Liberties*, (2009) 8 SCC 46; *State of Punjab* v. *Ram Lubhaya Bagga*, (1998) 4 SCC 117 : 1998 SCC (L&S) 1021; *Ram Singh Vijay Pal Singh* v. *State of U.P.*, (2007) 6 SCC 44; *Villianur Iyarkkai Padukappu Maiyam* v. *Union of India*, (2009) 7 SCC 561, *relied on*

R. **Precedents — Ratio decidendi — Factual scenario — Relevance of — Held, a judgment of a court is not to be read as a statute, as judicial utterances are made in the setting of facts of a particular case — A little difference in *facts or additional facts* may make a lot of difference to the precedential value of a decision — Disposal of cases by blindly placing reliance upon a decision is not proper — Constitution of India, Art. 141**

(Para 64)

MCD v. *Gurnam Kaur*, (1989) 1 SCC 101; *Govt. of Karnataka* v. *Gowramma*, (2007) 13 SCC 482; *State of Haryana* v. *Dharam Singh*, (2009) 4 SCC 340 : (2011) 2 SCC (L&S) 112, *relied on*

S. **Constitution of India — Art. 141 — Per incuriam decisions — What are**

Held :

"Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered in ignorance of a statute or other binding authority. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. (Para 67)

India Cement Ltd. v. *State of T.N.*, (1990) 1 SCC 12; *State of W.B.* v. *Kesoram Industries Ltd.*, (2004) 10 SCC 201; *Mamleshwar Prasad* v. *Kanhaiya Lal*, (1975) 2 SCC 232; *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372; *State of U.P.* v. *Synthetics and Chemicals Ltd.*, (1991) 4 SCC 139; *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514, *relied on*

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664; *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32, *held, partly per incuriam*

T. **Interpretation of Statute — Basic Rules — Reasonable Construction/Interpretation — Held, court has to interpret a provision giving it a construction agreeable to reason, and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences — Interpretation must not produce unworkable, impracticable results or cause unnecessary hardship, serious inconvenience or anomaly — Court must also keep in mind object of legislation (Paras 78 to 85)**

Directorate of Enforcement v. *Deepak Mahajan*, (1994) 3 SCC 440 : 1994 SCC (Cri) 785; *Narashimaha Murthy* v. *Susheelabai*, (1996) 3 SCC 644; *Workmen* v. *Dimakuchi Tea*

Estate, AIR 1958 SC 353; *Sk. Gulfan* v. *Sanat Kumar Ganguli*, AIR 1965 SC 1839; *Corporation Bank* v. *Saraswati Abharansala*, (2009) 1 SCC 540; *Sonic Surgical* v. *National Insurance Co. Ltd.*, (2010) 1 SCC 135 : (2010) 1 SCC (Civ) 28; *Bihar State Council of Ayurvedic and Unani Medicine* v. *State of Bihar*, (2007) 12 SCC 728; *Mahmadhusen Abdulrahim Kalota Shaikh (2)* v. *Union of India*, (2009) 2 SCC 1 : (2009) 1 SCC (Cri) 620; *Union of India* v. *Ranbaxy Laboratories Ltd.*, (2008) 7 SCC 502 : (2008) 3 SCC (Cri) 123, *relied on*

G.P. Singh: *Principles of Statutory Interpretation*, 12th Edn. (2010); *Maxwell on Interpretation of Statutes*, 10th Edn., at p. 229, *referred to*

U. **Constitution of India — Arts. 226 and 32 — Public Interest Litigation/ PIL — Cautious exercise of PIL jurisdiction — Duty of courts — High standards of responsibility of applicant — Requirement of — Case law discussed — Held, while dealing with a PIL Court has to be vigilant and must ensure Court is neither abused nor used to achieve an oblique purpose — Maxims — *Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem*** **(Para 160)**

V. **Constitution of India — Arts. 32, 226, 215 and 129 — PIL — Abuse of process of court/law — Misleading statements made to Court amounting to criminal contempt — Omkareshwar Dam — Applicant Narmada Bachao Andolan (NBA) making false statements to obtain favourable order for tenure-holders — Consequences — Held, conduct by NBA cannot be approved — NBA guilty of *suppressio veri* and *suggestio falsi* — In future Court must view any presentation by NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly, and in case it has any doubt, refuse to entertain NBA — However, considering interests of the oustees, it may be desirable to appoint an amicus curiae to present their cause, if such contingency arises — Contempt of Courts Act, 1971 — S. 2(c) — Contempt of Court — Criminal Contempt — General principles — Prejudice to or interference with judicial proceeding — Misleading statements made to court, reiterated, can amount to criminal contempt**
(Paras 153 to 155, 161 to 164, 167 and 168)

W. **NGOs and Third Sector — Particular NGOs — Narmada Bachao Andolan (NBA) — Warning issued by Supreme Court as to credibility of NBA's pleadings and assertions in PILs in future due to *suppressio veri* and *suggestio falsi* indulged in by NBA in present case**
(Paras 153 to 155, 161 to 164, 167 and 168)

Ramjas Foundation v. *Union of India*, 1993 Supp (2) SCC 20; *Noorduddin* v. *Dr. K.L. Anand*, (1995) 1 SCC 242; *Ramniklal N. Bhutta* v. *State of Maharashtra*, (1997) 1 SCC 134; *Sabia Khan* v. *State of U.P.*, (1999) 1 SCC 271; *S.J.S. Business Enterprises (P) Ltd.* v. *State of Bihar*, (2004) 7 SCC 166; *Union of India* v. *Shantiranjan Sarkar*, (2009) 3 SCC 90 : (2009) 1 SCC (L&S) 575; *Naraindas* v. *Govt. of M.P.*, (1975) 3 SCC 31 : 1974 SCC (Cri) 727; *Advocate General, State of Bihar* v. *M.P. Khair Industries*, (1980) 3 SCC 311 : 1980 SCC (Cri) 688; *Afzal* v. *State of Haryana*, (1996) 7 SCC 397 : 1996 SCC (Cri) 424; *K.D. Sharma* v. *SAIL*, (2008) 12 SCC 481; *A. Abdul Farook* v. *Municipal Council, Perambalur*, (2009) 15 SCC 351; *R&M Trust* v. *Koramangala Residents Vigilance Group*, (2005) 3 SCC 91; *Holicow Pictures (P) Ltd.* v. *Prem Chandra Mishra*, (2007) 14 SCC 281; *Sheela Barse* v. *Union of India*, (1988) 4 SCC 226; *Janata Dal* v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36; *Kapila Hingorani (1)* v. *State of Bihar*, (2003) 6 SCC 1; *Kushum Lata* v. *Union of India*, (2006) 6 SCC 180; *State of Uttaranchal* v.

Balwant Singh Chaufal, (2010) 3 SCC 402 : (2010) 1 SCC (L&S) 807 : (2010) 2 SCC (Cri) 81; *R.* v. *Kensington Income Tax Commissioners*, (1917) 1 KB 486 (CA), *relied on*

Narmada Bachao Andolan v. *Union of India*, (1998) 5 SCC 586, *considered*

B-D/A/48141/CV

Advocates who appeared in this case :

Sanjay Parikh, T.V.S. Raghavendra Sreyas, Swapnil Verma and Nikhil Nayyar, Advocates, for the Appellant;

P.S. Patwalia and Ravi Shankar Prasad, Senior Advocates (Sunny Choudhary, Ajay Chauhan, C.D. Singh, Ms Suparna Srivastava, Ran Swarup Sharma, Ashok Bhan and D.S. Mahra, Advocates) for the Respondents.

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105. 1 NY 3 (1847), *Pierce* v. *Delameter* 680*e-f*

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J.— All these appeals relate to the establishment of Omkareshwar Dam on Narmada River in Madhya Pradesh. As these appeals are interconnected and have been filed against interim orders passed by the High Court in the same writ petition, they have been heard together and disposed of by a common judgment. However, for convenience Civil Appeals Nos. 2115-16 of 2011 are dealt with first.

Civil Appeals Nos. 2115-16 of 2011

2. These appeals have been preferred against the judgment and order dated 21-2-2008 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 4457 of 2007, *Narmada Bachao Andolan* v. *State of M.P.*, wherein the High Court as an interim measure, has issued directions, inter alia, for allotment of agricultural land to the displaced persons in lieu of the land acquired for construction of the dam in terms of the Rehabilitation and Resettlement Policy (hereinafter called as "the R&R Policy") as amended on 3-7-2003. The High Court direction applied even to those oustees who had already withdrawn the compensation, if such oustees opt for such land and refund 50% of the compensation amount received by them. The balance cost of the allotted land would be deposited by the allottees in 20 equal yearly instalments as stipulated in Clause (5.3) of the R&R Policy, and to treat a major son of the family whose land has been acquired as a separate family for the purpose of allotment of agricultural land.

Factual matrix

3. The facts and circumstances giving rise to these cases are as follows:

(*A*) Narmada River starts at Amarkantak. It flows through Madhya Pradesh for 1077 km, then forms a common boundary in Maharashtra for 74 km (35 km with Madhya Pradesh and 39 km with Maharashtra) and then passes through Gujarat for 161 km before meeting the Arabian Sea after a total length of 1312 km. The Narmada Water Disputes Tribunal apportioned the water in Narmada between Madhya Pradesh, Gujarat, Maharashtra and Rajasthan, subject to review after 45 years.

(*B*) The State of Madhya Pradesh conducted a survey in 1955 for the establishment of hydropower projects in the Narmada basin at different sites including Barwaha (Omkareshwar Project). In 1983, the Narmada Valley Development (Irrigation) Department (hereinafter called "NVD") was set up and further studies were conducted for the establishment of hydropower projects.

(*C*) Omkareshwar Dam, an intra-State project for generating 520 MW of power, which also involved the irrigation of 1.47 lakh hectares of agricultural land, was approved by the State Government, with an assessment that on the completion of the project, 30 villages would be submerged at the full reservoir level i.e. 196.60 m.

(*D*) The Government of Madhya Pradesh framed a rehabilitation and resettlement policy in 1985 (hereinafter called "the R&R Policy") for the

oustees of all the Narmada projects in the State. The said policy was amended from time to time as is evident from the R&R Policies dated 9-6-1987; 5-9-1989; 7-6-1991 and 27-8-1993. The said policy provided for the allotment of a minimum of 2 ha of agricultural land; irrigation facilities at government cost; grant-in-aid for small and marginal farmers and SC/ST families and to meet the entire cost of the allotted land. The policy further provided that the allotment of agricultural land would be carried out much in advance, before the dam construction reached the crest level. The land required for allotment would be procured in the common area from the farmers having holdings of more than 4 ha of land.

The State authorities obtained environmental clearance for the Omkareshwar Project from the Ministry of Environment and Forests on 13-10-1993. The Ministry of Welfare granted clearance on 8-10-1993. The Planning Commission also granted clearance on condition of compliance with welfare and environmental clearances vide Order dated 25-5-2001. The Central Electricity Authority accorded techno-economic clearance under the provisions of the Electricity (Supply) Act, 1948 on 24-7-2001. The Government of India approved and granted financial concurrence from the Public Investment Board of the Planning Commission for this project on 17-5-2002. Forest clearance was granted on 20-8-2004 under the provisions of Section 2 of the Forest (Conservation) Act, 1980 for the diversion of 5829 ha of forest lands. Therefore, there had been various statutory and non-statutory clearances from the authorities.

(*E*) The R&R Policy further stood amended on 3-7-2003, to the effect that agricultural land would be offered to the oustees "as far as possible", and not to those who would make application in writing to receive compensation for their acquired land.

(*F*) The construction of Omkareshwar Dam began in 2002 and stood completed in October 2006. A large number of families had been uprooted on construction of the dam up to its 190 m height. For the dam site, a huge area of land had been acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter called as "the 1894 Act"). The displaced persons were allegedly not offered the land under the R&R Policy, as amended on 3-7-2003, rather compensation for their land was deposited in their accounts.

(*G*) Narmada Bachao Andolan, Respondent 1 (hereinafter referred to as "NBA"), an action group, had been espousing the grievances of displaced persons by filing public interest litigations (hereinafter called "PILs") before the High Court/further to this Court from time to time and a large number of orders had been passed by the courts to redress the grievances of the oustees. When the decision was taken to raise the height of the dam, NBA filed Writ Petition No. 4457 of 2007 before the High Court seeking a number of reliefs, inter alia, to stop all eviction;

directions for serving of life supplies such as drinking water and electricity; not to take any other coercive measures; to stop closure of the radial gates of Omkareshwar Dam above the crest level of EL 179.60 m and to stop the blocking of the sluice gates below the crest level, until all project affected families (hereinafter called "PAFs") were rehabilitated as per the R&R Policy. Further reliefs sought included the issuance of appropriate directions for an assessment by the Grievance Redressal Authority (hereinafter called "GRA") for Omkareshwar Project of the status of relief and rehabilitation of the oustees affected at full reservoir level (hereinafter called "FRL") and backwater level (hereinafter called "BWL") within a stipulated period.

(*H*) During the pendency of the writ petition in pursuance of the orders passed by the High Court from time to time, a large number of reports/interim reports were furnished by the authorities concerned. The High Court after considering the said reports and submissions advanced on behalf of the parties passed the impugned judgment and order dated 21-2-2008. The High Court issued a large number of directions as interim measures, including the direction for allotment of land in lieu of land acquired and to treat the major sons of the family, as independent families for the purpose of allotment of agricultural land. Hence, these appeals.

4. S/Shri Ravi Shankar Prasad and P.S. Patwalia, learned Senior Counsel appearing for the appellants have submitted that the High Court ought not to have entertained the writ petition as it did not have material facts/particulars disclosing any cause of action to the writ petitioners even in the PIL. Not a single order passed by any statutory authority had been challenged and the writ petition was filed after inordinate delay without furnishing any explanation for the same. GRA had been constituted to consider the individuals' grievances and not a single oustee approached GRA before filing of the writ petition. The Court ought to have relegated the parties for redressal of their grievances to GRA. An efficacious alternative remedy was available to the oustees. The High Court further committed an error in issuing directions for allotment of land in lieu of land even in those cases where the oustees have voluntarily accepted the compensation amount; that such oustees would deposit 50% of the said amount and would be entitled to allotment of land.

5. It is further submitted that the High Court erred in treating the major son of such an oustee as a separate family for the purpose of allotment of agricultural land, though he did not have any independent right to claim compensation for the land acquired. Land for allotment to such oustees is not available. The State authorities cannot be asked to do an impossible task. The State authorities have provided a package for their resettlement and rehabilitation, giving all facilities and financial aid. Making the allotment of land mandatory in lieu of land acquired would force the State to displace other persons to settle such oustees, which is impermissible in law. In case each major son of such oustees is treated as a separate family, acquisition of

his family land would prove to be a bonanza for such persons as the tenure holding of such a family would multiply several times and the State would suffer irreparable losses. The State Government vide amendments of the Revenue Code reduced the area of the grazing land but the land so made available is not enough to meet the needs of such a large number of oustees. The cases decided by this Court earlier on two occasions have no bearing on the issue in these cases, as the true and correct facts could not be brought to the notice of this Court. Most of the oustees had taken benefit of the Special Rehabilitation Grant (hereinafter called as "SRG") and withdrawn the amount and surrendered the possession of their land. The SRG amount has been more than the compensation amount for acquisition of land. The High Court did not issue any direction in regard to the amount taken by the oustees as SRG, either to refund the same or for adjustment of the same. Therefore, directions issued by the High Court are liable to be set aside. The appeals deserve to be allowed.

6. On the contrary, Dr. Rajeev Dhavan, learned Senior Counsel and Shri Sanjay Parekh, Advocate representing the oustees, have vehemently opposed the appeals contending that displacement of oustees without proper implementation of the rehabilitation scheme is violative of Article 21 of the Constitution of India. In a matter of this nature where a very large number of illiterate, inarticulate and poor people have suffered at the hands of the statutory authorities, no technical objections e.g. want of proper pleadings or delay, etc. can be allowed to be raised. The statutory and non-statutory authorities have granted clearances for Omkareshwar Dam Project on the clear understanding that the State authorities would carry out and implement, in letter and spirit, all the terms and conditions of the R&R Policy. Therefore, it is not permissible for the State authorities to say that they would not strictly adhere to the terms incorporated therein. The appellant State and its instrumentalities never made any serious attempt to acquire land for such oustees and the compensation amount has been deposited in respective accounts of the oustees. Not a single oustee had ever opted for compensation for land in lieu of land acquired. Amendment made in the R&R Policy vide Order dated 3-7-2003 is ultra vires and illegal and is liable to be ignored for the reason that the R&R Policy had been approved by the State Government, though the amendment had not undergone the same process. If a major son of the family, whose land has been acquired, is not treated as a "separate family" for the purpose of allotment of land for the land acquired, the definition of "displaced family" under Clause 2(*b*) of the R&R Policy would be rendered nugatory. Therefore, such an interpretation is not permissible. This Court, while interpreting the other schemes in respect of Narmada projects itself has given effect to the said policy and directed for allotment of land for the land acquired and upheld the entitlement of the major son of an oustee to an independent allotment of agricultural land. Denial of such a right would be discriminatory and thus violative of the equality clause enshrined in Article 14 of the Constitution of India. Thus, the appeals lack merit and are liable to be dismissed.

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

Pleadings

8. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the court is under no obligation to entertain the pleas.

9. In *Bharat Singh* v. *State of Haryana*[1], this Court has observed as under: (SCC p. 543, para 13)

> "*13.* … In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, *if he is the writ petitioner, must plead and prove such facts by evidence* which must appear from the writ petition and if he is the respondent, from the counter-affidavit. *If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition* or the counter-affidavit, as the case may be, *the court will not entertain the point*. … there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not [the] evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it." (emphasis added)

A similar view has been reiterated by this Court in *Larsen & Toubro Ltd.* v. *State of Gujarat*[2], *Atul Castings Ltd.* v. *Bawa Giryachan Singh*[3] and *Rajasthan Pradesh Vaidya Samiti* v. *Union of India*[4].

10. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties.

11. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice. (Vide *Ram*

1 (1988) 4 SCC 534 : AIR 1988 SC 2181
2 (1998) 4 SCC 387 : AIR 1998 SC 1608
3 (2001) 5 SCC 133 : AIR 2001 SC 1684
4 (2010) 12 SCC 609 : AIR 2010 SC 2221

Sarup Gupta v. *Bishun Narain Inter College*[5] and *Kalyan Singh Chouhan* v. *C.P. Joshi*[6].)

12. It cannot be said that the rules of procedural law do not apply in PIL. The caution is always added that every technicality in the procedural law is not available as a defence in such proceedings when a matter of grave public importance is for consideration before the court. (Vide *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[7])

13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which the court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. The information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks the standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide *A. Hamsaveni* v. *State of T.N.*[8], *Ashok Kumar Pandey* v. *State of W.B.*[9], *Prabir Kumar Das* v. *State of Orissa*[10] and *A. Abdul Farook* v. *Municipal Council, Perambalur*[11].)

14. In the instant case, in the writ petition, an impression had been given that some drastic steps would be taken by the authorities which would cause great hardship to a large number of persons. However, the writ petition did not disclose the factum of how many persons had already vacated their houses and handed over the possession of their land. It was contended that urgent measures were required to be taken by the Court in order to mitigate the sufferings of the people. In view of the fact that there was no material before the Court to adjudicate upon the issues involved therein, the High Court passed the order dated 30-3-2007 directing GRA to submit the report on the rehabilitation work already done and still to be done and to disclose the consequences of the closure of radial gates of the dam and blocking of the sluice gates of the dam on the people residing in the area which would be submerged.

15. In pursuance of the said order, GRA submitted the report dated 7-4-2007, explaining that a huge amount of several thousand crores of rupees had already been invested. The SRG had already been disbursed. Out of a total number of 4513 families to be adversely affected by the project, 2787

5 (1987) 2 SCC 555 : AIR 1987 SC 1242
6 (2011) 11 SCC 687 : AIR 2011 SC 1127
7 1989 Supp (1) SCC 504 : AIR 1988 SC 2187
8 (1994) 6 SCC 51 : 1994 SCC (L&S) 1277 : (1994) 28 ATC 240
9 (2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865 : AIR 2004 SC 280
10 (2005) 13 SCC 452
11 (2009) 15 SCC 351

families had already shifted and 1726 families remained there. An amount of Rs 9924 lakhs had already been disbursed among the claimants and only a sum of Rs 589 lakhs remained to be disbursed. The report further explained that land in lieu of land acquired would be allotted to the oustees "as far as possible" and as most of the oustees had accepted the compensation, it was not required on the part of the State to allot the land for the land acquired. The other benefits of the R&R Policy had already been given. In fact, it is in view of this report, the High Court started examining the grievances of the oustees. Several reports were submitted by GRA before the High Court from time to time and whatever has been disclosed in those reports provided the basis for raising further queries and that, in fact, became part of pleadings of the case. In fact, the present appellants had been asked to lay factual foundation to adjudicate the issues raised by the writ petitioners.

16. In view of the above, it is evident that there were no pleadings before the High Court on the basis of which the writ petition could be entertained/decided. Thus, it was liable to be rejected at the threshold for the reason that the writ petition suffered for want of proper pleadings and material to substantiate the averments/allegations contained therein. Even in the case of a PIL, such a course could not be available to the writ petitioners.

Delay/Laches

17. In the instant cases, the construction of the dam started in October 2002 and was completed in October 2006. No objection had ever been raised by NBA at any stage. The Narmada Development Authority vide order dated 28-3-2007 gave permission to National Hydraulic Development Corporation to raise the water level of the dam to 189 m upon showing that rehabilitation of oustees of five villages adversely affected at 189 m, had already been completed. The writ petition was filed praying for restraining the appellants from closing the sluice gates of the dam contending that resettlement and rehabilitation was not complete. There was no explanation as to under what circumstances the Court had been approached at such belated stage.

18. In *Narmada Bachao Andolan* v. *Union of India*[12] [hereinafter called as "*Narmada Bachao Andolan (1)*"], this Court dealt with a similar issue of laches and observed that in spite of the fact that the clearance for construction of the dam was given in 1987, the same was challenged in 1994 on the ground that there was a lack of studies available regarding the environmental aspects and also because of seismicity. Thus, the clearance should not have been granted. The rehabilitation package was dissimilar and there had been no independent study or survey done before the decision to undertake the project was taken and construction started. This Court held that clearance and undertaking to construct the dam had been given and hundreds of crores of rupees had already been invested before the writ petitioner had chosen to file the writ petition in 1994. Thus, the petitioner was guilty of laches in not approaching the Court at an earlier point of time.

12 (2000) 10 SCC 664

19. The Court, however, observed as under: (*Narmada Bachao Andolan (1) case*[12], SCC pp. 695-96, paras 48 & 50)

> "*48.* When such projects are undertaken and hundreds of crores of public money is spent, any individual or organisations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against the national interest and contrary to the established principles of law that decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project.
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> * * *
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> *50.* This Court has entertained this petition with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures … In short, it was only the concern of this Court for the protection of the fundamental rights of the oustees under Article 21 of the Constitution of India which led to the entertaining of this petition. *It is the relief and rehabilitation measures that this Court is really concerned with and the petition in regard to the other issues raised is highly belated.*" (emphasis added)

In *State of Maharashtra* v. *Digambar*[13] this Court had taken a similar view.

20. In fact for redressal of any grievance regarding implementation of the R&R Policy, the oustees ought to have approached GRA. There is nothing on record to show how many oustees remained unsatisfied/aggrieved of the orders passed by GRA till the filing of the writ petition. Thus, in view of the above, the High Court ought not to have examined any issue other than relating to rehabilitation i.e. implementation of the R&R Policy.

Alternative remedy

21. While dealing with a similar issue in *Narmada Bachao Andolan* v. *Union of India*[14] [hereinafter called as "*Narmada Bachao Andolan (2)*"], this Court observed as under: (SCC p. 51, para 67)

> "*67.* Several contentions involving factual dispute had, we may notice, not been raised before GRA. GRA had been constituted with a purpose, namely, that the matters relating to rehabilitation scheme must be addressed by it at the first instance. This Court cannot entertain applications raising grievances involving factual issues raised by the parties. GRA being headed by a former Chief Justice of the High Court would indisputably be entitled to adjudicate upon such disputes. It is also expected that the parties should ordinarily abide by such decision. This Court may entertain an application only when extraordinary situation emerges."

Thus, in view of the above, the High Court ought to have directed the oustees to approach GRA for redressal of their grievances and if any person was further aggrieved of the directions issued by GRA, he could have approached the High Court after full-fledged adjudication of the factual issues by GRA.

12 *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664
13 (1995) 4 SCC 683
14 (2005) 4 SCC 32

Amendment of R&R Policy

22. There are claims and counterclaims on the issue as to whether the validity of the amendment of the R&R Policy was under challenge before the High Court. However, it is evident from the pleadings that the validity of the amendment dated 3-7-2003 had been raised while filing the rejoinder-affidavit. The rejoinder-affidavit reveals that as the R&R Policy had been approved by the State Government and statutory and non-statutory clearances had been obtained on the basis of the R&R Policy, the amendment dated 3-7-2003 ought to have been brought for the approval of the authorities who had granted approval at the initial stage. The amendment cannot be given effect to. The impugned judgment makes it explicit that the issue had been raised and only taken note of by the Court but not decided.

23. The appellants have placed documents on record to show that the amendment in issue had been duly approved by the Cabinet of the Madhya Pradesh Government and suggestion has been made that the amendment did not require approval of the authorities who had granted clearances. It has been opposed by the respondents.

24. In case a plea is raised and not considered properly by the court the remedy available to the party is to file a review petition. (Vide *State of Maharashtra* v. *Ramdas Shrinivas Nayak*[15], *Transmission Corpn. of A.P. Ltd.* v. *P. Surya Bhagavan*[16] and *Mount Carmel School Society* v. *DDA*[17].)

25. Be that as it may, in view of the fact that neither the writ petitioner asked the High Court to quash the said amendment dated 3-7-2003, nor has the Court suo motu quashed it, nor has the writ petitioner filed special leave petition raising the said point, it is not permissible for us to deal with the issue.

Land acquisition and rehabilitation: Article 21

26. It is desirable for the authority concerned to ensure that *as far as practicable* persons who had been living and carrying on business or other activity on the land acquired, *if they so desire*, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case.

27. In certain cases, the oustees are entitled to *rehabilitation*. Rehabilitation is meant only for those persons who have been *rendered destitute* because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way

15 (1982) 2 SCC 463 : 1982 SCC (Cri) 478 : AIR 1982 SC 1249
16 (2003) 6 SCC 353 : 2003 SCC (L&S) 883 : AIR 2003 SC 2182
17 (2008) 2 SCC 141

of employment, housing, investment opportunities, and *identification of alternative lands*.

> "*10*. … A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens." (*Mahanadi Coalfields Ltd. case*[18], SCC p. 273, para 10)

For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. (Vide *State of U.P.* v. *Pista Devi*[19], *Narpat Singh* v. *Jaipur Development Authority*[20], *Land Acquisition Officer* v. *Mahaboob*[21], *Mahanadi Coalfields Ltd.* v. *Mathias Oram*[18] and *Brij Mohan* v. *HUDA*[22].) The fundamental right of the farmer to cultivation is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in [the] social system".

28. However, in case of land acquisition, "the plea of deprivation of right to livelihood under Article 21 is unsustainable". (Vide *Chameli Singh* v. *State of U.P.*[23] and *Samatha* v. *State of A.P.*[24]) This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide *Lachhman Dass* v. *Jagat Ram*[25] and *Amarjit Singh* v. *State of Punjab*[26].) However, in *Jilubhai Nanbhai Khachar* v. *State of Gujarat*[27] this Court held: (SCC pp. 620 & 632, paras 30 & 58)

> "*30*. Thus it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right. …
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> * * *
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> *58*. … The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles."

18 *Mahanadi Coalfields Ltd.* v. *Mathias Oram*, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450 : JT (2010) 7 SC 352
19 (1986) 4 SCC 251 : AIR 1986 SC 2025
20 (2002) 4 SCC 666 : AIR 2002 SC 2036
21 (2009) 14 SCC 54 : (2009) 5 SCC (Civ) 297
22 (2011) 2 SCC 29 : (2011) 1 SCC (Civ) 336
23 (1996) 2 SCC 549 : AIR 1996 SC 1051
24 (1997) 8 SCC 191 : AIR 1997 SC 3297
25 (2007) 10 SCC 448
26 (2010) 10 SCC 43 : (2010) 4 SCC (Cri) 29
27 1995 Supp (1) SCC 596 : AIR 1995 SC 142

29. This Court in *Narmada Bachao Andolan (1)*[12] held as under: (SCC pp. 702-03, para 62)

"*62*. The displacement of the tribals and other persons *would not per se result in the violation of their fundamental or other rights*. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress." (emphasis supplied)

30. In *State of Kerala* v. *Peoples Union for Civil Liberties*[28], this Court held as under: (SCC p. 95, paras 102-03)

"*102*. Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question?

103. *If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired.* Furthermore, a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribes are acquired vis-à-vis a prohibition imposed upon the State from doing so at all." (emphasis supplied)

31. Thus, from the abovereferred judgments, it is evident that acquisition of land does not violate any constitutional/fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned.

Findings of the High Court

32. The High Court after considering the submissions and examining the documents on record, so far as the issue of land in lieu of land acquired is concerned, came to the following conclusions:

(*i*) An area of 2508.14 ha of agricultural land was required for allotment to the displaced families as per the R&R Policy for Omkareshwar Project. Such land was proposed to be acquired from big cultivators having more than 4 ha of land in the command area of the project under Section 11(4) of the Madhya Pradesh Pariyojana Ke Karan Visthapit Vyakti (Punahsthapan) Adhiniyam, 1985 (hereinafter called "the 1985 Adhiniyam").

(*ii*) Vide Order dated 4-3-1998, the area of the grazing land (required under the M.P. Land Revenue Code) was reduced from 10% to 5% in every village. Subsequently, vide Order dated 19-9-2002, area of grazing land was further reduced to 2% so that some part of such land could be allotted to the oustees of the project.

12 *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664
28 (2009) 8 SCC 46

(*iii*) No efforts had been made by the Government for allotment of land in lieu of land acquired to the displaced families under the R&R Policy as amended on 3-7-2003.

(*iv*) The State instrumentalities had not made any effort to purchase private lands for allotment to oustees under the R&R Policy. On the contrary, the Government made available a huge area of land required for a special economic zone by acquiring private land under the 1894 Act for setting up of industries in the State of Madhya Pradesh.

(*v*) The submission of the State authorities that on account of scarcity of cultivable land in the State, it was impossible for the State Government to purchase private land for allotment, was not acceptable.

(*vi*) Only 11% of the displaced families were able to purchase private agricultural land themselves without any aid or assistance of the State authorities.

(*vii*) None of the oustees has given option in writing to receive compensation in lieu of land acquired.

(*viii*) The State deposited the amount of compensation in the accounts of the oustees irrespective of whether they wanted land in lieu of land acquired.

(*ix*) None of the protections/facilities provided for persons belonging to Scheduled Castes and Scheduled Tribes under the R&R Policy had been accorded. The District Collector did not make any verification in regard to their claim for land in lieu of land acquired as required under the R&R Policy.

(*x*) The Government had not made any attempt to provide any grant-in-aid to cover up the gap between the amount of compensation and the actual cost of land available for the purpose, particularly to all displaced Scheduled Caste and Scheduled Tribe families.

(*xi*) The State authorities had hastily proceeded to complete the rehabilitation process and started the power project of Omkareshwar Dam contrary to the assurances given under the said policy for the Scheduled Caste and Scheduled Tribe families, as none of such oustees was interested in receiving compensation for agricultural land.

(*xii*) Grant-in-aid to cover up the difference of cost of the land purchased and amount of compensation was not paid to marginal farmers having up to 2 ha of land, as provided in the R&R Policy.

33. We have to examine whether any of the findings recorded by the High Court on the issue of entitlement for land in lieu of land acquired suffers from perversity and thus, warrants interference by this Court.

34. The relevant part of the R&R Policy, for the purpose of determination of first issue, reads as under:

(I) Principles for rehabilitation of displaced families:

1. The aim of the State Government is that all displaced families as defined hereinafter would after their relocation and resettlement improve, or at least regain, their previous standard of living within a reasonable time.

* * *

4. *Special care would be taken of the families of Scheduled Castes, Scheduled Tribes, marginal farmers and small farmers.*

* * *

1. The displaced families would be encouraged and assisted in purchase of lands from voluntary sellers of the host villages.

(II) State Government policy regarding rehabilitation and resettlement of families affected due to submerging in Narmada projects:

1. *Definitions:*

(1.1) *Displaced person:*

(*a*) Any person who has been ordinarily residing or carrying on any trade or vocation for his livelihood or has been cultivating land for at least one year before the date of publication of notification under Section 4 of the Land Acquisition Act in the area which is likely to be submerged permanently or temporarily due to the project.

* * *

3. *Allotment of agricultural land:*

* * *

(3.2)(*a*) Every displaced family from whom more than 25% of its landholding is acquired in revenue villages or forest villages shall be entitled to and *as far as possible* will be allotted land to the extent of land acquired from it, subject to the provision of Para 3.2(*b*) below.

(*b*) *As far as possible*, a minimum area of 2 ha 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 ha of land is acquired from a family, it will be allotted equal land *as far as possible, subject to a ceiling of 8 ha*. (Portion in italics was added vide amendment dated 3-7-2003.)

* * *

5. *Recovery of cost of allotted land:*

(5.1) At least fifty per cent amount of compensation for the acquired land shall be retained as initial instalment towards the payment of the cost of land to be allotted to the displaced family. *However, if a displaced 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 Land Acquisition Officer concerned.* In such cases displaced families will have no entitlement over allotment of land and shall be paid full amount of compensation in one instalment. As option once exercised under this provision shall be final, no claim for allotment of land in lieu of the acquired land can be made afterwards. (Portion in italics was added vide amendment dated 3-7-2003.)

If any displaced family belonging to the Scheduled Tribe, submits such an application, it will be essential to obtain orders of the Collector who will, after necessary enquiry, certify that this will not adversely affect the interests of the displaced family. Such application of the displaced Scheduled Tribe families will be accepted only after the abovesaid certification by the Collector.

(5.2) * * *

(5.3) There will be no recovery of this loan for the first 2 years. Thereafter, the loan would be recovered in 20 equal yearly instalments.

(5.4) *Grant-in-aid would be paid to cover up the gap between the amount of compensation and the cost of allotted land in the cases where the cost of allotted land is more than the amount of compensation.* This grant would be payable to all displaced landowning Scheduled Caste and Scheduled Tribe families and other families losing up to 2 ha of land. For other families from whom more than 2 ha and up to 8 ha of land is acquired, grant-in-aid in addition to the amount of compensation will be given by the Narmada Valley Development Authority on the rates prescribed therein. (emphasis supplied)

Policy decisions

35. In *State of Punjab* v. *Ram Lubhaya Bagga*[29] this Court while examining the State policy fixing the rates for reimbursement of medical expenses to government servants held: (SCC pp. 129-30, paras 25-26 & 29)

"*25.* … When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

26. … For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right, finances are an inherent requirement. Harnessing such resources needs top priority.

* * *

29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible."

36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies

29 (1998) 4 SCC 117 : 1998 SCC (L&S) 1021 : AIR 1998 SC 1703

are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh* v. *State of U.P.*[30], *Villianur Iyarkkai Padukappu Maiyam* v. *Union of India*[31] and *State of Kerala* v. *Peoples Union for Civil Liberties*[28].)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions.

"As far as possible"

38. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide *Iridium India Telecom Ltd.* v. *Motorola Inc.*[32] and *High Court of Judicature for Rajasthan* v. *Veena Verma*[33].) Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.

Doctrine of impossibility

39. The court has to consider and understand the scope of application of the doctrines of *lex non cogit ad impossibilia* (the law does not compel a man to do what he cannot possibly perform), *impossibilium nulla obligatio est* (the law does not expect a party to do the impossible); and *impotentia excusat legem* in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman law *nemo tenetur ad impossibilia* (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of

30 (2007) 6 SCC 44
31 (2009) 7 SCC 561
28 (2009) 8 SCC 46
32 (2005) 2 SCC 145 : AIR 2005 SC 514
33 (2009) 14 SCC 734 : (2010) 1 SCC (L&S) 452 : AIR 2009 SC 2938

God, the circumstances will be taken as a valid excuse. (Vide *Chandra Kishore Jha* v. *Mahavir Prasad*[34], *Hira Tikkoo* v. *UT, Chandigarh*[35] and *HUDA* v. *Dr. Babeswar Kanhar*[36].)

40. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein.

Land for land

41. In *Gramin Sewa Sanstha* v. *State of M.P.*[37] this Court held: (SCC p. 579, para 2)

> "*2.* We are also informed that though land … has been earmarked by the State Government for resettlement of the displaced tribals, such land is not available because it is already occupied by other persons who themselves will be uprooted if such land is acquired and made available for the tribals displaced on account of the Hasdeo Bango Dam Project. *If this is true, the remedy might be worse than the disease because in order to resettle one set of displaced persons the State Government would be displacing another set of persons*. We would, therefore direct the State Government to consider in the meanwhile as to whether the cultivable land at any other place or places can be made available for the tribals who are displaced on account of the present project." (emphasis added)

42. This Court in *Narmada Bachao Andolan (1)*[12] held as under: (SCC p. 701, para 58)

> "*58.* … when the removal of the tribal population is necessary as an exceptional measure, *they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss or injury*. The rehabilitation package contained in the award of the Tribunal as improved further by the State of Gujarat and the other States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned." (emphasis added)

43. In *State of Kerala* v. *Peoples Union for Civil Liberties*[28] this Court held as under: (SCC p. 101, para 121)

> "*121.* We must also make it clear that while allotting land to the members of the Scheduled Tribes, *the State cannot and must not allot them hilly or other types of lands which are not at all fit for agricultural purpose*. The lands, which are to be allotted, *must be similar in nature* to

34 (1999) 8 SCC 266 : AIR 1999 SC 3558
35 (2004) 6 SCC 765 : AIR 2004 SC 3649
36 (2005) 1 SCC 191 : AIR 2005 SC 1491
37 1986 Supp SCC 578
12 *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664
28 (2009) 8 SCC 46

the land possessed by the members of the Scheduled Tribes. If in the past, such allotments have been made, as has been contended before us by the learned counsel for the respondent, the State must allot them other lands *which are fit for agricultural purposes*. Such a process should be undertaken and completed as expeditiously as possible and preferably within a period of six months from date." (emphasis added)

44. The issue has to be decided taking into consideration the totality of the circumstances. For deciding this issue, the terms and conditions incorporated in the Narmada Water Disputes Tribunal award (hereinafter called as "the NWDT award") cannot be taken into consideration for the simple reason that the Tribunal had been constituted under the provisions of the Inter-State Water Disputes Act, 1956 (hereinafter called "the 1956 Act"), and the award had been given in a case where several States i.e. the States of Madhya Pradesh, Gujarat and Maharashtra were involved. The said award has no application in the instant cases *nor can it be a benchmark*. More so, in the Sardar Sarovar Project, land for land was mandatory. These cases are to be decided giving strict adherence to the R&R Policy, as amended on 3-7-2003, further considering that special care is to be taken where persons are oppressed and uprooted so that they are better off.

45. 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 an 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. (Vide *Murlidhar Dayandeo Kesekar* v. *Vishwanath Pandu Barde*[38] and *N.D. Jayal* v. *Union of India*[39].)

46. Mere payment of compensation to the oustees in such a case may not be enough. In case the oustee is not able to purchase the land just after getting the compensation, he may not be able to have the land at all. In *K. Krishna Reddy* v. *Collector (LA)*[40] this Court expressed grave concern on the issue observing as under: (SCC p. 167, para 12)

> "*12*. … After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even one-half of it. It is a common experience that the purchasing power of rupee is dwindling. With rising inflation … The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. *They may even face starvation unless rehabilitated*." (emphasis added)

38 1995 Supp (2) SCC 549
39 (2004) 9 SCC 362 : AIR 2004 SC 867
40 (1988) 4 SCC 163 : AIR 1988 SC 2123

47. It is a matter of common experience that the "person interested" gets the actual amount of compensation in reference under Section 18 and appeal under Section 54 of the 1894 Act. Award made by the Land Acquisition Collector is merely an offer by the State through its agent. The Collector acts in dual capacity. It is in fact for this reason that local authority/company for whom the land is acquired cannot question the award of the Collector except on the ground of fraud, corruption or collusion, as provided under Section 50 of the 1894 Act. The award in the enquiry by the Collector is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owners of the lands, and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the court. (See *Ezra* v. *Secy. of State for India in Council*[41] and *Santosh Kumar* v. *Central Warehousing Corpn.*[42])

48. In the instant cases, admittedly, in spite of the fact that there has been a consent award under Section 11(2) of the 1894 Act, the appellants had agreed before the High Court that the oustees would be entitled to have reference under Section 18 of the 1894 Act, a large number of references are pending before the courts for consideration. Thus, there is still a possibility of enhancement of compensation, but such a course would take time. By that time there will be such a hike in the price of land that the oustees will not be able to purchase the land. For lack of any experience or skill, such oustees would not be able to engage themselves in any other alternative occupation/vocation. Thus, it would be difficult for them to survive.

49. The record of the case reveals that about 56% of the oustees involved in these cases are members of the Scheduled Castes and Scheduled Tribes. Land had never been offered to any of these oustees. The amount of compensation as determined under the 1894 Act had been deposited in their bank accounts. No attempt had ever been made by the appellant State to either acquire land from other persons having a larger area of land resorting to the provisions of the 1894 Act or purchase the same by agreement/negotiation for resettlement of the oustees. Only 11% of the oustees could purchase the land of their own from other persons without any assistance from the State authorities. The submission raised on behalf of the State that it had been impossible for the authorities to acquire/purchase the land cannot be accepted as this is a pure question of fact and in the absence of any material to show that any attempt had ever been made to acquire the land to rehabilitate the oustees, such a submission remains unsubstantiated.

50. Same appears to be the position in regard to the amended provisions of the R&R Policy. The phrase "as far as possible" would come into play, in case an attempt is made to acquire/purchase lands and then to make allotment of land to the oustees. The other added term i.e. giving the option to the oustees to make application for acceptance of compensation and not claiming land for land acquired, remained inapplicable, as it is alleged that not a single

41 (1904-05) 32 IA 93
42 (1986) 2 SCC 343 : AIR 1986 SC 1164

oustee made such an application. If it is so, the question remains merely academic.

51. None of the obligations on the part of the authorities as clearly stipulated by the R&R Policy had been fulfilled. The 1985 Adhiniyam had not been made applicable in respect of Omkareshwar Dam Project taking into account the past experience in other projects. Undoubtedly, the acquisition of land and displacing other persons for resettling these oustees could have a chain reaction and the remedy/cure might have been worse than the disease itself and could further give rise to the question as to whether such an action was permissible in law. The State authorities ought to have assisted the oustees in purchasing the land of their choice from other agriculturists and met the difference of cost, if any, over and above the amount of compensation and the cost of land so purchased. While determining such issues, the State authorities could take into consideration the fact that the land should be not less than of the same quality and nature which the oustees were originally having with them. This exercise could have been done "pari passu" which means "equably" or "ratably" to the construction of the dam and could have been completed much in advance of completion of the dam to the full water level.

52. In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The Court is not oblivious of the fact that social and economic reasons had caused disaffection, and thus, the tribal areas are today in the grip of extremism, as the tribal youths have become easy prey to the extremists' propaganda.

53. While dealing with IA No. 42086 of 2008 in Writ Petition No. 4457 of 2007 (PIL), the High Court on 16-3-2009 considered the grievance of the oustees that the land available with the State for allotment was not cultivable and had been encroached upon, thus, the oustees were not willing to accept the land offered to them. The Court directed the Indian Council of Agricultural Research (Bhopal) to depute a sufficient number of experts to inspect the land offered to the displaced families and to find out as to whether it was suitable for agricultural purposes and submit its report and further directed the authorities to file an affidavit as to whether the encroachment could be removed expeditiously within a period of two months. The expert committee of the Indian Council of Agricultural Research (Bhopal) had submitted the report that the land was cultivable. The matter was directed to be listed on 13-9-2009 and in the meanwhile, GRA was directed to dispose of all applications/objections of the oustees for allotment of land in lieu of land acquired except those where the dispute related to entitlement of major sons for allotment of land and where the oustees had withdrawn the entire amount of compensation/SRG amount. The report dated 13-1-2010 submitted by GRA before the High Court makes it clear that all objections filed before it by the oustees had been decided and directions issued by GRA had been complied with by the State authorities.

54. Before the High Court, the State put forward the explanation that the authorities had awarded the benefit of SRG to the oustees. In fact, the PAFs had complained that with the amount of compensation for their lands they were not able to buy land elsewhere and that instead of purchasing the land by the Government, the additional cost involved may be made available to the PAFs to enable them to purchase land of their choice. The State Government after consultation with all concerned and approval by the Hon'ble Chief Minister devised a scheme whereby a PAF is given substantial additional amount over and above the compensation for its land in order to enable it to purchase arable and irrigable land at the location of its choice. This scheme has come to be known as SRG or Special Rehabilitation Package (SRP). The rate of the irrigated land in the nearest command area is worked out on the basis of sale deeds and the cost of land going under submergence is calculated. 30% of this amount is again added to this cost and a sum is worked out which is known as the determined value. Difference between the determined value and compensation already paid is called SRG and is paid to the PAF. The problems inherent in the Government purchase are totally eliminated and the PAF is fully empowered and competent to decide things for itself. The additional amount made available to the PAF as SRG is not recoverable from him. The purchase of land made by the PAF is exempt from the stamp duty and registration fee.

55. The offer of SRG is over and above the Rehabilitation Policy. SRG enables the PAF to purchase land suitable to it at a place of its choice as it is neither willing to accept the land offered by the Government nor to start the life at the new place by mortgaging the land for the loan. Under SRG, the extra amount paid over and above the compensation is not recoverable. Due to the advantage of free hand, SRG is well accepted by the PAFs. Registration fees and stamp duty are also paid. As the SRG comes into operation after the PAFs show unwillingness to accept the land from the land bank and the PAFs want complete freedom for getting the land of their choice, so the land for land option has not been exercised by the PAFs and instead they have preferred and accepted cash compensation. So land for land has not been allotted to PAFs as the policy. It is, however, erroneous to say that not a single PAF of Omkareshwar Project was allotted agricultural land because the PAFs were empowered to purchase land of their choice by paying SRG.

56. SRG is an additional amount paid to an oustee to enable him to purchase land in the command area to the extent of his land acquired. Normally, an oustee who loses land in the submergence area gets an amount determined under the 1894 Act. When a project is envisaged in an area, the sale and purchase in that area decrease and the prices also get depressed. By the time the notification under Section 4(1) of the 1894 Act is issued, the sale deeds, if any, executed in that area, do not represent the correct price. Similarly, the prices in the command area also increase as a result of declaration of the project. Hence, it is difficult for an oustee to purchase land in the command area from the amount given to him under the 1894 Act. SRG is designed to nullify both the above effects and to enable the oustee to get an

amount by which he can purchase land to the extent of his land acquired, in the command area.

SRG =	Award amount calculated for equal land in command area as per the 1894 Act including solatium	– (*minus*)	Award amount calculated for the land acquired from oustee in the submergence area as per the 1894 Act including solatium
SRG =	Award with assumption that land is in command area	– (*minus*)	Actual award for the basis land in the submergence area.

57. The aforesaid relief granted by the appellants to the oustees as SRG is much more than the amount of compensation or amount entitled in the R&R Policy as amended on 3-7-2003. In fact, to a certain extent, it is in consonance with the provisions contained in Clause (5.4) of the R&R Policy, wherein the State is under an obligation to meet the gap of amount between the amount of compensation and the value of the land purchased by the oustees.

58. The appellants have submitted that all the oustees have voluntarily accepted the SRG and withdrawn the amount and they stand fully satisfied. In the absence of appropriate pleadings and evidence on record, it is not possible for this Court to adjudicate upon the individual claims or issue a direction of sweeping nature. Thus, if an oustee feels aggrieved of what he has received, he may approach GRA. In case GRA, after adjudication of facts, comes to the conclusion that a particular oustee has not been granted the relief, he is entitled for, GRA itself would grant the appropriate relief taking into account the provisions of the R&R Policy. In case either of the parties is aggrieved, it may approach the High Court for appropriate directions.

Entitlement of major sons for agricultural land in the R&R Policy, 1993

59. So far as the second issue is concerned, the R&R Policy provides for definition clause:

"*Displaced family*:

(*i*) A family composed of displaced persons as defined above shall mean and include husband, wife and minor children and other persons dependent on the head of the family e.g. widowed mother, widowed sister, unmarried sister, unmarried daughter or old aged father.

(*ii*) Every son/unmarried daughter who has become major on or before the date of notification under Section 4 of the Land Acquisition Act, will be *treated as a separate family*." (emphasis added)

60. This Court in *Narmada Bachao Andolan (1)*[12] dealt with the issue of entitlement of major sons of the oustees of the Sardar Sarovar Project and held that as it had been provided in the NWDT award, the sons who had become major one year prior to the date of issuance of the notification under

12 *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664

Section 4 of the 1894 Act, for land acquisition, had become entitled to allotment of land.

61. In *Narmada Bachao Andolan (2)*[14] this Court had taken note of the said observation/finding in the aforesaid *Narmada Bachao Andolan (1) case*[12] and held: [*Narmada Bachao Andolan (2) case*[14], SCC p. 51, para 64]

> "*64. Once major son comes within the purview of the expansive definition of family, it would be idle to contend that the scheme of giving 'land for land' would be applicable to only those major sons who were landholders in their own rights*. If a person was a landholder, he in his own right would be entitled to the benefit of rehabilitation scheme and, thus, for the said purpose, an expansive definition of family was not necessarily to be rendered. Furthermore, if such a meaning is attributed as has been suggested by Mr Vaidyanathan, the definition of 'family' would to an extent become obscure. As a *major son constitutes 'separate family'* within the interpretation clause of 'family', no meaning thereto can be given." (emphasis added)

62. In the instant case, the High Court on this issue held as under:

> "There is no separate definition of displaced family given in Para 3 of the R&R Policy of 1993. Hence, the same definition as has been given in sub-para 1.1(*b*) of the R&R Policy of 1993 would be applicable to Para 3 of the R&R Policy and the displaced family in Para 3.2 will include husband, wife, minor children and other persons dependent on the head of the family and every son who has become major on or before the date of notification under Section 4 of the Land Acquisition Act but who *was part of the larger landowning family* from whom the land was acquired will have to be treated as separate displaced family from whom land is acquired under the Land Acquisition Act. While calculating however the extent of landholding of a displaced family for the purposes of determining the area of land to be allotted to the displaced family, the share of the displaced family without the major son may only be taken. Similarly, while calculating the extent of land to be allotted to the separated family of such major son, the share of the major son in the land may be taken into consideration … we hold that every adult son and his family who was part of *the bigger family* from whom land was acquired would be entitled to allotment of agricultural land in accordance with Paras 3 and 5 of the R&R Policy of 1993 for Omkareshwar Dam Project." (emphasis added)

63. In view of the above, this Court has to consider as to whether the NWDT award provided for any entitlement of major sons to allotment of agricultural land, and if not, whether the judgment in *Narmada Bachao Andolan (1)*[12] could have been considered as a precedent in *Narmada Bachao Andolan (2)*[14] and whether the High Court has rightly interpreted the terms

14 *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32
12 *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664

and conditions of the R&R Policy, as the High Court has proceeded with the assumption that the R&R Policy provides that major sons of the oustees i.e. the "large landowning families" and those who had been "part of the bigger family" would be entitled for allotment of agricultural land.

Precedence doctrine

64. The court should not place reliance upon a judgment without discussing how the *factual situation fits* in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the *material facts* and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some *distinguishing features*. A little difference in *facts or additional facts* may make a lot of difference to the precedential value of a decision. A judgment of the court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in *setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases*. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide *MCD* v. *Gurnam Kaur*[43], *Govt. of Karnataka* v. *Gowramma*[44] and *State of Haryana* v. *Dharam Singh*[45].)

Per incuriam doctrine

65. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.

66. While dealing with the observations made by a seven-Judge Bench in *India Cement Ltd.* v. *State of T.N.*[46], the five-Judge Bench in *State of W.B.* v. *Kesoram Industries Ltd.*[47], observed as under: (*Kesoram Industries Ltd. case*[47], SCC pp. 292 & 297, paras 57 & 71)

> "*57.* … A doubtful expression occurring in a judgment, *apparently by mistake or inadvertence*, ought to be read by assuming that the court had intended to say only that which is correct according to the settled position of law, and the *apparent error should be ignored, far from making any capital out of it*, giving way to the correct expression which ought to be implied or necessarily read in the context, …
>
> * * *
>
> *71.* … *A statement caused by an* apparent typographical or *inadvertent error* in a judgment of the court *should not be misunderstood as declaration of such law by the court*." (emphasis added)

43 (1989) 1 SCC 101 : AIR 1989 SC 38
44 (2007) 13 SCC 482 : AIR 2008 SC 863
45 (2009) 4 SCC 340 : (2011) 2 SCC (L&S) 112
46 (1990) 1 SCC 12 : AIR 1990 SC 85
47 (2004) 10 SCC 201

(See also *Mamleshwar Prasad* v. *Kanhaiya Lal*[48], *A.R. Antulay* v. *R.S. Nayak*[49], *State of U.P.* v. *Synthetics and Chemicals Ltd.*[50] and *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*[51].)

67. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

68. Admittedly, the NWDT award did not provide for allotment of agricultural land to the major sons of such oustees. The States of Gujarat and Maharashtra had given concessions/relief over and above the said award. Thus, *Narmada Bachao Andolan (1)*[12] has been decided with the presumption that such a right had been conferred upon major sons by the NWDT award and *Narmada Bachao Andolan (2)*[14] has been decided following the said judgment and interpreting the definition of "family" contained in the R&R Policy. When the two earlier cases were being considered by the Court, it had not been brought to its notice that the NWDT award did not provide for such an entitlement. In such cases, the issue is further required to be considered as to whether, as we will consider the definition of the word "family" at a later stage, the mistake inadvertently committed by this Court earlier, should be perpetuated.

69. The courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in *Hotel Balaji* v. *State of A.P.*[52] observed as under: (SCC p. 551, para 12)

> "*12. … '2. …* To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this we derive comfort and strength from the wise and inspiring words of Justice Bronson in *Pierce* v. *Delameter*[53], AMY at p. 18:
>
> > "a Judge ought to be wise enough to know that he is fallible and therefore ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors." '* "

48 (1975) 2 SCC 232 : AIR 1975 SC 907
49 (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531
50 (1991) 4 SCC 139
51 (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514
12 *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664
14 *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32
52 1993 Supp (4) SCC 536 : AIR 1993 SC 1048
53 1 NY 3 (1847)
* **Ed.**: As observed in *Distributors (Baroda) (P) Ltd.* v. *Union of India*, (1986) 1 SCC 43, p. 46, para 2.

(See also *Nirmal Jeet Kaur* v. *State of M.P.*[54] and *Mayuram Subramanian Srinivasan* v. *CBI*[55].)

70. In *Ministry of Information & Broadcasting, In re*[56] this Court observed: (SCC p. 629, para 10)

> "*10.* … None is free from errors, and the judiciary does not claim infallibility. It is truly said that a judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors."

Discrimination

71. We also have to consider the submissions made on behalf of Respondent 1 that the denial of allotment to major sons of agricultural land would amount to hostile discrimination as in earlier cases it had been granted.

72. Unequals cannot claim equality. In *Madhu Kishwar* v. *State of Bihar*[57] it has been held by this Court that every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution.

73. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify. [Vide *Kathi Raning Rawat* v. *State of Saurashtra*[58], and *Video Electronics (P) Ltd.* v. *State of Punjab*[59].]

74. However, in *Vishnudas Hundumal* v. *State of M.P.*[60] and *Eskayef Ltd.* v. *CCE*[61], this Court held that when discrimination is glaring, the State cannot take recourse to inadvertence in its action resulting in discrimination. In a case where denial of equal protection is complained of and the denial flows from such action and has a direct impact on the fundamental rights of the complainant, a constructive approach to remove the discrimination by

54 (2004) 7 SCC 558 : 2004 SCC (Cri) 1989
55 (2006) 5 SCC 752 : (2006) 3 SCC (Cri) 83 : AIR 2006 SC 2449
56 (1995) 3 SCC 619
57 (1996) 5 SCC 125 : AIR 1996 SC 1864
58 AIR 1952 SC 123 : 1952 Cri LJ 805
59 (1990) 3 SCC 87 : 1990 SCC (Tax) 327 : AIR 1990 SC 820
60 (1981) 2 SCC 410 : AIR 1981 SC 1636
61 (1990) 4 SCC 680

putting the complainant in the same position as others enjoying favourable treatment by inadvertence of the State authorities, is required.

75. The High Court while passing the order had given a much wider interpretation to the R&R Policy making reference to the terms as "*bigger family*" and the "*large landowning family*". The court while interpreting the provisions of a statute, can neither add nor subtract a word. The legal maxim *a verbis legis non est recedendum* means from the words of law, there must be no departure. (See *S.P. Gupta* v. *Union of India*[62], *P.K. Unni* v. *Nirmala Industries*[63] and *CIT* v. *Tara Agencies*[64].)

Interpretation of statute

76. In *Principles of Statutory Interpretation* by Justice G.P. Singh (12th Edn., 2010), the learned author has stated as under:

> "In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' … A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."

77. In *Directorate of Enforcement* v. *Deepak Mahajan*[65] this Court held as under: (SCC pp. 453-55, paras 24-25 & 31)

> "*24*. … Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.
>
> *25*. In *Maxwell* on *Interpretation of Statutes*, 10th Edn., at p. 229, the following passage is found:
>
> > 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.'
>
> * * *
>
> *31*. … but to winch up the legislative intent, it is permissible for courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the

62 1981 Supp SCC 87 : AIR 1982 SC 149
63 (1990) 2 SCC 378 : AIR 1990 SC 933
64 (2007) 6 SCC 429
65 (1994) 3 SCC 440 : 1994 SCC (Cri) 785 : AIR 1994 SC 1775

words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane."

78. Therefore, an interpretation having a social justice mandate is required. The statutory provision is to be read in a manner so as to do justice to all the parties. Any construction leading to confusion and absurdity must be avoided. The court has to find out the legislative intent and eschew the construction which will lead to absurdity and give rise to practical inconvenience or make the provision of the existing law nugatory. The construction that results in hardship, serious inconvenience or anomaly or gives unworkable and impracticable results, should be avoided. (Vide *Corporation Bank* v. *Saraswati Abharansala*[66] and *Sonic Surgical* v. *National Insurance Co. Ltd.*[67])

79. A reasonable construction agreeable to justice and reason is to be preferred to an irrational construction. The court has to prefer a more reasonable and just interpretation for the reason that there is always a presumption against the lawmaker intending injustice and unreasonability/ irrationality, as opposed to a literal one and which does not fit in with the scheme of the Act. In case the natural meaning leads to mischievous consequences, it must be avoided by accepting the alternative construction. [Vide *Bihar State Council of Ayurvedic and Unani Medicine* v. *State of Bihar*[68] and *Mahmadhusen Abdulrahim Kalota Shaikh (2)* v. *Union of India*[69].]

80. The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it. (Vide *Union of India* v. *Ranbaxy Laboratories Ltd.*[70])

81. In *Narashimaha Murthy* v. *Susheelabai*[71] this Court held: (SCC p. 658, para 20)

> "*20.* … the purpose of [the] law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and internal sense of it that makes the law meaningful."

82. In *Workmen* v. *Dimakuchi Tea Estate*[72] it has been held thus: (AIR p. 356, para 9)

> "*9.* . . . the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act."

66 (2009) 1 SCC 540
67 (2010) 1 SCC 135 : (2010) 1 SCC (Civ) 28
68 (2007) 12 SCC 728 : AIR 2008 SC 595
69 (2009) 2 SCC 1 : (2009) 1 SCC (Cri) 620
70 (2008) 7 SCC 502 : (2008) 3 SCC (Cri) 123 : AIR 2008 SC 2286
71 (1996) 3 SCC 644 : AIR 1996 SC 1826
72 AIR 1958 SC 353

83. In *Sk. Gulfan* v. *Sanat Kumar Ganguli*[73] it has been held as follows: (AIR p. 1845, para 19)

> "*19.* … Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material."

84. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Justice means justice between both the parties. Justice is the virtue, by which the court gives to a man what is his due. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. The underlying idea is of balance. It means to give to each his right. Therefore, while tempering the justice with mercy, the court has to be very conscious that it has to do justice in exact conformity with the statutory requirements.

85. Thus, it is evident from the abovereferred law, that the court has to interpret a provision giving it a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences. The interpretation so made must not produce unworkable and impracticable results or cause unnecessary hardship, serious inconvenience or anomaly. The court also has to keep in mind the object of the legislation.

Instant case

86. Rehabilitation provisions as per the NWDT award and Statewise comparative provisions:

Sl. No.	*Item*	*NWDT award*	*Madhya Pradesh*	*Gujarat*	*Maharashtra*
1.(*a*)	Tenure-holder	*	*	*	*
(*b*)	*	*	*	*	*
(*c*)	*	*	*	*	*
(*d*)	Major sons of all above categories of oustees.	*No provision for land allotment.*	Major son will be treated as separate family. They will be entitled to cash compensation according to the category to which they belong.	2 ha of land to each major son of all categories.	1 ha of land to each unmarried daughter and major son of all categories of oustees with—as cut-off date for major sons and unmarried daughters.

73 AIR 1965 SC 1839

87. Implications if the impugned judgment is upheld:

Category of oustees	*In case each of the following categories of oustees lose only one hectare of land*					
	Mr A (landless)	*Mr B (Losing less than 25% of holding)*	*Mr C (Single khatedar)*	*Mr D (Single khatedar)*	*Mr E (E1 + E2 + E3) Joint khatedars*	*Mr F (F1 + F2 + F3) Joint khatedars*
No. of major sons/ daughters	3	3	0	3	0	F1: 3 sons F2: 3 sons F3: 4 sons
	Entitlement if contention of the respondent is accepted					
For self	0	0	2 ha	2 ha	3 ha @ 2 = 6 ha	3 ha @ 2 = 6 ha
For major sons/ daughters	0	0	0	3 ha @ 2 = 6 ha	0	10 ha @ 2 = 20 ha
Total entitlement	0	0	2 ha	8 ha	6 ha	26 ha

88. It is apparent that the directions of the Hon'ble High Court regarding land for land would lead to grave inequity, and thereby likely to cause undue enrichment of some categories of oustees:

(*a*) Sons of landowning class get better rights than their fathers.

(*b*) Sons of landowning class get better rights than those of landless class.

(*c*) Even though everybody loses same measure of land, some are not entitled to any land while for some it becomes an unimaginable bounty or proves to be a bonanza.

89. In case the view taken by the High Court is upheld, it would have very serious repercussions for the reason that no land had been acquired wherein a major son can independently claim compensation as a matter of right. In such an eventuality, the question of retaining 50 per cent of the compensation could not arise. If it were allowed, it would create hostile discrimination against others like landless persons who have been found to be non-suited by the High Court in the impugned judgment. The High Court has added words like "*larger landowning family*" and "*bigger family*" to justify the relief given to major sons even though such terms do not appear in the R&R Policy or either of the judgments given by this Court earlier. The charts hereinabove make it crystal clear that there was no provision for allotment of land to major sons in the NWDT award. Obviously, it has wrongly been mentioned in the earlier judgments of this Court by inadvertence. This requires correction as such an error cannot be perpetuated.

90. The claims of the respondents, if accepted, and the High Court judgment if upheld, would lead to unwarranted results. For some of the families having a large number of major sons, it would lead to a level of unjust enrichment that could never have been envisaged by the Government of Madhya Pradesh. The view taken by the High Court gives rise to presupposition (a fiction) of partition of agricultural land amongst the tenure-holder and his major sons. Such a concept would defeat the right of minor sons for partition or claiming the share in the agricultural land and also lead to uncertainty as to whether 75% of the total land of the major son, after partition stood acquired. The plea of discrimination is not available to such major sons of the families, whose land has been acquired for this project, as they cannot be put on a par with the major sons of the oustees of the Sardar Sarovar Project. Even if the plea is tenable, such discrimination cannot be held to be conscious or intentional as the State is willing to rectify the mistake.

91. The State has filed an application to rectify the mistake in the judgment of 2005, as IA No. 37 of 2009 for clarification/modifications of the said judgment which is pending consideration.

92. The view expressed earlier, inadvertently, on a wrong assumption may result in great public loss and would be against larger public interest. There is no prohibition under the law on this Court to locate the error and adopt a correct approach if the Court is convinced that the error exists and its avoidance is necessary to prevent any baneful effect on the general interest of the public or the State. The mistake (*sic* view) is manifestly wrong and has a direct impact on the procedure to be adopted for rehabilitation. The impact of allotment cannot be against public good and has to be balanced with an appropriate grant to the oustees. It is, therefore, essential to rectify the mistake.

93. Compensation in the present context has to be understood in relation to the right to property. The right of the oustee is protected only to a limited extent as enunciated in Article 300-A of the Constitution of India. The tenure-holder is deprived of the property only to the extent of land actually owned and possessed by him. This is, therefore, limited to the physical area of the property and this area cannot get expanded or reduced by any fictional definition of the word "family" when it comes to awarding compensation. Compensation is awarded by the authority of law under Article 300-A of the Constitution read with the relevant statutory law of compensation under any law made by the legislature and for the time being in force, only for the area acquired.

94. Rehabilitation on the other hand, is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under Article 300-A, brings within its fold the presence of the elements of Article 21 of the Constitution of India. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves. This becomes necessary for

the State when it relates to the rehabilitation of the already depressed classes like Scheduled Castes, Scheduled Tribes and marginal farmers in order to meet the requirements of social justice.

95. As noted above, benefit given to a major son was not within the terms of the award. It was rather a concession given by the States who were parties to the NWDT award. The said award, therefore, as understood in the previous decisions was not at all applicable for the purpose of extending any such grant of benefit to a major son. The concession given by the respective States after the award was delivered during the course of subsequent negotiations therefore, could not be a part of the award. The aforesaid decisions, therefore, would not be a binding precedent for the purpose of the present case as it was under some mistaken belief that the award was understood to have extended the said benefit to major sons also. The High Court, therefore, fell into an error by proceeding to assume that a major son would be treated to be a separate family for the purpose of allotment of land also.

96. The rehabilitation has to be done to the extent of the displacement. The rehabilitation is compensatory in nature with a view to ensure that the oustee and his family are at least restored to the status that was existing on the date of the commencement of the proceedings under the 1894 Act. There was no intention on behalf of the State to have awarded more land treating a major son to be a separate unit. This would otherwise bring about an anomaly, as is evident from the chart that has been gainfully reproduced hereinabove. The idea of rehabilitation was, therefore, not to distribute largesse of the State that may reflect distribution totally disproportionate to the extent of the land acquired. The State has, therefore, rightly resisted this demand of the writ petitioners and, in our opinion, for the High Court to presuppose or assume a separate unit for each major son far above the land acquired, was neither justified nor legally sustainable.

97. In effect, the major son would not be entitled to anything additional as his separate share in the original holding and it will not get enhanced by the fictional definition as stated in the impugned judgment. The major son would, however, be entitled to his share in the area which is to be allotted to the tenure-holder on rehabilitation in case he is entitled to such a share in the law applicable to the particular State.

98. More so, the view taken by the High Court that the land to be allotted to major sons shall be determined on the basis of his share in the land prior to its acquisition, does not appear to be compatible or in consonance with the terms of the R&R Policy which provides for a minimum allocation of 2 ha. Thus, the policy must be interpreted to the effect that the major sons of the oustees will be entitled to all the benefits under the R&R Policy, except allocation of agricultural land. Each State has a right to frame the rehabilitation policy considering the extent of its resources and other priorities. One State is not bound if in a similar situation, the other State has accorded additional facilities even over and above the policy. The definition of "displaced family" cannot be read in isolation, rather it requires to be considered taking into account the eligibility criteria for allotment of land in

Clause (5) of the R&R Policy. To that extent, the judgment of the High Court is liable to be set aside.

Conclusions

99. In view of the above, the direction given by the High Court in para 64(*i*) of the judgment is modified to the extent that the displaced families who have not withdrawn SRG benefits/compensation voluntarily and submitted applications for allotment of land before the authority concerned, shall be entitled to the allotment of agricultural land "as far as possible" in terms of the R&R Policy, and for that purpose, the appellants must make some government or private land available for allotment to such oustees if they opt for such land and agree to ensure compliance with other terms and conditions stipulated therein. In case suitable land is available in the land bank, the same would be offered to such oustees. In case, dispute of suitability of land is raised, it would be adjudicated upon and determined by GRA.

100. The authorities must render all possible assistance to the oustees to purchase the land by negotiations. In case the land is not available as mentioned hereinabove, the State must ensure compliance with Clause 5.4 of the R&R Policy to the full extent in the cases of the Scheduled Castes/Scheduled Tribes and to the extent of 2 ha in case of other marginal farmers. In case the extent of the land acquired is more than 8 ha, the same shall be paid according to the provisions contained therein. The Government must continue to search for additional land than what is already available in the land bank and to find out the means of its purchase for allotment to the oustees. The Government should also ensure that the allocated land is not encroached upon by the unscrupulous persons.

101. Direction given by the High Court to allot agricultural land to major sons of the oustees in para 64(*iii*) of the impugned judgment is hereby set aside.

102. In the instant cases, the R&R Policy or amendment thereto in 2003, has not been under challenge. There was no prayer by the respondents to quash the said amendment. Relief not sought by the party cannot be granted by the Court. More so, the direction has been issued by the High Court to grant relief in the impugned judgment and order taking into account the said amendment. The same is not under challenge at the behest of the respondents before us. In such an eventuality, it was not desirable for the High Court to make any comment on the competence of the State to amend the policy and the finding so recorded in para 38 of the judgment cannot be sustained in the eye of the law, and thus is set aside.

Civil Appeal No. 2082 of 2011

103. The present appeal has been preferred by the appellant/writ petitioners mainly on the three issues on which no relief has been granted by the High Court. Therefore, the appeal is limited to the extent of: whether landless oustees are entitled to allotment of agricultural land; whether the NWDT award dated 12-12-1979 is applicable to the present project of

Omkareshwar Dam; and, thirdly, whether the oustees of five villages which have already been submerged, are entitled to allotment of land in lieu of land acquired, in spite of the fact that SRG had already been granted to them.

104. The facts and circumstances giving rise to this appeal have already been elaborately mentioned in connected Civil Appeals Nos. 2115-16 of 2011, thus, the same are not repeated here and we proceed to decide the issues involved herein.

105. Shri Sanjay Parekh, learned counsel appearing for the appellant, has submitted that the R&R Policy does not provide for land for agricultural purposes to landless persons. However, the Office Memorandum issued by the Ministry of Environment and Forests dated 13-10-1993 granting clearance for Omkareshwar Dam provided for allotment of land to landless labourers also. The NWDT award is applicable in the case of Omkareshwar Dam also for providing the resettlement and rehabilitation of all kinds of oustees of the five villages, whose land had already been submerged in view of the orders of the Court passed, from time to time, though paid compensation under the 1894 Act/SRG, are also entitled for allotment of agricultural land in terms of the R&R Policy. Hence, to that extent, the judgment and order of the High Court impugned herein, is liable to be set aside.

106. On the contrary, the appeal had been vehemently opposed by S/Shri Ravi Shankar Prasad and P.S. Patwalia, learned Senior Counsel appearing for the respondents contending that the R&R Policy does not provide for allotment of land to the landless persons. More so, the clearance given by the Ministry of Environment and Forests stood qualified by the words "as permissible" meaning thereby, the landless labourer shall be entitled to allotment of land in case it is permissible in law for the time being in force or any other policy framed by the State to that effect. They have further submitted that the NWDT award was meant only for Sardar Sarovar Dam as a water dispute had arisen among the States sharing the water of Narmada River under the award and thus the said award has no application whatsoever so far as Omkareshwar Dam was concerned. In view of the fact that five villages had already been submerged long back and the oustees thereof had been paid compensation for their land acquired/SRG, the question of reopening the issue is not permissible. Thus, the appeal is liable to be dismissed.

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

108. The Office Memorandum issued by the Ministry of Environment and Forests dated 13-10-1993 granting clearance for Omkareshwar Dam Project with a condition, stated as under:

> "(*vii*) The rehabilitation programme should be extended to landless labourers and the people affected due to the canal by identifying and allocating suitable land *as permissible*. A time-bound programme should be submitted by December 1993."

109. The High Court has held that the said condition so added stood qualified by the words "as permissible" and thus, the landless labourers would get the land even for agricultural purposes to the extent of 2 ha (about 5 acres), if it is permissible in law or any other government policy. In addition thereto, the High Court had further taken note of the fact that all other reliefs including the transportation charges, plots for residential accommodation and preference for employment, etc. etc., shall be available not only to the landless labourers, but also to major sons of such oustees including landless labourers. As the said condition imposed by the Ministry of Environment and Forests while granting clearance is as stood qualified, and has been subject to any other law for the time being in force or the government policy, etc., we do not feel that landless labourers are entitled to allotment of land.

110. More so, the R&R Policy itself provides a particular mode of retaining 50% of the compensation amount and 50% to be recovered in 20 years. As the landless labourers never had any land, they are not entitled to any compensation under the 1894 Act, thus, the question of allotment of land to them would not arise. The R&R Policy itself provides that such persons are entitled to get Rs 49,300 to buy productive employment creating assets, etc. and such money can also be used for acquiring land. Such terms cannot be interpreted to mean that the landless labourers become entitled to allotment of land for agricultural purpose to the extent of 2 ha. The policy is to be read as a whole, as it is not permissible for a party to pick up one word or phrase or one sentence and claim relief on the basis of the same. In case, the major sons, as we have already held hereinbefore, are not entitled to allotment of agricultural land, the question of landless labourers being entitled to the same does not arise. More so, the words "as permissible" cannot be given a complete go-by.

111. In *Gurbax Singh* v. *State of Punjab*[74] this Court while interpreting the provisions of the Punjab Security of Land Tenures Act, 1953, interpreted the words "permissible area" while determining the surplus area and held that permissible area means that the landowner is entitled to reserve land not exceeding the said area and the balance remains surplus area. Therefore, permissible area was defined as an area which is permissible for a person to retain under the provisions of that Act. Thus, permissible area can legitimately be defined as the area reserved under the Act. Similarly, in *Municipal Committee, Patiala* v. *Model Town Residents Assn.*[75] this Court interpreted the phrase "permissible classification" to mean what is permissible in law.

112. In *Jagjit Cotton Textile Mills* v. *Northern Railway*[76], while interpreting Rule 161-A of the Indian Railways Conference Association Rules and Section 73 of the Railways Act, 1989, construing the term

74 AIR 1967 SC 502
75 (2007) 8 SCC 669 : AIR 2007 SC 2844
76 (1998) 5 SCC 126

"permissible carrying capacity", this Court held that the normal carrying capacity means, it cannot exceed the upper limits prescribed under the statute/law.

113. The Government of Madhya Pradesh in Narmada Valley Development Project had issued its Omkareshwar Multi-purpose Project, Rehabilitation and Resettlement Plan in August 1993, according to which landless persons had been defined as:

"1.2(*a*) Landless persons:

A person, who, whether individually or jointly with members of his family, does not hold any agricultural land or does not have any land for agriculture…."

114. Clause 6 thereof further provided for the families of landless agricultural labourers, a rehabilitation grant of Rs 11,000; transport assistance; allotment of plots in rural areas for residential purpose; and various other special financial assistance. The relevant part of Clauses 9.1 and 9.2 reads as under:

"9.1. The Narmada Valley Development Authority will ensure appropriate arrangements for discharge of these responsibilities within a stipulated time-frame. In the interim period special financial assistance will be given to supplement the income of the landless agricultural labourers and landless Scheduled Caste and Scheduled Tribe oustee families for three years in descending order which shall be in addition to the grant-in-aid mentioned in Para 6.1. This period of three 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 8250, Rs 5500 and Rs 2750 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 shall be made available for executing an independent viable scheme for earning livelihood or for purchase of productive assets. The above support amounts will be 75%, 50% and 25% respectively of the poverty line and the amount to be kept in reserve is also linked with the poverty line. If the scale of the poverty line is revised, the amount of special support amount and the reserve shall also be proportionately increased accordingly. For other landless, special financial assistance of Rs 19,500 will be given for the purpose of productive assets.

9.2. Amount to be paid to the landless displaced families shown in Paras 6.1 and 9.1 will be credited to a special fund by NVDA and can be made available to the oustees for acquisition of a suitable productive asset, including land, in one or more instalments as required."

115. It has been submitted by Shri Parekh that the word "land" mentioned in Clause 9.2 means that the Government has to provide financial assistance for acquisition of suitable land in one or more instalments, as required. Such an interpretation is not permissible for the simple reason that the area mentioned in Clause 9.2 is subject to the provisions of Paras 6.1 and

9.1. Para 6.1 provides for a claim to the tune of Rs 11,000 and Para 9.1 deals with other grants as mentioned hereinabove. Therefore, such an interpretation is not permissible. Had it been the intention of the Ministry of Environment and Forests to impose such a condition, the word "permissible" would not have been used. More so, it would have asked the State Government to amend the R&R Policy accordingly. Thus, in view of above, we do not see any force in the contentions made by the appellant. The reliefs sought by the appellant for landless labourers are not permissible.

Applicability of the NWDT award

116. Shri Sanjay Parekh, learned counsel appearing for the appellant, has submitted that under the provisions of the 1956 Act, a Tribunal was constituted and it had made the award on 12-12-1979 and it provides for various reliefs to the oustees and all the benefits granted by the said award to the oustees are applicable in case of the oustees of Omkareshwar Dam Project. The High Court has rejected the said contention of the appellant on the ground that the Tribunal had been constituted to resolve the water dispute as defined under Section 2(*c*) of the 1956 Act, for the reason that a dispute had arisen between various States i.e. the States of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan. The matter was limited to resettlement and rehabilitation of 6147 oustee families spread over in 158 villages in the State of Madhya Pradesh as a consequence of Sardar Sarovar Project. Therefore, the High Court after considering the entire arguments, has come to the conclusion that the Tribunal was considering only the resettlement of the aforesaid oustee families spread over 158 villages in the State of Madhya Pradesh and, therefore, the Tribunal was concerned only with those persons and it did not take in its ambit any other future plan or project.

117. The findings recorded by the High Court read as under:

> "Thus, all the aforesaid directions in the NWDT award were in relation to Sardar Sarovar Project and were not applicable to the displaced families affected by the acquisition of land for Omkareshwar Project."

118. Shri Sanjay Parekh could not point out anything from the award which may be explained or interpreted to suggest that the terms of the award would be applicable to any project to be taken by the State of Madhya Pradesh in the future. More so, the award itself provides for distribution of water among the States and to regulate the amount of water distributed by the Tribunal. Clause 11 thereof dealt with the directions regarding acquisition of submerged land and rehabilitation of persons displaced by Sardar Sarovar Dam. Sub-clause III(1) thereof fastened the total liability of compensation for land acquisition and rehabilitation, etc. on the State of Gujarat, as it reads as under:

> "Gujarat shall pay to Madhya Pradesh and Maharashtra all costs including compensation, charges and expenses incurred by them for or in respect of the compulsory acquisition of lands required to be acquired as aforesaid."

119. Sub-clause IV(1) provides for provisions for rehabilitation and it reads as under:

> "IV(1) According to the present estimates the number of oustee families would be 6147 spread over 158 villages in Madhya Pradesh, 456 families spread over 27 villages in Maharashtra…. Gujarat shall establish rehabilitation villages in Gujarat in the irrigation command of Sardar Sarovar Project on the norms hereinafter mentioned for rehabilitation of the families who are willing to migrate to Gujarat. For oustee families who are unwilling to migrate to Gujarat, Gujarat shall pay to Madhya Pradesh and Maharashtra the cost, charges and expenses for establishment of such villages in their respective territories on the norms as hereinafter provided."

120. Clause XIV thereof, provides for setting up of machinery to implement the decision of the Tribunal. Clause VIII(3) provides for future dams, etc. only to the extent that any further projects in Madhya Pradesh shall not infringe the rights of the States created under the award.

121. Thus, we do not find anything in the award which provides any benefit to the oustees of Omkareshwar Dam or suggests that the award is applicable in the present case also. We do not find any reason to take a contrary view than what has been taken by the High Court on the issue.

Entitlement to land in lieu of submerged land

122. In the instant case, we are concerned with the rights and entitlements of the oustees of the five villages which had already been submerged. In fact, the project has affected the residents of 30 villages. Five villages had already been submerged. Before the High Court, the question arose as to whether the oustees of those five villages which have already been submerged, were entitled to the benefits of the R&R Policy and they had been awarded only the compensation/SRG and the area of these five villages has been submerged during the pendency of litigation before the High Court and this Court. This Court while disposing of Civil Appeals Nos. 2115-16 of 2011 against this very judgment vide order dated 14-5-2008, has issued a large number of directions and also asked the oustees to approach GRA. However, Clause 4 thereof reads as under:

> "The above interim direction will come in the way of the State Government making efforts to provide solution for the land wherever required in terms of its R&R Policy."

123. The High Court decided the issue observing that as submerging of the five villages took place in view of the orders by the courts and the oustees had been paid compensation/SRG and this Court had passed the order not to submerge the remaining 25 villages till the completion of rehabilitation took place, it was not proper for the High Court to direct the respondents to restore the status quo ante for the five villages in issue.

124. There are claims and counterclaims in regard to voluntary acceptance of compensation amount/SRG by the oustees of those five villages. S/Shri R.S. Prasad and P.S. Patwalia, learned Senior Counsel

appearing for the respondents, have relied upon the report of GRA dated 28-4-2007 to show that all those persons have accepted the benefit of SRG and nothing remains to be adjudicated upon.

125. The record does not contain sufficient material to adjudicate upon the factual aspects involved herein. GRA is the best forum to decide the claims of such persons. However, in view of the settled legal proposition that no person should suffer from an act of the court and to ensure that the oustees of the five villages which have already been submerged under the orders of the courts, do not face hostile discrimination at the hands of the authorities; they shall be entitled to the relief to which the other oustees are entitled in Civil Appeals Nos. 2115-16 of 2011. In case, any of the oustees of these five villages is not satisfied with what he has been awarded by the State authorities and he approaches GRA in his personal name and establishes his case, he would be entitled to the relief granted by us in Civil Appeals Nos. 2115-16 of 2011.

Civil Appeals Nos. 2083-2112 of 2011

126. These appeals have arisen out of the impugned order dated 23-9-2009, passed by the High Court of Madhya Pradesh at Jabalpur, in Interlocutory Applications Nos. 4679 and 4804 of 2009 in Writ Petition No. 4457 of 2007, by which the High Court has allowed the said applications and directed the appellants to rehabilitate the oustees so far as the land measuring 284.03 ha in the five villages, namely, Dharadi, Nayapura, Guwadi, Kothmir and Narsinghpura is concerned, and not to withdraw the acquisition proceedings in respect of the said area.

127. S/Shri R.S. Prasad and P.S. Patwalia, learned Senior Counsel appearing on behalf of the appellants, have submitted that the High Court has committed an error by directing the rehabilitation of the occupants of the land in dispute in the said five villages, recording a wrong finding; that as the possession of the land had been taken by the Government the acquisition proceedings cannot be reversed. The land stood vested in the State; the land in dispute would stand submerged actually and, therefore, withdrawal of the acquisition proceedings was not permissible, though the land acquisition proceedings had not been completed and the actual physical possession of the land in dispute has not been taken. The persons/tenure-holders interested are still in possession of their respective lands. Therefore, the appellants have a right, not to acquire the land. Entries in the revenue records after mutation do not confer any title or interest in the property. The land in dispute would not be submerged even temporarily unless the flood situation occurs on backwater level. Therefore, the authorities had taken a decision on 2-4-2009 to abandon the land acquisition proceedings. The land in dispute would be waterlocked unless the height of the road is enhanced. However, considering the cost of rehabilitation as very high, the authorities have taken a decision to raise the level of the road to the extent that no part of the land in dispute would ever be submerged or waterlocked and people residing there or occupying the land would have access to the said land. Therefore, the appeals deserve to be allowed and the impugned order of the High Court is liable to be set aside.

128. On the contrary, Shri Sanjay Parekh, learned counsel appearing for the respondents, has submitted that land stood vested in the State free from all encumbrances as actual physical possession of the land in dispute had been taken in December 2007; tenure-holders thereof stood evicted; not a single tenure-holder is in possession of its holdings today; mutation entries had been made in the revenue records; award had been made by the Land Acquisition Collector; money had been deposited in the treasury by the appellant, as it was not accepted by the oustees for the reason that they wanted rehabilitation rather than compensation or SRG, some people had got the amount of compensation enhanced by filing references under Section 18 of the 1894 Act. Hence, the question of denotifying the said land under Section 48 of the 1894 Act, at this stage does not arise. The appeals are devoid of any merit and are liable to be dismissed.

129. We have considered the rival submissions made by the learned counsel for the parties and perused the record. In the instant case, a huge chunk of land was notified under Section 4 of the 1894 Act in these five villages on 9-11-2007 and 10-11-2007. Section 6 declarations were issued on 20-11-2007, 22-11-2007 and 23-11-2007. Notices under Section 9 were issued on 22-11-2007 and 23-11-2007 and the dates of hearing fixed on 7-12-2007 and 8-12-2007. Awards were made on 20-12-2007, 22-12-2007 and 26-12-2007. Subsequent thereto, a letter was written by NHDC, the company on 3-8-2007 to the Member (Rehabilitation), Narmada Valley Development Authority for approval of land acquisition of these five villages, which reveals that after having surveyed the area, there were certain practical difficulties in raising the level of the roads above BWL in respect of certain areas (land in dispute) because the level of the agricultural lands is lower than BWL. Therefore, the land would be submerged in the backwater submergence and it would require an amount of 11 crores to raise the level of the roads up to BWL. Thus, acquisition of remaining 284.03 ha of land of these five villages was requested to be approved for acquisition.

130. However, it is evident from the letter dated 5-10-2007 of NVDA that the land in dispute measuring 284.03 ha in the said five villages would not be submerged, in fact, it would be waterlocked, as it reads that "some area of a village becoming island or houses surrounded by flood or a village which has become an unviable unit". The acquisition of 284.03 ha of land of five villages was approved and grant of an amount of Rs 550 lakhs was made.

131. By letter dated 2-4-2009, the previous plan was reconsidered in respect of acquiring the said land for five villages considering that the cost of rehabilitation would be much more than raising the level of the road at the cost of 11 crores, which would prevent this area from being waterlocked.

132. Therefore, the case of the State had been that the land in dispute measuring 284.03 ha would not be submerged temporarily or permanently, rather it may at the most become inaccessible at the time of the highest flood situation exceptionally and in case the level of the road is raised, it may work as an embankment and this land would not be submerged. Thus, on this premise, the authorities thought it proper to abandon the acquisition proceedings.

133. The State authorities have pleaded before the High Court by filing a rejoinder-affidavit that the standard practice in the dam projects involving submergence in India as prescribed by the Central Water Commission (CWC) is that all lands and properties or the houses are acquired up to full reservoir level (FRL) and only properties or the houses are acquired above FRL up to the Back Water Level (BWL). The lands above FRL will no doubt be under water up to BWL for a few hours during floods due to backwater and the lands will be benefited due to silting during that period. The land which remains temporarily under water above FRL and up to BWL is not acquired as after a few hours the backwater recedes and the land is available for normal agricultural purposes. The lands about 5 to 10 ft below FRL should also not be acquired as these lands are likely to come out of water by 15th December every year as the water is gradually used from the dam for irrigation and/or power generation. Presently the practice is that the land which remains submerged under water temporarily is generally given on pattas to farmers as it is fit for agricultural purpose.

134. The order of the High Court dated 22-6-2007 in the interim application filed by the respondents reads as under:

> "… The consequence is that the five villages, namely, Gunjari, Paladi, Sailani, Bakhatgarh and Rampura could be affected by the submergence at 189 m and its backwater on account of the closure of the radial and sluice gates of Omkareshwar Dam.
>
> Regarding the other villages, the case of the petitioner as well as the respondents contesting before us is that rehabilitation measures are yet to be completed in these villages and that these villages were not to be submerged at 189 m on account of the closure of the radial and sluice gates of Omkareshwar Dam. We are of the considered opinion that the Court takes up the matter and finally decides the grievance of the petitioner with regard to rehabilitation measures. The respondents should not sever electricity and water supply and demolish public buildings such as schools, etc. in these 25 other villages or take up any coercive step which would force the oustees to leave the villages during the pendency of the writ petition and until the oustees receive all their rehabilitation benefits. We accordingly restrain the respondents from severing electricity and water supplies and demolishing public buildings such as schools, etc. in the other 25 villages and from taking any coercive step which will force the oustees to leave these villages during the pendency of the writ petition or until further orders passed by this Court."

135. So far as the acquisition of land in such a situation is concerned, even the rehabilitation schemes under the NWDT award provided that BWL at the highest flood level in Sardar Sarovar would be worked out by CWC in consultation with the States of Madhya Pradesh and Gujarat. The other relevant part reads specifically "the lands which are to be compulsorily acquired". A reference award made in this case on 4-8-2009 also particularly reveals that "the property acquired under the project will not be covered by water, but after filling of water, it will be difficult for the villagers to reach up

to that level" and the symbolic possession had been taken on 8-12-2007 as is evident from Para 29 of the said award.

136. In the instant case, the issue to be determined is whether it is necessary to acquire this land compulsorily, likely to be submerged temporarily or permanently and also, whether the acquisition proceedings had reached the stage of no return i.e. it cannot be abandoned. Undoubtedly, most of the land in these five villages which was likely to be submerged temporarily and permanently below the FRL plus MWL and land affected by backwater resulting from MWL plus 141.21 m (460 ft) had already been acquired and there is no dispute in respect of the same. The dispute remains only in respect of 284.03 ha of land in these five villages, wherein BWL in exceptional floods, etc. may make the said land waterlocked though it may not be submerged permanently.

137. Whether submergence temporarily for a very short period in an exceptional flood situation, warrants acquisition of the land in dispute?

138. The High Court while dealing with the said applications did not deal with the issue specifically as to whether the possession of the land has actually been taken or even symbolic possession has been taken by the State; as to whether the persons interested have been evicted from the said land; or they have voluntarily abandoned their possession; or they are still in physical possession of the land; or as to whether after being evicted they had illegally encroached upon the land in dispute. A direction has been issued observing as under:

> "The lands in these five villages of the oustees were acquired by notifications issued under the Land Acquisition Act and NVDA has now passed an order on 2-4-2009 saying that the land/property of these five villages shall not be acquired and the action taken till now be dropped as per the provisions of law. ... The respondents, therefore, will have to provide all the rehabilitation benefits to the villagers of the five villages and for the purpose of rehabilitation, the order dated 2-4-2009 of NVDA is of no consequence. The two IAs stand disposed of."

139. The appellants herein have raised an objection that the tenure-holders of the said land are still in actual physical possession and they had never been evicted. However, on behalf of the respondent i.e. Narmada Bachao Andolan, Shri Alok Agrawal, chief activist of the organisation, has filed the counter-affidavit dated 1-2-2010 before this Court, wherein it has specifically been mentioned as under:

> (*a*) The acquired lands/properties of these five villages stood already vested in the State. The State is not competent to withdraw the land acquisition proceedings.
>
> (*b*) The order dated 2-4-2009 as not to acquire the land of the five villages is a nullity and void ab initio because *the possession of the lands has already been taken*. The land has already vested in the State. This may be seen from the judicial orders of the Reference Court, Devas; the land record of the Revenue Authorities of the State Government, the order of the Land Acquisition Officer and the affidavits of the oustees concerned which were placed on record before the said authorities.

(*c*) The order of the Land Acquisition Officer dated 14-8-2008 to the Tahsildar, Bagli District, Devas asking for mutation in favour of NVDA makes it evident that as the land acquisition proceedings in question stood completed and possession of the land had been taken by the State.

(*d*) The order in the mutation proceedings had never been challenged by NVDA and thus, attained finality and it makes it clear that the possession is with NVDA.

(*e*) As per Section 117 of the M.P. Land Revenue Code, the record-of-rights entered in the land records is presumed to be correct, until the contrary is proved.

(*f*) Information received from the Tahsildar, Bagli under the Right to Information Act reads that the lands and houses of these five villages had already been transferred in favour of NVDA.

(*g*) The Reference Court recorded a judicial finding that the possession of land/houses concerned of these villages was taken on 8-12-2007. On this basis, the Reference Court directed the payment of interest on the compensation amount from the recorded date of possession i.e. 8-12-2007 up to the date of payment @ 9% p.a. for one year and 15% p.a. after one year.

(*h*) The oustees of the five villages had filed a large number of affidavits before the authorities/courts concerned stating *that possession of their lands/properties acquired had been taken in December 2007*.

(emphasis added)

140. There are claims and counterclaims regarding "taking possession of the land". It is submitted on behalf of the appellants that symbolic possession in the facts and circumstances of the case does not meet the requirement of law and, therefore, the State has a right to withdraw the acquisition proceedings. On the contrary, the learned counsel appearing for the respondents would submit that taking of actual physical possession of the land is not necessary and taking symbolic possession is enough. More so, such a submission has become merely academic, as the oustees are not in actual physical possession of the land in dispute.

141. The question does arise as to what is the meaning of taking possession—whether it is taking of actual physical possession or symbolic/paper possession which would be sufficient to meet the requirement of law.

142. In *Balwant Narayan Bhagde* v. *M.D. Bhagwat*[77] this Court while dealing with the issue, referred to various provisions of the Code of Civil Procedure, 1908 particularly Order 11 Rules 35, 36, 96 and 97 and came to the conclusion: (SCC p. 707, para 16)

"*16.* … If the property is land over which does not stand any building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the

77 (1976) 1 SCC 700 : AIR 1975 SC 1767

delivery is effected by going upon the land, or in case of resistance, by removing the person resisting unauthorisedly. A different mode of delivery is prescribed in the Code in the rules aforesaid in regard to a building, with which we are not concerned in this case."

In *State of T.N.* v. *Mahalakshmi Ammal*[78] this Court held as under: (SCC p. 272, para 9)

"*9.* … Possession of the acquired land would be taken only by way of a memorandum, panchnama, which is a legally accepted norm."

Similarly, in *Balmokand Khatri Educational & Industrial Trust* v. *State of Punjab*[79], this Court held as under: (SCC p. 215, para 4)

"*4.* … It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. *The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession* of the land."

(emphasis supplied)

143. In *P.K. Kalburqi* v. *State of Karnataka*[80], this Court held that if the land is vacant and unoccupied, taking symbolic possession by the State Government would amount to taking possession. In the said case, in spite of the fact that symbolic possession of the vacant land had been taken, the Hon'ble Minister directed the issuance of a notification under Section 48 of the 1894 Act on the basis of his understanding of the law that symbolic possession did not amount to actual possession and that the power to withdraw from acquisition could be exercised at any time before the actual possession was taken. This Court has held as under: (*P.K. Kalburqi case*[80], SCC p. 491, para 6)

"*6.* … There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. In the instant case the lands of which possession was sought to be taken were unoccupied, in the sense that there was no crop or structure standing thereon. In such a case only symbolic possession could be taken … such possession would amount to vesting the land in the Government."

144. In *NTPC Ltd.* v. *Mahesh Dutta*[81], after resorting to the urgency clauses under Section 17 of the 1894 Act, a possession certificate had been issued on behalf of the Collector, Ghaziabad on 16-11-1984 making it evident that possession of lands in question therein, had been taken. After making of the award under Section 11 in some cases, references under Section 18 of the 1894 Act had also been decided by the District Judge, Ghaziabad, vide order dated 12-10-1993 and persons aggrieved approached the Allahabad High Court for enhancement of compensation. It was at this

78 (1996) 7 SCC 269
79 (1996) 4 SCC 212
80 (2005) 12 SCC 489
81 (2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375

stage that NTPC Ltd. realised that it would not be possible for certain reasons for it to have the power plant on the land under acquisition and site thereof should be shifted. Thus, inter alia on the premise that possession of the entire land notified under Section 4 of the 1894 Act had not been taken, the State of U.P. issued a Notification dated 11-11-1994 under Section 48 of the 1894 Act, denotifying the land. The said notification was challenged by the "persons interested" therein by filing a writ petition before the High Court. The writ petition was allowed by the High Court holding that mere symbolic possession was enough to meet the requirement of taking possession under Section 16 of the 1894 Act and on taking such symbolic possession, the land vested in the State free from all encumbrances could not be divested. This Court held that taking over of possession in terms of the *provisions of the Act would, however, mean actual possession and not symbolic possession*.

145. The Court further observed: (*Mahesh Dutta case*[81], SCC pp. 351 & 357, paras 27 & 44)

> "*27.* When possession is to be taken over in respect of the fallow or patit land, a mere intention to do so may not be enough. … *If the lands in question are agricultural lands, not only actual physical possession had to be taken* but also they were required to be properly demarcated. …
>
> * * *
>
> *44. … The burden of proof could be discharged only by adducing clear and cogent evidence*." (emphasis added)

146. In this regard, it may also be pertinent to deal with the mutation proceedings heavily relied upon by Respondent 1. Mutation proceedings are much more in the nature of fiscal inquiries. "Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered, to pay the land revenue in question." (Vide *Nirman Singh* v. *Lal Rudra Pratab Narain Singh*[82], *Sawarni* v. *Inder Kaur*[83], SCC p. 227, para 7, *R.V.E. Venkatachala Gounder* v. *Arulmigu Viswesaraswami & V.P. Temple*[84] and *Suman Verma* v. *Union of India*[85].) Therefore, entries in the revenue record are of no assistance to determine the present controversy.

147. In view of the above, law on the issue can be summarised to the effect that no straitjacket formula can be laid down for taking the possession of the land for the purpose of Sections 16 and 17 of the 1894 Act. It would depend upon the facts of an individual case. In case the land is fallow and barren and does not have any structure or crop on it, symbolic possession may meet the requirement of law. However, this would not be the position in case crop is standing on the land or a kachha or pucca structure has been raised on such land. In that case, actual physical possession is required to be

81 *NTPC Ltd.* v. *Mahesh Dutta*, (2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375
82 (1925-26) 53 IA 220 : AIR 1926 PC 100
83 (1996) 6 SCC 223 : AIR 1996 SC 2823
84 (2003) 8 SCC 752 : AIR 2003 SC 4548
85 (2004) 12 SCC 58

taken. There may be a case where the acquiring authority is in possession of the land, as the same has already been requisitioned under any law or the property is in possession of a tenant, in such a case symbolic possession qua the tenure-holder would be sufficient.

148. In the instant case, in view of the fact that land in dispute is an agricultural land and has 167 dwelling houses, law in fact requires taking over the actual physical possession. Respondent 1 has asserted that the tenure-holders are not in possession of the said land. We considered it proper to appoint a Commissioner and to have his report. Thus, vide order dated 24-2-2011, this Court requested the District Judge, Indore to have an inspection of the lands in dispute in the five villages and submit the report as to who is in actual physical possession of the same.

149. In pursuance of our direction dated 24-2-2011, Shri M.K. Mudgal, learned District and Sessions Judge, Indore (M.P.) has submitted a detailed report after having conducted spot inspections and examining all the tenure-holders in respect of the land in dispute in the presence of Shri Alok Agrawal, chief activist of the Narmada Bachao Andolan (who remained present in this Court throughout the proceedings also and had been instructing the learned counsel for the said party) and recorded the following findings of fact:

(*1*) So far as the land in dispute in Villages Dharadi, Guadi, Kothmir, Nayapura and Narsinghpura, having an area of 284.03 ha is concerned, the original tenure-holders are in actual physical possession.

(*2*) The bhumiswamis (tenure-holders) had sown the crops on the said land.

(*3*) They have admitted that they had been sowing the crops even after acquisition proceedings.

(*4*) The tenure-holders are in possession of the acquired land on the ground that they had still not been rehabilitated as per the scheme of the State Government. Therefore, they are compelled to continue growing the crops and also using the other parts of the land for habitation.

(*5*) They are in possession of their respective lands already acquired as they have not yet been offered the land in lieu of the land so acquired and they would make a shift from the acquired land after compliance with the said obligation by the State.

The report concludes as under:

"Therefore, on the spot inspection and the recorded evidence, there is no doubt in my mind to conclude that the standing crops have been sown by the former bhumiswamis and the acquired lands of the five villages in question are actually in possession of the former bhumiswamis even now. It has also got to be deduced further *that NVDA has never been in possession of* the aforesaid lands since the acquisition of the same."

(emphasis added)

150. We have seen the DVDs and CDs of the videos prepared during the time of inspection by the District Judge, Indore in the presence of hundreds of tenure-holders and officials. It is evident from the same that the tenure-holders identified their land in presence of Shri Alok Agrawal, the social activist. The entire land is having wheat, cotton, maize and millet crops. The said tenure-holders have admitted that they had been cultivating the land for last several years and they had never been dispossessed from the land in dispute by the State. Shri Agrawal had been shown advancing legal submissions before the District Judge, Indore, justifying why the original tenure-holders are still in actual/physical possession of the land.

151. The District Judge, Indore, has recorded the statements of all the tenure-holders. For example, we quote the statement of one Shri Devi Singh s/o Pahar Singh, r/o Village Nayapura, Post Ratanpur, Tehsil Bagli, District Devas, Madhya Pradesh. The same reads as under:

> 1. My land is in Village Nayapura. The land is in Shamlati, its area is approximately twenty acres. The said land is affected by Omkareshwar Dam Project. On 8-12-2007, the then Land Acquisition Officer, Shri Chaturvedi came to Village Nayapura, gathered the farmers together and informed them along with me that the land no longer belongs to any of us and it has now become the State Government's land and the possession of the said land was with the State. At that time, the land was vacant.
>
> 2. From that day onward, the Government has not been collecting land revenue for the said land and the society concerned has stopped extending the facilities of providing seeds and fertilisers. I along with other farmers have submitted an affidavit in this regard in the High Court at Jabalpur. Under the Resettlement and Rehabilitation Scheme, we were supposed to get land in lieu of the land acquired. We had been shown land in Village Khorda, Tehsil Harsud, but some other people had already encroached upon some of that land and some of it was grazing land which was unfit for agriculture. That is why we have not taken the land that was offered to us.
>
> 3. We have not yet been given land as under the Rehabilitation Policy, that is why we are cultivating the acquired land. At present our crop is standing on the site. As soon as we get land under the Rehabilitation Policy, we will vacate possession of the acquired land.
>
> 4. Yesterday, my land was inspected by the District Judge, Indore. My crops were found to be standing at the site, which was taken on record and witnessed by me.
>
> The record was read aloud to the deponent and he agreed that it was correct.
>
> Signed at my instruction
> sd/-
> (M.K. Mudgal)

152. In view of the above, it becomes crystal clear that none of the tenure-holders, so far the land in dispute is concerned, has been evicted/dispossessed. All the tenure-holders are enjoying the said land without any interference. The tall claims made by the respondents before the High Court were totally false. The High Court was not justified in entertaining their applications in this regard, without verifying the factual aspects. In such a fact situation, as the actual physical possession has not yet been taken by the authorities and the entries in the revenue records, etc. are not the conclusive proof, therefore, the State Government is competent to exercise its power under Section 48 of the 1894 Act. However, it will be subject to the decision on another relevant issue regarding submergence of the land in dispute permanently or temporarily which is to be considered hereinafter.

153. Before adverting to the next issue, it is desirable to deal with the conduct of NBA. The question is not of justification of the tenure-holders to retain possession of the land, rather it had emphatically been argued by Shri Sanjay Parekh, learned counsel appearing for the said respondent applicant, that powers under Section 48 of the 1894 Act could not be resorted to because the tenure-holders had already been physically dispossessed and the land stood vested in the State. Therefore, the same could not be divested.

154. The matter was argued by Shri Sanjay Parekh at great length to impress upon the Court that the tenure-holders had been actually dispossessed long ago. This fact was denied by the State. It was only after considering the rival submissions on behalf of the parties that this Court thought it fit and appropriate to have a spot inspection report and then the District Judge, Indore, was asked to make a local inspection and submit the report. The report has been made after making an inspection of the area and recording statements of the tenure-holders in the presence of Shri Alok Agrawal, chief activist of NBA and thus, we accept the same. It is evident from the said report that statements made by the said respondent applicant in the Court, in this regard are factually incorrect and false. The Court has been entertaining this petition under the bona fide belief that NBA was espousing the grievance of inarticulate and illiterate poor farmers with all sincerity and thus, would not make any misleading statement. However, our belief stands fully belied. The respondent applicant made pleadings and advanced arguments without any basis only to secure unwarranted benefits to those tenure-holders. In the instant case it stands discredited totally in the eyes of this Court. This Court had been a little careful and cautious in this regard, which has exposed the true picture.

155. In such a fact situation, NBA not having personal interest in the case, cannot claim to be *dominus litis*. Thus, it ought to have acted at every stage with full sense of responsibility and sincerity. Earlier also, this Court in *Narmada Bachao Andolan* v. *Union of India*[86], has disapproved the conduct

86 (1998) 5 SCC 586

of Narmada Bachao Andolan and described it to be most unfortunate that it had celebrated the 4th anniversary of the stoppage of work of the dam under the interim orders of the Court. This Court found it to be an obstruction in the way of implementing the R&R Policy. However, at that time this Court was assured by the said NBA that they "shall not directly or indirectly give any cause for concern by this Court". But, in our opinion, it has not been able to keep its solemn undertaking given to this Court.

Public interest litigation

156. It has often been stated that PIL jurisdiction should be exercised cautiously in matters that primarily require the attention of the democratic process, or the State or those issues whose crevices and complexities the court may not easily unravel, and comparatively generously in cases involving public interest of sections of people for whom the administration of justice and its reach are not effective and the rights delivery processes, are shown to be weakened by power and influence. (Vide *R&M Trust* v. *Koramangala Residents Vigilance Group*[87].)

157. Where the cause of action is genuinely in the general public interest, the court will relax the requirement of bona fides and appoint an amicus curiae to deal with the matter and keep the matter out of the power of the original applicant. [Vide *Holicow Pictures (P) Ltd.* v. *Prem Chandra Mishra*[88] and *A. Abdul Farook*[11].]

158. The "rights" of the public interest litigant in a PIL are always subordinate to the "interests" of those for whose benefit the action is brought. The status of *dominus litis* could not be conferred unreflectively or for the asking on a PIL petitioner as that would render the proceedings "vulnerable to and susceptible of a new dimension which might, in conceivable cases be used by persons for personal ends resulting in prejudice to the public weal". (Vide *Sheela Barse* v. *Union of India*[89], SCC p. 243, para 26.)

159. The standard of expectation of civic responsibility required of a petitioner in a PIL is higher than that of an applicant who strives to realise personal ends. The courts expect a public interest litigant to discharge high standards of responsibility. Negligent use or use for oblique motives is extraneous to the PIL process for were the litigant to act for other oblique considerations, the application will be rejected at the threshold. Measuring the "seriousness" of the PIL petitioner and to see whether she/he is actually a "champion" of the cause of the individual or the group being represented, is the responsibility of the court, to ensure that the party's procedural behaviour remains that of an adequate "champion" of the public cause. [Vide

87 (2005) 3 SCC 91 : AIR 2005 SC 894
88 (2007) 14 SCC 281 : AIR 2008 SC 913
11 *A. Abdul Farook* v. *Municipal Council, Perambalur*, (2009) 15 SCC 351
89 (1988) 4 SCC 226 : AIR 1988 SC 2211

Janata Dal v. *H.S. Chowdhary*[90], *Kapila Hingorani (1)* v. *State of Bihar*[91] and *Kushum Lata* v. *Union of India*[92].]

160. The constitutional courts have time and again reiterated that abuse of the noble concept of PIL is increasing day by day and to curb this abuse there should be explicit and broad guidelines for entertaining the petitions as PILs. This Court in *State of Uttaranchal* v. *Balwant Singh Chaufal*[93] has given a set of illustrative guidelines, inter alia:

(*i*) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(*ii*) The court should also ensure that there is no oblique motive behind filing the public interest litigation, etc. etc.

Therefore, while dealing with PIL, the Court has to be vigilant and it must ensure that the forum of the Court be neither abused nor used to achieve an oblique purpose.

Misleading statement amounts to criminal contempt

161. A person seeking relief in public interest should approach the court of equity, not only with clean hands but also with a clean mind, clean heart and clean objective. Thus, he who seeks equity must do equity. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem*, means that it is a law of nature that one should not be enriched by the loss or injury to another. The judicial process should never become an instrument of oppression or abuse or means to subvert justice.

162. "The interest of justice and public interest coalesce. They are very often one and the same." Therefore, the courts have to weigh the public interest vis-à-vis the private interest. A petition containing misleading and inaccurate statement(s), if filed, to achieve an ulterior purpose, amounts to an abuse of the process of the court and such a litigant is not required to be dealt with lightly. Thus, a litigant is bound to make "full and true disclosure of facts". The court is not a forum to achieve an oblique purpose.

163. Whenever the court comes to the conclusion that the process of the court is being abused, the court would be justified in refusing to proceed further with the matter. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of the court by deceiving it. However, the concealed fact must be a material one in the sense that had it not been suppressed, it would have an effect on the merit of the case/order. The legal maxim *jus ex injuria non oritur* means that a right cannot arise out of a wrongdoing, and it becomes applicable in a case like this. [Vide *Ramjas Foundation* v. *Union of India*[94], *Noorduddin* v. *Dr. K.L. Anand*[95],

90 (1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892
91 (2003) 6 SCC 1
92 (2006) 6 SCC 180
93 (2010) 3 SCC 402 : (2010) 1 SCC (L&S) 807 : (2010) 2 SCC (Cri) 81
94 1993 Supp (2) SCC 20 : AIR 1993 SC 852
95 (1995) 1 SCC 242

Ramniklal N. Bhutta v. *State of Maharashtra*[96], *Sabia Khan* v. *State of U.P.*[97], *S.J.S. Business Enterprises (P) Ltd.* v. *State of Bihar*[98] and *Union of India* v. *Shantiranjan Sarkar*[99].]

164. It is a settled proposition of law that a false statement made in the court or in the pleadings, intentionally to mislead the court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court, for the reason that causing an obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity". (Vide *Naraindas* v. *Govt. of M.P.*[100], *Advocate General, State of Bihar* v. *M.P. Khair Industries*[101] and *Afzal* v. *State of Haryana*[102].)

165. In *K.D. Sharma* v. *SAIL*[103] this Court held that: (SCC p. 492, para 34)

> "*34.* … Prerogative writs … are issued for doing substantial justice. It is, therefore, of *utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything* and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or *the petitioner is guilty of misleading the court*, his petition may be dismissed at the threshold without considering the merits of the claim." (emphasis added)

166. While deciding the said case this Court relied upon the leading case of *R.* v. *Kensington Income Tax Commissioners*[104], wherein it had been observed as under: (KB p. 514)

> "… when an applicant comes to the court to obtain relief on an ex parte statement he should make *a full and fair disclosure of all the material facts*—[it says] facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But *it knows nothing about the facts*, and the *applicant must state fully and fairly the facts*, and the penalty by which the court enforces that obligation is that *if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement*." (emphasis supplied)

96 (1997) 1 SCC 134 : AIR 1997 SC 1236
97 (1999) 1 SCC 273
98 (2004) 7 SCC 166
99 (2009) 3 SCC 90 : (2009) 1 SCC (L&S) 575
100 (1975) 3 SCC 31 : 1974 SCC (Cri) 727 : AIR 1974 SC 1252
101 (1980) 3 SCC 311 : 1980 SCC (Cri) 688 : AIR 1980 SC 946
102 (1996) 7 SCC 397 : 1996 SCC (Cri) 424
103 (2008) 12 SCC 481
104 (1917) 1 KB 486 (CA)

* * *

"*36.* … If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone…. *The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.*"* (emphasis supplied)

167. In such a case the person who suppresses the material facts from the court is guilty of *suppressio veri* and *suggestio falsi* i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud.

168. In view of the above, we reach the inescapable conclusion that NBA has not acted with a sense of responsibility and so far succeeded in securing favourable orders by misleading the Court. Such conduct cannot be approved. However, in a PIL, the Court has to strike a balance between the interests of the parties. The Court has to take into consideration the pitiable condition of the oustees, their poverty, inarticulateness, illiteracy, extent of backwardness, unawareness also. It is desirable that in future the Court must view any presentation by NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and in case it has any doubt, refuse to entertain NBA. However, considering the interests of the oustees, it may be desirable that the Court may appoint an amicus curiae to present their cause, if such a contingency arises.

169. In view of the above, we are of the considered opinion that no order is required on IAs Nos. 196-210, 211-25 and 241-55 of 2011 filed under Section 340 of the Code of Criminal Procedure, 1973, by both the parties, as dealing with the said applications would not serve any purpose. More so, IAs Nos. 226-40 of 2011 were filed for modification of the order dated 5-4-2011. Thus, all the said IAs stand disposed of.

170. In view of the serious controversy raised in these appeals, this Court vide order dated 24-2-2011, requested CWC to make a local inspection and submit its report as to whether the land measuring 284.03 ha in these five villages, would be submerged temporarily or permanently or merely waterlocked. In pursuance of the aforesaid order, CWC after having spot inspection submitted its report dated 22-3-2011. The relevant part thereof reads as under:

(*i*) *Village Kothmir:* * * *

"115.53 ha area (under reference) of this village falls between FRL and BWL. This will come under temporary submergence when water level exceeds FRL (196.60 m)."

(*ii*) *Village Narsinghpura:* * * *

"Out of the total 21.58 ha area (under reference) of this village, 19.30 ha falls between FRL and BWL and will come under temporary submergence when water level is between FRL (196.60 m) and BWL."

* **Ed.**: This extract is quoted from *K.D. Sharma case*, (2008) 12 SCC 481, SCC p. 492, para 36.

(*iii*) *Village Dharadi:* * * *

"The 103.09 ha area of the village (under reference) falls between FRL and BWL, which will come under temporary submergence when water level exceeds FRL (196.60m)."

(*iv*) *Village Nayapura:* * * *

"The 33.83 ha land (under reference) of the village falls between FRL and BWL which will come under temporary submergence when water level exceeds FRL (196.60 m)."

(*v*) *Village Guwadi:* * * *

"The 10.00 ha land (under reference) of village falls between FRL and BWL, which will come under temporary submergence when water level exceeds FRL (196.60m)."

(*vi*) *Conclusion of the Committee:* Out of the total land—subject-matter of dispute admeasuring 284.03 ha in the aforesaid five villages, 281.75 ha falls between FRL and BWL, which will come under temporary submergence due to backwater effect. The remaining 2.28 ha area will not come under submergence due to backwater levels when water levels are up to BWL.

171. The parties were given copies of the report and asked to submit their objections, if any. In response to the said order, the parties submitted their comments/objection to the report submitted by CWC.

172. The State Government has submitted that the report suggested that 2.28 ha of the area will never be submerged even when water levels are up to BWL. However, the remaining area of 281.75 ha falls between FRL and BWL, would be under temporary submergence due to backwater effect. In such a fact situation, the CWC Guidelines of 1997 provide that MWL at the dam site during maximum flood and BWL is the corresponding flood level at maximum flood in the pondage area. Hence, when MWL occurs at the dam site, BWL will occur simultaneously in the vicinity of the reservoir further upstream. In such a case, agricultural land affected by backwater is not acquired in a dam project, as that land is submerged only temporarily during floods hardly for 2-3 days which may occur rarely, once in a period of 1000 years. Rather the land is benefited due to silting during floods and is available for cultivation after the temporary flood recedes. The guidelines issued by CWC had been adopted by the State that agricultural land temporarily coming under submergence between FRL and BWL need not be acquired. However, houses in the temporary submergence area must be acquired. In order to fortify its stand, the State Government had quoted Para 6.2.3 of the Guidelines for Preparation of Project Estimates for River Valley Projects of CWC, March 1997. Further, the State has placed reliance on Clause XI-II(2) of the NWDT award, which also provides for the same.

173. It has further been submitted by Shri Ravi Shankar Prasad, learned Senior Counsel appearing for the State that all the dwelling structures which are 167 in number would be acquired positively in terms of the R&R Policy and in spite of the fact that the agricultural land would not be acquired, the

benefits provided under the R&R Policy shall be granted to all such oustees who fulfil the requirement of the provisions of Clause 1.1 which defines the "displaced person" under the R&R Policy and such a course will be in consonance with the guidelines issued by CWC. In view thereof, it has been submitted that as per the CWC Guidelines, only the land covered by structures must be acquired and not the entire land. Therefore, the report of CWC should be accepted with this understanding and clarification.

174. On the other hand, Narmada Bachao Andolan—the writ petitioner, has submitted that the report does not require any further explanation, there are 167 houses situated on the lands concerned of these five villages which are bound to be acquired. The remaining entire land has to be acquired in view of the decision taken by NVDA in its 144th meeting dated 5-10-2007, wherein it was resolved that it was necessary to acquire the land in dispute and subsequent decisions taken by the parties, particularly, dated 25-3-2009 and 2-4-2009, are arbitrary, mala fide and unconstitutional. Under the R&R Policy, even any land temporary submerged is bound to be acquired. In support of such a contention, reliance has been placed on the definition of "displaced person" contained in Clause 1.1 of the R&R Policy which speaks of the person whose land is likely to come under submergence whether temporarily or permanently. Further, reliance has also been placed upon the judgment of this Court in *Narmada Bachao Andolan (2)*[14] providing for the same and in view thereof, it has been submitted that the land is to be compulsorily acquired.

175. An extract from the Guidelines for Preparation of Project Estimates for River Valley Projects of CWC, March 1997 is reproduced below:

> "6.2.3. * * *
>
> Generally acquisition may be done up to FRL only. The area between FRL and MWL may be acquired only if the submerged land is fertile and the duration of submergence beyond FRL up to MWL is long enough to cause damage to crops i.e. over 15 days duration. (For acquisition of land the effect of backwater need not be taken into consideration.)
>
> * * *
>
> All structures coming under submergence between FRL and MWL should be acquired. If the structures coming under submersion are of religious or archaeological interest, provision must be made for re-establishing these structures above MWL."

176. Clause XI-II(2) of the NWDT award for Sardar Sarovar Project reads as under:

> "Madhya Pradesh and Maharashtra shall also acquire for Sardar Sarovar Project under the provision of the Land Acquisition Act, 1894, all buildings with their appurtenant land situated between FRL + 138.63 m (455') and MWL + 141.21 m (460') as also those affected by the backwater effect resulting from MWL = 141.21 m (460')."

14 *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32

177. Reasons for not acquiring land between FRL and BWL (MWL at dam site):

"(*i*) The CWC Guidelines, 1997 and Clause XI-II(2) of the NWDTA provision mentioned above clearly states that the agricultural land affected by BWL is not acquired in a dam project as a policy matter.

(*ii*) It will submerge only temporarily during maximum flood once in 1000 years.

(*iii*) The land gets benefited due to silting during flood and will be available for cultivation after flood recedes. It becomes more fertile.

(*iv*) The land gets only submerged temporarily in BWC due to flood (once in 1000 years) and should not be left unused. It will be a national loss.

(*v*) The land may get encroached if it is acquired and left without use as it is very fertile.

(*vi*) * * *"

178. In *Narmada Bachao Andolan (2)*[14], the Court has placed reliance upon the report of the Narmada Control Authority (NCA), dealing with the NWDT award, wherein it has been mentioned as under: (SCC pp. 48-49, paras 47 & 50)

"*47.* The award, as noticed hereinbefore, contained two sub-clauses relating to the directions on the State Government for compulsory acquisition of the land by the States of Madhya Pradesh and Maharashtra under the provisions of the Land Acquisition Act. This obligation on the part of the State to acquire land is, thus, neither in doubt nor in dispute. The additional directions are that those persons whose 75% or more land of a continuous holding is required to be compulsorily acquired, will have an option to compel compulsory acquisition of the entire contiguous holding; *and acquisition of buildings with their appurtenant land situated between FRL + 138.68 m (455') and MWL + 141.21 (460') as also those affected by the backwater effect resulting from MWL + 1451.21 m.* The submergence due to maximum water level and backwater would take place only after it reaches full height.

* * *

50. …

"Further, it was decided as per decision in the last meeting of the subgroup that all possible arrangements for R&R should be made by the State Governments concerned. For completing the same in all respects both in regard to oustees affected by the permanent as well as temporary submergence six months ahead from submergence. Actual allotment of land, house plot and payment of compensation, etc. and not merely offer of such facilities as per the R&R package should be made in respect of all PAFs (both categories of affected by permanent and temporary submergence) except in the case of

14 *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32

hardcore PAFs who refuse to accept the package and unwilling to shift.

* * *

Temporary submergence even for a short period can affect the oustees badly and it is desirable to keep this in mind while rehabilitating the oustees.' " (emphasis supplied)

179. If we read the abovereferred to provisions of the R&R Policy, findings in the NWDT award, project report prepared by CWC in March 1997 and observations made in *Narmada Bachao Andolan (2)*[14] and analyse it properly, the following picture emerges:

(*i*) In case the land/dwelling unit of the tenure-holder is submerged temporarily, he is entitled for the benefit of the R&R Policy;

(*ii*) In case of temporary submergence of the agricultural land between FLR and MWL and those affected by the backwater affect resulting from MWL, only the buildings with their appurtenant land would be acquired. But the agricultural land is not to be acquired; and

(*iii*) In case, the dwelling units are acquired because of temporary submergence, such persons shall be entitled for the benefits under the R&R Policy.

180. We have not only considered the rival submissions made by the learned counsel for the parties but in view of the fact that the matter is extremely technical, we requested CWC to depute Mr U.K. Ghosh, Chief Engineer (NDA-CWC), who had been the Chairman of the Committee, to render assistance as the Court wanted certain explanation/clarification from his team, thus called them in the Chambers on 27-4-2011 and again on 5-5-2011. We discussed various aspects of the report and objections filed by the parties. They have explained the concept of BWL and dam overtopping as under:

BWL: BWL in the upstream of a dam is formed by incoming flood while passing through the reservoir created by artificial obstruction in a river channel by construction of an weir or a dam.

Dam overtopping: Dam overtopping implies water flow over the dam top. Flow of water over the dam top may occur due to:

(*a*) Increase in water level in the reservoir higher than the top level of the dam due to an inflow volume greater than the project design flood, due to underestimation of the same at the time of project planning and design.

(*b*) Mechanical failure in reservoir operation or due to human negligence.

181. On the main issue as to whether the land in dispute is to be acquired or not, the relevant part of their written opinion dated 6-5-2011 reads as under:

"As per yearwise record of maximum flood discharge at Omkareshwar Dam, since 1951 up to 2003 (53 years), the flood discharge never exceeded the design spillway capacity of 69,000 cumecs.

14 *Narmada Bachao Andolan* v. *Union of India*, (2005) 4 SCC 32

The statement of yearwise maximum floor discharge is enclosed at Annexure I. From the standard project flood (SPF) hydrograph, as adopted for working out the backwater level in the Omkareshwar reservoir, it is noted that duration of flood magnitude above design spillway capacity at FRL is about two days only. Therefore, during monsoon season temporary submergence due to backwater effect above FRL will not be more than 4 to 5 days.

In respect of non-monsoon period it is to mention that there will be daily regulated release from both Indira Sagar Dam in the upstream of Omkareshwar Dam as well as from Omkareshwar Dam itself for power generation and other commitments. The reservoir level at Omkareshwar Dam is likely to be maintained within FRL by suitable reservoir operation at all times during the non-monsoon period.

In the present case, the disputed land admeasuring 284.03 ha between FRL and BWL comes under temporary submergence for a duration of less than 15 days when a flood of SPF magnitude, which is 1 in 1000 years return period flood for this project impinges the reservoir at FRL. Therefore, keeping in view all the above points given in Para 2(*i*) to Para 2(*iv*), the Committee is of the view that the agricultural lands within FRL and BWL *need not be acquired* as per the Guidelines for Preparation of Project, Estimates for River Valley Projects prepared by the Central Water Commission in March 1997." (emphasis added)

182. In view of the expert opinions rendered by CWC and other materials on record, we reach the inescapable conclusion that the agricultural land of these five villages is not to be acquired as it may only be under temporary submergence for a very short period, which occurs throughout the country during floods in monsoon. Such a submergence is always beneficial to agricultural produce as the land gets enriched due to silting during the flood and becomes more fertile. More so, such an acquisition is not in the interest of the State as the land cannot be put to any use whatsoever, and there is a possibility that such land would be encroached upon by unscrupulous elements.

Conclusions/Result

(*i*) *Civil Appeals Nos. 2115-16 of 2011 filed by the State of M.P. and NHDC*

183. These appeals involved two issues, namely, (*i*) allotment of land in lieu of land acquired; and (*ii*) entitlement of major son to get the allotment of land as a separate family. So far as the first issue is concerned, in respect of the same, we hold that in view of the provisions contained in the R&R Policy, the State authorities are under an obligation to allot the land to the oustees "as far as possible". In case an oustee has not accepted the compensation/SRG or has any grievance in respect of area/quality/location of land allotted or for any other entitlement, he may approach GRA and GRA will adjudicate upon the issue and pass an appropriate order in individual cases after giving an opportunity of hearing to all the parties concerned. Needless to say, the person aggrieved by the order of GRA shall be entitled to

approach the High Court for appropriate relief. However, in case of private person, the application/petition would be in the name of that individual person duly supported by his affidavit. So far as the issue of entitlement of major son for allotment of land as a separate family is concerned, our conclusion is in the negative. In other words, there is no such entitlement.

(ii) Civil Appeal No. 2082 of 2011 filed by NBA

184. This appeal involved three issues, namely, (*i*) entitlement of land to the landless labourers; (*ii*) applicability of the NWDT award in Omkareshwar Dam Project; and (*iii*) entitlement of allotment of land to the oustees of five villages already submerged. Our conclusion in respect of Issues (*i*) & (*ii*) is in the negative. However, on Issue (*iii*), the oustees shall be entitled for the relief as given to the oustees on Issue (*i*) in Civil Appeals Nos. 2115-16 of 2011.

(iii) Civil Appeals Nos. 2083-97 of 2011 and 2098-2112 of 2011

185. These appeals have been preferred by the State of M.P. and NHDC in respect of acquisition of land of five villages, wherein the State wants to withdraw the acquisition proceedings. Our conclusion is that in the fact situation of the case, the State is entitled to abandon the land acquisition proceedings in exercise of its power under Section 48 of the 1894 Act. However, it shall not apply to 167 dwelling units on the said land. Such persons whose dwelling units are acquired shall be entitled to the benefit of the R&R Policy to the extent provided therein. The State shall establish the roads, etc. after raising the height of the bandh as proposed by the authorities.

(iv) IAs Nos. 196-210, 211-25, 241-55 and 226-40 of 2011

186. IAs Nos. 196-210, 211-25, 241-55 and 226-40 of 2011 filed by both the parties under Section 340 CrPC, do not require to be dealt with in view of our observations made in para 169 of this judgment.

187. All the appeals and IAs stand disposed of accordingly. No order as to costs.

188. We have been given to understand that on Narmada River, in the State of Madhya Pradesh, in all 29 major and minor projects are contemplated. Some of them have already been completed, but on account of stay order by the court/authority some projects could not be completed. It is unfortunate that in spite of the fact that a huge amount has been spent, yet no one is able to reap the fruits of investment. The State should take immediate steps to get the final verdict in such cases or stay vacated and start the project at the earliest.

189. Before parting with the case, we record our deep appreciation for the assistance rendered to this Court by Shri M.K. Mudgal, learned District Judge, Indore and officials of CWC, particularly Shri U.K. Ghosh, Chief Engineer (NBP), CWC; Shri M.P. Singh, Director (FCA), CWC; and Shri D.P. Singh, Director (ND&HW), CWC, New Delhi.

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2023 SCC OnLine NGT 404

In the National Green Tribunal[1]

(Before Prakash Shrivastava, Chairperson, Sudhir Agarwal, Member (Judicial) and A. Senthil Vel, Expert Member)

Vijay Kumar ... Applicant(s);

Versus

State of Uttar Pradesh ... Respondent(s).

Original Application No. 260/2023

Decided on November 1, 2023, [Reserved on: October 11, 2023]

Advocates who appeared in this case:

Dr. Vijay Kumar, applicant in person for Applicant(s);

Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB (Through VC) for Respondent(s).

The Judgment of the Court was delivered by

Sudhir Agarwal, Member (Judicial):— This Tribunal *suo-moto* took cognizance of letter dated 06.01.2023 sent by Dr. Vijay Kumar, resident of Harola, Sector-5, District-Noida, State of Uttar Pradesh and treated the said letter to be a Petition and registered it as present Original Application (hereinafter referred to as 'OA') under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010').

2. The complaint made by Dr. Vijay Kumar is that there is a paper mill namely, Sandeep Paper Mills at A-20, Udhyog Marg, Sector-6, Noida, located just a few kilometers away from River Yamuna and adjacent to Villages Harola, Nayabans, Attta and Jhundpura and Sectors -5 to 12, 14, 15, 15 A and 44 of Noida. The industrial unit is located in the heart of city and near New Okhla Industrial Development Authority (hereinafter referred to as 'NOIDA') Office and Uttar Pradesh Pollution Control Board (hereinafter referred to as 'UPPCB') Office. It is largely responsible for release of all kinds of chemicals which have debilitating effects on health of everyone living in this area. There are several villages in Sectors around this hazardous industry and the effluents released by the industrial unit emits obnoxious smell causing several respiratory diseases to the residents. Elderly people and school going children are facing adverse health problems. Complainant has personally seen lot of waste material like rubber, plastic, gatta etc. used by the said industrial unit. It has piled up huge mountains of the above kind of waste on one of the gate of the industry just opposite to the village. The industry releases very harmful chemical in air through

one big chimney and emits black smoke. Residents always found black kind of substance on their clothes, terraces and in the morning on their cars. The noise caused by the industry disturb the peace of the residents in day and night both. All deadly effluents including in the waste materials are being used for burning the burner to make paper for the industry. It is effecting health of nearby residents and playing with future generation. Economic benefit of the industrial unit cannot be more important than the health of thousands of people living around the industrial unit. Residents are facing serious health problems including drinking water problems. Many residents are admitted in the hospitals for respiratory and other problems like Cancer, and kidney diseases etc. UPPCB must take reports of source of air emissions/ambient air quality, effluent samples report as well as underground water sample test.

3. Tribunal's order dater 25.05.2023: Considering the complaint *ex-facie*, Tribunal, vide order dated 25.05.2023, observed that a substantial question relating to environment due to implementation of Scheduled Enactments under NGT Act, 2010 has arisen but since the allegations were not supported with any material, whatsoever, except a few photographs which were also not very clear to support the serious allegations made in the complaint, a Joint Committee was constituted by Tribunal comprising UPPCB, Central Pollution Control Board (hereinafter referred to as 'CPCB') and District Magistrate, Gautam Budh Nagar to obtain a factual report. Committee was directed to visit the site, collect relevant information and submit factual Report particularly, covering the aspect of Consent, compliance, operation of industry in densely populated area, schedule of operation in accordance with Graded Response Action Plan (hereinafter referred to as 'GRAP') and use of approved fuel. It was also directed that in case, Joint Committee finds any violation on the part of Project Proponent (hereinafter referred to as 'PP'), a copy of the Report shall be served upon PP to enable it to file its objection/response by the next date.

4. Joint Committee's Report dated 28.08.2023: Pursuant to order dated 25.05.2023 passed by Tribunal, a Joint Committee comprising (i) Dr. Nitin Madan, ADM (E), Gautam Budh Nagar, (ii) Shri Rishabh Shrivastava, Scientist-C, CPCB, Delhi, (iii) Shri Utsav Sharma, Regional Officer, UPPCB, Noida, and (iv) Shri Kishan Singh, Assistant Environment Engineer, UPPCB, Noida visited the industrial unit of M/s. Sandeep Paper Mills Pvt. Ltd. on 21.07.2023 and submitted its Report vide letter dated 28.08.2023. It is said that M/s. Sandeep Paper Mills was established in Noida Industrial Development Area, constituted and notified as such under the provisions of Uttar Pradesh Industrial Development Area Act, 1976 (hereinafter referred to as 'UPIDA Act, 1976'); land for establishment of industrial unit was allotted by New

Okhla Industrial Development Authority (hereinafter referred to as 'NOIDA') constituted under the provisions of UPIDA Act, 1976, vide allotment letter dated 06.04.1979; area of the plot is 3524.25 m^2; plot allotted to the industry is Industrial Plot No. 20 in Block-A, Sector-VI in Noida area; M/s. Sandeep Paper Mills Pvt. Ltd. is a company incorporated under Companies Act, 1956 vide certificate of incorporation dated 15.03.1979 issued by Registrar of Companies, Delhi and Haryana; industry commenced its business of manufacturing Media Kraft Paper; it was granted Consent under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act, 1974'); the quantity of maximum daily effluent discharge permitted to the proponent is 15 KLD domestic effluent through septic tank and 300 KLD Industrial effluent after treatment from Effluent Treatment Plant (hereinafter referred to as 'ETP'); copy of the latest Consent order dated 19.01.2022, valid upto to 31.12.2026, is Annexure-2 to Joint Committee Report; PP also had an authorization issued under Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as 'HOWMTM Rules, 2016') for generation, collection, utilization, storage and disposal or any other use of Hazardous and other waste and the latest authorization is dated 14.04.2022, valid upto 13.04.2027, filed as Annexure-4 to Joint Committee Report.

5. Joint Committee Report also shows that ETP was functioning and parameters of treated waste water discharged by the industry were found within prescribed limit. Similarly, with regard to air pollution status, it is said that industrial unit has one boiler of 8 tons per hour capacity wherein biomass is used as fuel. All other arrangements for arresting air pollution are in order and the monitored value of the air was found within prescribed standards. The sludge generated in ETP is reused along with raw material and the quantity of sludge generated is about 1.0 MT per day. No substantial irregularity or violation of environmental norms and laws was found by Joint Committee. However, it found that the house keeping system of industrial complex was not very satisfactory and that should have been properly maintained by the industry. It is also recommended that industry should get a performance audit conducted from an Expert Agency like IIT/NEERI/CLRI.

6. Some other suggestions were also made with regard to covering of raw material storage area and recovered waste storage area; disposal of empty plastic/gunny bags of biomass fuel only through authorized recycler and to maintain information/data in this regard; installation of separate electromagnetic flow meters on all borewells and maintenance of record of total solid waste and plastic waste, generated and disposed of separately.

7. Committee also recommended that further expansion with regard to production capacity should not be permitted to the proponent considering socio-economic-environmental scenario of the area where the unit was presently operational and may consider in consultation of the NOIDA Authority for resettlement plan in other sector subject to carrying capacity and environmental conditions.

8. Relevant extract of Report, containing general information, observations and recommendations are reproduced as under:

"1. Details about the Unit i.e., M/s Sandeep Paper Mills, Plot No.- A-20, Sector-6, Noida.

M/s Sandeep Paper Mills has been allotted the present premises under industrial land use for manufacturing of paper vide NOIDA Authority's allotment letter dated 06.04.1979. The unit is presently engaged in the production of Media Kraft Paper in the said plot admeasuring 3524.25 square meters, copy of allotment letter is annexed as Annexure I. UPPCB has granted Consent to Operate under the provisions of Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 for production of Media Kraft Paper-130 MTD, copy of said consent is annexed as Annexure II. All the processes were found in operation at the 'time of inspection. The details of the unit are as follow:

General Information		
1.	*Raw Material*	*Waste Paper, Resin, Pac, Surface Size etc.*
2.	*Consented production capacity for Products/By-products*	*Media Kraft Paper-130MTD*
3.	*Present production*	*Presently production of Media Kraft Paper — 120MTD. (approx.)*
Information pertaining to water consumption and waste water generation		
4.	*Freshwater source & Consumption (kl/day)*	*• 03 nos. of bore wells provided with mechanical flow meters of capacity 5 HP, 5 HP and 7.5 HP* *• As per records maintained by the Unit, the raw water consumption details are as follow:* *• Average groundwater extraction was 350 KLD*

		during the month of April-2023 to June-2023 which includes water used in domestic purposes also.
5.	Type of flow meter(s)	A common Mechanical Flow meter has been installed on the all borewells
6.	Flow meter Reading (s)	Flow-37009 m^3
7.	Status of NOC from UPGWD for ground water extraction	NOC granted from UPGWD up to 04.08.2026 for 1,32,025 m^3/year abstraction of ground water.
8.	Consented wastewater discharge (KLD)	Industrial — 300KLD Domestic — 15 KLD As per industry representative and record submitted by the industry treated effluent is being used in process, washing, sprinkling and rest is disposed in the drain.
9.	Consent Status under the Water Act, 1974 & Air Act, 1981	The Unit has consent with validity up to 31.12.2026. (Annexure-II).
10.	Treated Waste water discharge (kl/day)	The unit has installed OCEMS for all the requisite parameters i.e. pH, TSS, BOD, COD and Flow. During the inspection OCEMS was found in operation and parameters were found within the prescribed limit (BOD-15.3 Mg/Ltr, COD-131.6 Mg/Ltr, TSS-34.7 Mg/Ltr, pH-7.8)
	ETP details	The Unit has installed ETP with Biological treatment capacity of 600 KLD based. ✓ ETP is comprised of

		primary treatment and secondary treatment followed by tertiary treatment. *✓ The unit comprises Collection tank, Sedicell, spray filter, Aeration tank, Secondary clarifier, Pressure Sand Filter, Activated Carbon Filter, sludge filter press, Air blower, Clarifier Scrapper, Treated water store tank etc.*
12.	*Mode of Effluent disposal*	*The industry treated effluent is being used in process, washing, sprinkling and rest is discharged into drain.*
Information pertaining to Air Pollution		
14.	*Source of Air Pollution, details of fuel and status of APCDs*	*• The Unit has one boiler of capacity 8 T/hr.* *• Biomass is used as fuel in the boiler. Multi-cyclone dust collector, Bag filter and wet scrubber system is installed with boiler as Air Pollution Control Devices (APCDs).* *• Flue gases are discharged into the ambient air through a stack of 36 meters height.* *• Unit has installed OCEMS on the stack for monitoring of emissions which was found operational during inspection and showed the parameters within the prescribed norms.* *• During the inspection, the work of monitoring*

		boiler chimney was done by the team of regional laboratory of UP Pollution Control Board, the monitored values were within prescribed standards, a copy of the report is attached. Annexure-III.
Information pertaining to ETP sludge and other solid waste		
15.	*Quantity of ETP sludge*	*According to the industry representative, approx 1.0 MTD of ETP sludge is generated, which is reused along with the raw material.*
16.	*Nature of waste*	*Plastic waste*
17.	*Facility for storage/disposal/treatment*	*Waste paper is used by industry as a raw material. It has been informed that there is about 1 percent plastic in the said waste paper, which has been informed to be segregated and disposed of through TSDF organization/authorized recycler. In regarding to the above, a copy of the agreement and Form-10 made with TSDF organization M/s Bharat Oil and Waste Management Ltd. has been submitted. According to Form-10, on 10.04.2023, 445 kg plastic waste has been given by the industry to TSDF organization. The industry has received the hazardous waste authorization from the UP Pollution Control Board*

		which is valid upto 13.04.2027. Annexure-IV.

Water Pollution:
During inspection, all ETP units were found in operation. In order to monitor the compliance status of treated waste water, grab samples were collected from inlet and outlet of ETP. The analysis results are presented below and copy of the said report is annexed as Annexure V:

Samplings Locations	Parameters					
	pH	TSS (mg/l	BOD (mg/l)	COD (mg/l)	O&G (mg/l)	MLSS (mg/l)
ETP inlet	4.83	296.0	584.0	1776.0	-	-
ETP Final outlet	7.21	40.0	22.0	184.0	7.2	-
Notified Standard	6.5-8.5	50	30	250	10	-

The monitored values at the ETP outlet are complying with the notified prescribed standards:
Air Pollution:
i. One boiler of 8 TPH is installed. During inspection the boiler was in operation and emissions are channelized through stacks of height 36m. Portholes and sampling platforms are provided.
ii. During the inspection, the work of monitoring boiler chimney was done by the team of regional laboratory of UP Pollution Control Board, the monitored values were within prescribed standards, a copy of the report is attached.
Observations:
i. During inspection, the Unit was found in operation.
Manufacturing of Media Kraft Paper-130 MTD. The requirement of fresh water was met through Bore wells.
ii. The Unit has provided OCEMS for the parameters, namely, pH, TSS, BOD & COD at final outlet of ETP and it was found operational during the visit and parameters were found within the prescribed limit (values of OCEMS BOD-15.3 mg/ltr, COD-131.6 mg/ltr, TSS-34.7 mg/ltr, pH-7.8.
iii. The unit has consents under the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution), Act, 1981 till 31.12.2026.
iv. The unit has installed a PTZ camera for boiler stack and fuel conveyor feed. Access for live streaming of these cameras have been submitted with the State Pollution Control Board.
v. The unit has obtained NOC for three borewells for abstraction of

ground water under Uttar Pradesh Ground Water Management and Regulation Act, 2019, copy of said permission is annexed as Annexure VI.

vi. As per the production records perused by the inspecting team, average production in months of April, 2023, May, 2023 and June, 2023 comes out to around 120 MTD, 102 MTD and 91 MTD respectively.

vii. The gunny bags used for transportation of biomass were found stacked near the main door of biomass storage area as shown in the site photographs attached. As per the unit representative, these bags are returned to the vendor, however, no record with regards to same could be furnished to the inspecting team.

viii. The plastic waste/laminates recovered from the raw material were found stacked near the raw material feeding conveyor as shown in the site photographs attached. The plastic waste being generated is being disposed through Bharat Oil & Waste Management Limited and Harshit Trading Company which in turn is getting it processed in M/s Nuvoco Vistas Corp. Ltd. Cement plant in co-processing, copy of said agreements is annexed as Annexure VII.

ix. The OCEMS is presently installed in filter feed tank, same should be placed in the treated waste water stream for true representation of effluent quality after treatment through Activated Carbon Filter and Pressure Sand Filter.

x. During the inspection, the housekeeping system of the industry complex was not found satisfactory and the raw material storage area is open and has not been covered with tin shed.

Recommendations:

I. The Unit should ensure that the treated waste water is discharged as per prescribed standards at all times.

II. The unit should engage an expert government agency, like IIT/NEERI/CLRI for adequacy & performance evaluation of ETP. The report be submitted to CPCB and UPPCB within a period of 3 months.

III. The unit should carry out the calibration of OCEMS on regular basis.

IV. The industry should improve the housekeeping system and deploy odour masking agents using mystifies.

V. The unit should properly cover the raw material storage area and recovered plastic waste storage area.

VI. The unit should dispose the empty plastic/gunny bags of biomass fuel only through the authorized recycler and related information/data should be maintained and sent to the Uttar Pradesh Pollution Control Board.

VII. The unit should install separate electromagnetic flow meters on all bore wells.

VIII. The unit is operating in relatively small area and thus need to earmark and demarcate areas for each activity, viz a viz, storage of raw material, storage of fuel, processing floor, storage of finished good and storage area for waste materials among others in order to ensure work place housekeeping as well as safety.

IX. The unit should install flow meters to measure the quantity of recycled/reused water and maintain the record for the same.

X. The unit should maintain the record of total solid waste and plastic waste generated and disposed separately.

XI. The unit should not be permitted for any further expansion with regards to production capacity henceforth. Simultaneously, unit should consider reducing its production capacity in present plant due to evolving socio-economic-environmental scenario of the area where it is presently operational and engage with Noida Authority for resettlement plan in other Sectors subject to carrying capacity and environmental conditions.

9. Objection to Joint Committee's Report filed by applicant:

10. Though, the complainant had chosen not to approach Tribunal by filing a proper application under Sections 14 and 15 of NGT Act, 2010, as per Rules, with supporting documents and impleadment of concerned parties, so that issue raised by him may be adjudicated in accordance with law and consistent with principles of natural justice by giving opportunity to all concerned parties and instead has chosen to send a letter petition to this Tribunal whereupon Tribunal *suo-moto* exercised its power and entertained complaint to look into the correctness of the complaint and thereby got factual report from a Joint Committee but after submission of the Joint Committee Report, applicant has chosen to file a detailed objection to Joint Committee's Report running in 439 pages to contest the Joint Committee Report and to pursue this Tribunal to ignore the said Report and instead take action against the industrial unit concerned.

11. Ordinarily, when *suo-moto* power is exercised, there is no applicant who is to be heard and hence complainant is not entitled to be heard by permitting to place on record further pleadings but to satisfy ourselves so that no environmental damaging activity may go on, we have entertained the objections filed by applicant and have also heard him.

12. One of the basic complaint of the complainant is that the unit is situated near residential areas without disclosing this fact that NOIDA is an industrial development area notified under UPID Act, 1976 and the area so notified is for the purpose of development of industries wherein residential and other blocks are incidental being in aid and assistance of development of industries and the industry in question was established more than 40 years back i.e., in 1979.

13. The objections raised by the complainant to Joint Committee Report dated 28.08.2023, in brief, are as under:

(i) Joint Committee has dealt with the aspect relating to Consent instead of giving report on operation of industry in densely populated area though location of industry in densely populated area is affecting local resident's health adversely.

(ii) Report does not mention effect of industry on the residents living in the vicinity of the industry and also effect on ground water, air etc. The residents living near industry are suffering various diseases like Cancer, Kidney failure, Ashthma, skin related problems etc.

(iii) Report fails to point out effect on ground water of nearby area which is badly affected due to the industry and the conditions of the villagers is very miserable since they are not getting clean water to drink, even cannot use ground water for bathing purposes since it is saline and not suitable even for washing clothes.

(iv) NOIDA Authority is providing drinking water to residential sectors but has failed to provide Ganga Jal water line to villagers of NOIDA.

(v) Report fails to mention the kind of hazardous chemicals and harmful gases being released by the industry in the air or water while residents are suffering from black smoke released from the chimney of the industry day and night.

(vi) Report says that treated effluent is being re-used and remaining one is discharged into drain but it does not mention the drain in which it is being discharged and where the said drain ultimately meets.

(vii) Report fails to consider previous quarterly monitoring Reports of the industry, though, submission of quarterly reports constitute conditions of consent granted to the industry by UPPCB.

(viii) Consent conditions also require industry to submit point-wise Compliance Report, maintain log-book of ETP and submit latest test Report of treated effluent from ETP by approved laboratory after operation of unit. There is no reference of such documents in the report and if the industry had not provided such documents to UPPCB, it cannot be presumed that the industry is working within the prescribed standards and it is continuously violating Environment (Protection) Act, 1986 (hereinafter referred to as 'EP Act, 1986') and Rules framed thereunder.

(ix) Committee has failed to enclose Report of the effluent of the drain adjacent to the industry where colour of the water is actually different as has personally been noticed by the complainant who

has taken photographs also.

(x) Complainant claims to file Consent letters under Water Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'Air Act, 1981') as annexure-5 to its objections but we find that annexure-5 is copy of the test reports dated 24.08.2023 of the sample collected from inlet of ETP and final outlet of ETP and the report of final outlet of ETP shows that the results meet the prescribed standards and there is no violation of norms prescribed under Water Act, 1974.

(xi) Report has failed to mention the year in which ETP was installed in the industry and has also failed to mention whether ETP is functioning as per the parameters or not.

(xii) Report fails to mention kind of waste like waste oil, cotton rags, fly ash generated from the boiler etc.

(xiii) Joint Committee has failed to inspect the relevant record with regard to handing over of waste to TSDF facility and does not verify the actual disposal of waste by paper industry and there is no mention about waste oil, fly ash and other waste and the manner of its disposal.

(xiv) Joint Committee has failed to enclose report from TSDF facility to show as to how such units are disposing of waste and what mode of transportation is being used by them for transporting waste from M/s. Sandeep Paper Mills to their facility.

(xv) Report fails to mention that the raw material feeding conveyor is on the main road and trucks used by industry for raw material are not only disturbing traffic but also unload the raw material on the road and hazardous waste kept lying on the gate where raw material is unloaded by the trucks.

(xvi) Committee on the one hand has said that the industry is disposing plastic waste as per norms and guidelines but on the other hand had recommended that unit should properly cover raw material storage area and recovered plastic waste area which is contradictory.

(xvii) Committee has recommended that for maintenance of record of total solid waste and plastic waste generated and disposed separately, meaning thereby there is no proper record of the solid and plastic waste with the unit, hence, the question of fulfilling standard parameters does not arise.

(xviii) The industrial unit claim that gunny bags used to be returned to the venders but no record was maintained. Hence, the committee recommended that empty plastic/gunny bags of biomass fuel should be disposed through authorized recycler and related information/data should be maintained and sent to UPPCB

which shows no compliance of consent conditions by Proponent.

(xix) Report fails to mention anything about hazardous substance used by the industry and hazardous waste discharge by it. The terms and conditions of authorization therefore have been violated.

(xx) Joint Committee has failed to mention anything about emergency response procedure, storage area for hazardous waste at an isolated sport in the premises which ought to be fenced, covered and duly marked and has also not said anything about adverse impact on the air, soil, water including ground water, disposal facility and the design of facility ought to be approved by the UPPCB. Further, there should have been display online data outside the main factory gate with regard to quantity and nature of hazardous waste chemicals handled in the plant including waste water and air emissions, solid hazardous waste generated within the factory premises and full details should have been given. All these parameters are important as per HoWMTM, Rules, 2016.

(xxi) Committee has failed to consider that the industry now complying with the conditions of authorization issued under Hazardous Waste (Management and Handling) Rules, 1989, a closure order should have been issued but no such thing has been mentioned by the Committee in the Report.

(xxii) Committee has not mentioned anything about compliance of conditions of NOC granted by UP Ground Water Department for abstraction of ground water, though there are general and specific conditions which the industry was required to be observed.

(xxiii) Committee has failed to mention about affixing digital water flow meter, effect of extraction of ground water on the densely populated area, construction of piezometers and installation of digital water level recorders etc., all these requirements are part of conditions of NOC which have not been mentioned by Joint Committee.

(xxiv) Though, Committee on the one hand has said that industry is functioning within the parameters but simultaneously has recommended installation of separate electromagnetic flow meters on all bore wells and installation of flow meters to measure the quantity of recycled/reused water and maintenance of the record for the same, these are contradictory. (xxv) Report does not mention the effect of extraction of huge quantity of ground water by the industry on adjacent residential area. (xxvi) Committee on the one hand has said that Proponent has installed OCEMS for all requisite parameters while also recommended that the OCEMS presently installed in filter feed tank, should be placed in the

treated waste water stream for true representation of effluent quality after treatment through activated carbon filter and pressure sand filter which means that there is no proper compliance with regard to installation of OCEMS by the industry. (xxvii) One of the conditions of the consent is 33% of the land to be maintained for plantation of trees which has not been observed and not even a single tree has been planted in the red category industry by PP.

(xxviii) Report fails to mention about obnoxious smell emitted by Proponent's industry which is unbearable for the local residents who are being suffocated by such emissions.

(xxix) Committee has not said anything about noise pollution by this industry.

(xxx) Report is silent about the category of the industry.

(xxxi) Okhla Bird Sanctuary a protected area declared by a notification dated 08.05.1990 issued under Sections 18 and 26 (A) of Wildlife Protection Act, 1972 is within 10 kms of the Proponent's industry but no Environmental Clearance (hereinafter referred to as 'EC') has been obtained which is in violation of Supreme Court's Judgment dated 04.12.2006 in *Goa Foundation* v. *Union of India*, (2011) 15 SCC 791 titled as *W.P.(C) No. 460/2004*.

(xxxii) Though in 1976, 36 villages of Yamuna-Hindon-Delhi Border Regulated Area were notified as New Okhla Industrial Development Area by notification dated 17.04.1976 issued under UP Industrial Development Act, 1976 but after 46 years, there is substantial change and the area has got developed a huge population changing the objective of NOIDA and also changing it from industrial to commercial sector. Therefore, all hazardous industries need be shifted or closed and this aspect has been completely omitted by the committee, though, it has recommended that no expansion should be permitted to the industry in question.

(xxxiii) Committee has tried to give clean chit, though, the industry does not fulfill various standard parameters laid down in the consent document and other norms.

(xxxiv) On 12.07.2019, NOIDA authority's officials and others inspected the premises and imposed fine of Rs. 21 lakhs for violating Environment (Protection) Act, 1986, Factories Act, 1948 and UP Urban Planning and Development Act, 1973. The news was published in daily newspaper 'Times of India' dated 12.07.2019.

(xxxv) Report does not mention anything about Sewage Treatment Plant (hereinafter referred to as 'STP'), though, the industry was

fined for flouting STP norms and non-compliance with Solid Waste Management, Rules, 2016 (hereinafter referred to as 'SWM Rules, 2016').

(xxxvi) Committee has failed to mention anything about environmental impact assessment of the industry, cost benefit analysis Report and annual balance sheet of the industry.

(xxxvii) Even, if it is assumed that the industry is complying with all norms and conditions still paper and pulp industry causes air and water pollution as said in an article published in an International Journal of Lakes and River.

(xxxviii) Committee has failed to consider that the industry can led to a disaster in future affecting people's life.

(xxxix) Committee has failed to consider that as per the present Guidelines of NOIDA, paper and pulp industries are not allowed to be established in NOIDA and this industry cannot be allowed to run in the heart of the city.

(xl) Report also fails to mention damage caused due to lack of Rain Water Harvesting System (hereinafter referred to as 'RWHS') provided by the industry, its failure to provide energy conservation system, top soil preservation etc.

(xli) Committee Report is only reiteration of documentary information and there is no scientific study conducted by the expert members of the Committee.

DISCUSSION ON MERITS:

14. Cognizance in this matter was taken by this Tribunal *suo-moto*, after receiving information through a Letter Petition addressed by Dr. Vijay Kumar to this Tribunal making a complaint with the allegations which if found correct, would have given rise to a substantial question relating to environment arising due to implementation of enactments mentioned in the Schedule of NGT Act, 2010 and remedial, preventive and punitive action under the relevant environmental Statutes would have been necessary. The jurisdiction to entertain a complaint and take further action *suo-moto* by registering the complaint as OA under Sections 14 and 15 of NGT Act, 2010 has been recognized by Supreme Court in *Municipal Corporation of Greater Mumbai* v. *Ankita Sinha*, (2022) 13 SCC 401. It was argued therein that NGT did not have power to initiate *suo-moto* proceedings and the grounds raised in support of the above contention as formulated by Supreme Court were founded on the arguments that (i) NGT is a creature of the statute and just like other statutory Tribunals, NGT is also bound within statutory confines, (ii) NGT Act is applicable to "disputes" as necessarily referring to a *lis* between two parties and (iii) lack of general power of judicial review shows legislative intent to curb *suo-moto* powers.

15. Dealing with above arguments and the grounds, Supreme Court examined the matter from various angles i.e., the backdrop of constitution of National Green Tribunal, preamble and statement of objects and reasons of NGT Act, 2010, purposive interpretation, features of NGT Act, 2010, non-adjudicatory roles of NGT, uniqueness of NGT *vis-a-vis* other Tribunals, need of NGT to exercise *suo-moto* powers, sui generis role of NGT, authority with self-activating capability, precautionary principle, environmental justice and environmental equity and environmental jurisprudence in India. We may summarize the observations made by Supreme Court under the above-mentioned heads as under:

i) NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues, both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and Supreme Court.

ii) NGT was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that creation of NGT would allow Supreme Court and High Courts to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum.

iii) The power of judicial review was omitted to ensure avoidance of High Courts' interference with Tribunal's orders by way of a mid-way scrutiny by High Courts, before the matter travels to Supreme Court where NGT's orders can be challenged.

iv) The mandate and jurisdiction of NGT is conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

v) Unlike Civil Courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

vi) Myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons.

vii) Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by High Courts under Article 226 of the Constitution or by Supreme Court under Article 32 of the Constitution.

viii) The activities of NGT are not only geared towards the protection

of environment but also to ensure that the developments do not cause serious and irreparable damage to ecology and the environment.

ix) Concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment.

x) NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.

xi) In *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India*, (2012) 8 SCC 326, Court mandated transfer of all cases, concerning the Statutes mentioned in Schedule I of NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo-moto* by the Courts.

xii) As long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.

xiii) In *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494, Court recognized that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context, Tribunal has special jurisdiction for enforcement of environmental rights.

xiv) In *Rajeev Suri* v. *DDA*, 2021 SCC OnLine SC 7, Court said that in its own domain, as crystalized by the statute, the role of NGT is clearly discernible.

xv) Referring to *Andhra Pradesh Pollution Control Board* v. *Prof. M.V. Nayudu (Retd.)*, (1999) 2 SCC 718, Court said that role of NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

xvi) Statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

xvii) Referring to *State of Meghalaya* v. *All Dimasa Students Union Dima-Hasao District Committee*, (2019) 8 SCC 177, Court said

that reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

xviii) NGT has been recognized as one of the most progressive Tribunals in the world.

xix) NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution.

xx) Referring to *DG NHAI* v. *Aam Aadmi Lokmanch*, 2020 SCC OnLine SC 572, Court repelled the argument for a restricted jurisdiction for NGT, and observed in paragraph 76 that powers conferred on NGT are both reflexive and preventive and the role of NGT was recognized in paragraph 77 as "an expert regulatory body", which can issue general directions also albeit within the statutory framework.

xxi) NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from High Courts and Supreme Court.

xxii) Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo-motu cognizance of matters, for effective discharge of its mandate.

xxiii) Section 14(1) of NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application.

xxiv) Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The subSection (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adiudication is involved. the

adjudicatory function under Section 14(2) comes into play.

xxv) When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

xxvi) The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

xxvii) To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.

xxviii) It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

xxix) It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

xxx) Supreme Court adopted the role of an “amicus environment” by threading together human rights and environmental concerns, resultantly developing a *sui generis* environmental discourse.

xxxi) NGT is the institutionalization of the developments made by Supreme Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

xxxii) NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns.

xxxiii) NGT must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal.

16. In the case where jurisdiction is exercised by Tribunal *suo-moto*, the concept of *lis* generally applicable in civil cases is not attracted. Tribunal adopts the role of amicus environment and cannot remain a mute spectator but has to act on its own. In other words, in the cases where action is taken suo-moto, a formal party like applicant is not present. When information is received by Tribunal on its own or through the medium of individual(s), without roping in such individual as a party to the *lis*, Tribunal on its own, may enter into the dispute and proceed further. That is how in the cases where *suo-moto* jurisdiction is exercised, neither a formal applicant is present nor the person conveying information is entitled as a matter of right to contest the matter as a party to the *lis*.

17. However, it is open to Tribunal, if in any matter complainant comes before Tribunal to assist it, normally, to entertain such complainant and allow him to assist Tribunal.

18. In the present case, what we find is that complainant Dr. Vijay Kumar sent a letter petition making certain allegations against proponent M/s. Sandeep Paper Mills Pvt. Ltd. instead of adopting the normal course prescribed in the Rules to file OA in the prescribed performa and payment of requisite Court fees supporting the allegation with appropriate material and enable this Tribunal to proceed further on substantive material.

19. In the letter petition where complaint is not appended with any material supporting the allegations, normally Tribunal seeks verification of such allegations by constituting an Expert Committee on the subject to collect factual information as also verification of the allegations made in the complaint and if the same are found correct, to proceed further. Tribunal followed the above procedure and entertained complaint, registered the same as OA under Sections 14 and 15 of NGT Act, 2010 and appointed a Joint Committee comprising respondents i.e., UPPCB, CPCB and local highest administrative officer at the District Level i.e., District Magistrate, Gautam Budha Nagar requiring them to submit a factual Report. Besides other, Tribunal also required Committee to submit its report specially on the aspect of consent, compliance, operation of industry in densely populated area, schedule of operation in accordance with GRAP and use of approved fuel.

20. In furtherance of the above order dated 25.05.2023, Joint Committee has submitted Report pointing out that the industry in question is situated in an area which is statutory constituted for industrial development and all other activities are incidental. UP Legislature for the purpose of industrial development in the State,

enacted UPID Act, 1976. In exercise of powers under above Act, New Okhla Industrial Development Authority was constituted in certain area including the area wherein M/s. Sandeep Paper Mills Pvt. Ltd. has been established, and notified as part of New Okhla Industrial Development Area vide Notification dated 17.04.1976. Proponent industry took steps for establishment of the industry in 1979 and the land was allotted by allotment letter dated 06.04.1979.

21. It is nobody's case that the unit was installed in a densely populated area in 1979 or that there was any siting restriction or otherwise obstruction in establishment of the industry at the place where it is operating presently. Joint Committee on the aspect of Consent has found that the industry in question had Consent under relevant environmental Statutes, validity whereof not only was operating at the time when OA was filed but even on the date when Joint Committee made inspection and even till date. On the aspect of compliance, it has found that all requisite equipments and arrangements for checking air and water pollution have been installed by the industry and Joint Committee did not find any water or air pollution caused by the said industry. Water samples or air samples were collected and everything has been found satisfying the parameters provided under Water Act, 1974 and Air Act, 1981.

22. With regard to disposal of solid waste due authorization under HoWMTM Rules, 2016 has been obtained by the industry and in disposal of the hazardous waste, Committee did not find any violation on the part of proponent.

23. Proponent is extracting ground water for which it had installed 3 borewells in respect whereof also, it has obtained authorisation/NOC from Uttar Pradesh Ground Water Department under the provisions of UP Ground Water Management and Regulation Act, 2019.

24. Complainant though initially had chosen to require this Tribunal to initiate proceedings *suo-moto* but later on, appeared and filed objection to the Joint Committee Report dated 28.08.2023. Complainant has sought to treat the Committee as an inspecting body which should have proceeded to inspect to find out any violation on the part of proponent by making a fishing and roving inquiry, though Joint Committee was constituted to submit factual Report in respect of the allegations made by complainant and also on certain aspects specifically mentioned in the order dated 25.05.2023 i.e., consent, compliance, operation of industry in densely populated area, schedule of operation in accordance with GRAP and use of approved fuel.

25. Joint Committee has made inspection and given its Report as per the directions of this Tribunal and not by acting on its own as a self -authorized inspecting body making inspection of the industrial unit to find out any violation whatsoever. It was not exercising any statutory

power vested in it under some statute relating to environment.

26. Such Reports are more in the nature of Report submitted by the commission appointed under the provisions of Order 26 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC 1908'). Rule 10-A talks of commission for scientific investigation.

27. Rule 9 Order 26 CPC 1908 says that Court may issue a Commission when it requires local investigation for the purpose of elucidating any matter in dispute and direct such Commission to make such investigation and report to the Court.

28. Rule 10 provides procedure and Rule 10A deals with Commission appointed for investigation when such aspect is involved making Rule 10 applicable for the purpose of procedure.

29. Report of Commission can be objected by the parties to the litigation appearing before Court and it is open to the Court to reject or accept or partly accept the Commissioner's Report. Status of Commissioner's report is that of an evidence in the litigation when accepted by Court. Court can also issue a fresh or further Commission for enquiry when it is not satisfied with the earlier Commission report.

30. In *State of Meghalaya* v. *All Dimasa Students Union, Dima-Hasao District Committee*, (2019) 8 SCC 177, in para 195.14, Supreme Court has also referred to Order 26 Rule 10-A of Civil Procedure Code, observing that a court can appoint a commission for scientific investigation. The power which can be exercised by a court under Order 26 Rule 10-A, CPC 1908 can be exercised by the Tribunal. However, while considering the power of Tribunal to constitute Committees for obtaining factual report, Supreme Court has said that Tribunal while asking an Expert to give report is not confined to the four corners of Rule 10-A and its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A by virtue of Section 19(1) of NGT Act, 2010. Para 195.14 reads as under:

> *"195.14. Under Order 26 Rule 10-A of the Civil Procedure Code, a court can appoint a commission for scientific investigation. The power which can be exercised by a court under Order 26 Rule 10-A, CPC can very well be exercised by the NGT also. The NGT while asking expert to give a report is not confined to the four corners of Rule 10-A and its jurisdiction is not shackled by strict terms of Order 21 Rule 10-A by virtue of Section 19(1) of the NGT Act."*

31. In *Kantha Vibhag Yuva Koli Samaj Parivartan Trust* v. *State of Gujarat*, 2022 SCC OnLine SC 120, in Civil Appeal No. 1046/2019 decided on 21.01.2022, Supreme Court examined the status of Committee appointed by Courts/Tribunals and said that such Committees are set up to assist Tribunal with technical expertise in a

given area, and their reports are, subject to judicially observed restraints, open to judicial review before Courts when decisions are taken solely based upon them. Supreme Court also said that precedents of Supreme Court unanimously note that Courts should be circumspect in rejecting the opinion of the Committees appointed by it, unless they find their decision to be manifestly arbitrary or *mala-fide*.

32. These Committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the Committees to conduct field visits. These Committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these Committees submit their final reports to the Court/Tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these Expert Committees does not substitute the adjudicatory role of the Court or Tribunal. The role of an Expert Committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties.

33. Expert Committees may be appointed to assist NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to Courts and Tribunals cannot be hived off to Administrative Committees.

34. An Expert Committee may be able to assist NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by NGT. This is not a delegable function.

35. The above judgment has been referred to and followed recently in *Singrauli Super Thermal Power Station* v. *Ashwani Kumar Dubey*, Civil Appeal No. 3856/2022 and other connected Appeals decided vide judgment dated 05.07.2023.

36. Further, Tribunal in exercising of power under Section 14 is required to adjudicate an issue when a substantial question relating to environment due to implementation of enactment Scheduled in the Act has arisen. It is not every petty or inconsequential alleged omission or non-compliance which requires interference by Tribunal.

37. The jurisdiction of this Tribunal is discharged by considering the principle of 'Sustainable Development'. In *Lafarge Umiam Mining Private Limited, T.N. Godavarman Thirumulpad* v. *Union of India*, (2011) 7 SCC 338, Supreme Court in para 75 of the judgment observed that universal human dependence on use of environmental resources for the most basic needs render it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably

requiring choices as to the appropriate level of environment protection and the risk which are to be regulated. This aspect is recognized by the concept of 'Sustainable Development'. Further, Court in para 76 of the judgment observed that since the nature and degree of environmental risk caused by different activities varies, the implementation of environmental rights and duties requires proper decision making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.

38. Following above dictum and in the light thereof when we examine the facts, proceedings and material in the present case, we find that the complainant i.e., Dr. Vijay Kumar in his letter dated 06.01.2023 has said,

(i) The industrial unit (M/s. Sandeep Paper Mill) located just a few kilometer away from River Yamuna and adjacent to Villages Harola, Nayabans, Attta and Jhundpura and Sectors like 5 to 12, 14, 15, 15 A and 44 of Noida.

(ii) Industry is located in the heart of city and near the office of NOIDA and UPPCB.

(iii) The industry is largely responsible for release of all kinds of chemicals which have deliberating effects on health of every living in this area.

(iv) There are many villages in Sectors around this hazardous industry.

(v) Effluents released by the industry emits obnoxious smell causing number of respiratory diseases.

(vi) Complainant has personally watched and seen use of waste material like rubber, plastic, gatta etc. by the said industry.

(vii) The above waste is piled up at one of the gate of the industry just opposite to village.

(viii) Industry releases very harmful chemical in air though one big chimney emitting black smoke.

(ix) Residents always found black kind of substance on their clothes, terraces etc.

(x) Noise coming out of industry renders residents sleepless and disturb their peace.

(xi) Deadly effluents including waste materials are used in burning the burner to make paper for the industry.

(xii) The residents are facing various health problems in various manner including problem of drinking water and many are admitted in the hospitals for respiratory. Some have died due to Cancer and some are patient of Kidney mal-functioning.

39. The complainant has appended a few photographs showing thick, white smoke emitting from the chimney of the industry and also dumping of some material at a place which is not identifiable.

40. Complainant did not give specific details of the alleged hazardous chemicals released by the industry, nature of effluent etc. yet considering the complaint that the alleged pollution by the industry is causing health hazards to the local residents by functioning in a manner which violates environmental laws and norms, Tribunal proceeded further and sought a factual report by constituting a joint Committee. Joint Committee has found that it is not the white paper but media Kraft paper which is being manufactured by the industry. Raw material for manufacturing of media kraft paper is waste paper, packman etc. as mentioned in the Joint Committee Report. With regard to water pollution, Joint Committee collected samples and found discharge of the effluents meeting prescribed standards and within permissible limits. Similarly, with respect to air pollution, Joint Committee found that the boiler and accompanied equipment control air pollution effectively and the discharged smoke meet the standards prescribed under Air Act, 1981. Unit was inspected by Joint Committee when it was functional. All the instruments and equipments dealing with water and air pollution were found functional. Industry has obtained statutory consents/NOC/Clearance required under Water Act, 1974 and Air Act, 1981 as also authorization under HoWMTM Rules, 2016 from the Competent Authorities which were validly operating at the time of inspection and even today. For the functional requirement of fresh water, industry is abstracting ground water from 3 borewells in respect whereof it has obtained NOC. It had installed mechanical flow meter on all the borewells and the flow mater reading was also available to the Joint Committee meaning thereby the quantity of ground water extracted by the industry was well recorded. Treated effluent is being re-used to some extent and rest disposed of in the drain. Housekeeping maintenance, however, was not found very appropriate and satisfactory by Joint Committee and it recommended to improve the same.

41. The allegations regarding emission of hazardous chemicals and discharge of polluted effluents etc. by the industry have not been found correct by Joint Committee. These findings as such, we find, have neither been shown to be incorrect or false by the complainant in its objections dated 25.09.2022. On the contrary, the grievance of complainant is that the Committee should have proceeded to make some further enquiry on aspects which are not part of the complaint as such nor within the directions of Tribunal and in fact virtually travel in the realm of roving and fishing enquiry particularly, when the unit has not been found to cause any water or air pollution on the basis of

scientific analytical reports obtained from the Competent Testing Labs of UPPCB. In these circumstances, we find no substance in the objections raised by the complainant and also no reason for not to accept the report submitted by Joint Committee. The recommendations made by Joint Committee, we find, are broadly by way of abundant precaution and to ask the industry to show even better performance but do not disclose any violation of environmental law or norm.

42. Even otherwise when we examine objections taken by applicant in his letter petition as also the objections filed to Joint Committee Report, we find shallowness in the allegations and an attempt to have an enquiry beyond the activities of proponent to find out some fault, that too, without providing any material to show nexus of the activities of proponent with such probable faults.

43. In the objection to Joint Committee Report, one of the objections is that Joint Committee Report has not dealt with the aspect of giving consent to the industry running in densely populated area affecting local resident's health adversely. It further says that the residents living in the vicinity of the industry are affected by ground water, air and suffering various diseases like Cancer, Kidney failure, Ashthma, skin related problems etc.

44. The complainant has not provided any material or details of the person(s), even by way of illustration, to show the sufferance as pointed out in the objections to the Joint Committee Report. It is also not clear as to how various diseases mentioned in the objections are related to the activities of the proponent. In the absence of any material provided by the complainant, it could never be imagined or expected from a Joint Committee constituted by Tribunal to collect factual information by undertaking a door to door survey of all the residents in the area to find out whether any one of them is suffering any disease and if so, reason behind that etc. Such kind of enquiry, in our view, is not expected from a Joint Committee appointed by this Tribunal to find out factual details in respect of industrial unit and also to find out whether it is causing any pollution or not.

45. The allegations with regard to contamination of ground water is made but nothing has been placed on record to show as to how contamination has been caused by the proponent when it has been permitted to extract ground water through permitted source by the Competent Authority and no material has been placed on record to show that any contamination to ground water has been caused due to any industrial activity of the proponent.

46. The next objection is regarding non-availability of drinking water i.e., Ganga Jal through water lines to villagers of Noida. This objection has nothing to do with the industrial activities of proponent and is beyond the scope of the enquiry which was directed to be made by

Joint Committee.

47. Several objections are over-lapping stating that hazardous chemicals and harmful gases are being released by proponent without giving details of such chemicals and gases which in the industrial activities of proponent are liable to be released, particularly when the Joint Committee on the basis of samples collected has shown that no polluting activities were found on the part of the industry in question.

48. The further objection is that the Committee has not considered various record required to be maintained by proponent under the rules like logbook of ETP, test report of effluent discharged from ETP etc. Neither there was any such complaint in the letter nor any material has come that no such record was maintained by proponent. Moreover, assuming that such record was not produced before Joint Committee and Joint Committee did not examine such record, the fact remains that polluting activities have not been found on the part of the proponent and if there is any technical violation with regard to maintenance of such record, it is a matter between the Statutory Regulator and the proponent. Where no damage to environment has been caused, principle of 'polluter pays' does not apply and it is always open to the Statutory Regulator to ask and recommend the proponent to maintain record regularly failing which it is open to the Regulator to take action but in the absence of any material to show any polluting activities or actual pollution being caused to the air and water, we do not find that at the instance of the complaint, any action is needed by Tribunal as it cannot be said that a substantial question relating to environment has arisen.

49. The further objections that the year of establishment of ETP is not mentioned, the manner in which TSDF facility collecting waste is being disposed are also baseless in as much as the year of establishment of ETP is irrelevant when it was found functioning meeting the norms and there was no complaint against TSDF facility that it was not disposing waste collected from the proponent in question, properly, hence no such enquiry was required to be conducted by Joint Committee and the objections are only to point out some fault to Joint Committee Report without any substance.

50. The recommendations made by Committee are advisory in nature and for more effective management of the things but per se cannot be said to be a violation of environmental laws causing damage to environment and that being so, the said complaint do not result in giving rise to a substantial question relating to environment arising due to implementation Scheduled enactment under NGT Act, 2010 requiring interference or adjudication by Tribunal.

51. In substance, various objections mostly are over-lapping, have nothing to do with the subject matter which was taken cognizance by

the Tribunal to call for the factual report and in the absence of any substantial objections to the correctness of the findings of the Joint Committee Report, we do not find any reason not to accept the same.

52. With regard to location of the industry, it is not the case that the industry is situated in a non-conforming area or that its location is in contravention of any provision relating to siting. On the contrary, the admitted position is that the entire area is declared to be an industrial development area and residential and other activities have been allowed only as a consequential activities necessary as incidental and ancillary activities for the development of industry. In the absence of any violation of any provision relating to siting and in the absence of any material to show that the industry in question is causing air, water or otherwise pollution, it cannot be said that continued operation and performance of the industry at the location in question is an anathema to a healthy atmosphere and also adverse to the health of the people residing in the nearby area. There may be some problems on account of other reasons but so long as there is no nexus with regard to damage of environment with the performance of the industry in question, the functioning of the industry in our view, cannot justifiably be interfered by Tribunal and neither the principle of 'sustainable development' nor 'inter-generational equity' nor 'precautionary principle' would embrace such an action on the part of this Tribunal.

53. In the circumstances, we reject the objections filed by complainant, and accept Joint Committee Report. We do not find any material to show that there is any violation on the part of industrial proponent with regard to environmental laws and norms which require any interference or issue of direction or even remedial, preventive or punitive action by this Tribunal.

54. The application is accordingly dismissed.

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† Principal Bench New Delhi

(2004) 3 Supreme Court Cases 349

(BEFORE DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.)

ASHOK KUMAR PANDEY . . Petitioner;

Versus

STATE OF W.B. . . Respondent.

Writ Petition (Crl.) No. 199 of 2003†, decided on November 18, 2003

A. **Constitution of India — Arts. 32 and 21 — PIL — Locus standi/ Standing — Standing of third party to challenge the sentence and conviction (in this case the pending death sentence) — Legal disability sufficient to permit relaxation of the general rule granting standing only to the aggrieved party — Whether a mere obsession based on religious belief or any other personal philosophy can be regarded as such a disability — Seriousness of consequences that may ensue from relaxation of the rule — Criminal Procedure Code, 1973 — Ss. 320(4)(a), 330(2) r/w Ss. 335(1)(b) and 339 — Minority or insanity as grounds to waive usual rule for locus standi**

B. **Constitution of India — Art. 32 — PIL — Maintainability — Information on which PIL may be based — Nature and adequacy of permissible information — Necessity of disclosure of sources of information — Roving inquiry in light of inadequate information — When permissible — Imposition of exemplary costs on failure to meet the requisite criteria for proper information on which PILs may be based — Evidence Act, 1872 — Chs. III to V — Necessity of disclosure of information**

This petition under Article 32 of the Constitution was filed purportedly in public interest. The prayer in the writ petition was to the effect that the death sentence imposed on one *D* by the Sessions Court, affirmed by the Calcutta High Court and the Supreme Court, needed to be converted to a life sentence because there had been no execution of the death sentence for a long time.

According to the petitioner, he saw a news item on a TV channel wherein it was shown that the authorities were unaware of the non-execution of the death sentence and, therefore, the condemned prisoner, the accused, had suffered a great degree of mental torture and that itself was a ground for conversion of his death sentence to a life sentence on the basis of the ratio in *Triveniben case*, (1989) 1 SCC 678. It was noted that the prayer for conversion of death sentence to life sentence had already been turned down by the Governor of West Bengal and the President of India in February 1994 and June 1994 respectively.

Dismissing the petition, the Supreme Court

Held :

Ordinarily, only the aggrieved party has the right to seek redress under Article 32. Unless the aggrieved party is a minor or insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g. next friend, to move the court on his behalf, for example, see Sections 320(4)(*a*), 330(2) read with Sections 335(1)(*b*) and 339

† Under Article 32 of the Constitution of India

CrPC, a third party would not be permitted to initiate proceedings under Article 32. (Para 30)

A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Code of 1973 or any other law, which would permit initiation of proceedings under Article 32 by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the court can be serious e.g. any co-accused who may have been acquitted and whose acquittal may have been confirmed would run the risk of a fresh trial and a possible conviction. (Paras 30, 31, 33 and 34)

State of Maharashtra v. *Sukhdev Singh*, (1992) 3 SCC 700 : 1992 SCC (Cri) 705 : AIR 1992 SC 2100; *Simranjit Singh Mann* v. *Union of India*, (1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280; *Karamjeet Singh* v. *Union of India*, (1992) 4 SCC 666 : 1993 SCC (Cri) 17 : AIR 1993 SC 284, *relied on*

Triveniben v. *State of Gujarat*, (1989) 1 SCC 678 : 1989 SCC (Cri) 248, *cited*

Neither under the provisions of the Code of 1973 nor under any other statute is a third-party stranger permitted to question the correctness of the conviction and sentence. It has not been shown as to how and in what manner the accused condemned prisoner is handicapped in not seeking relief, if any, as available in law. (Paras 34, 35 and 17)

Sources and nature of information on which PIL to be based

The court has to be satisfied about: (*a*) the credentials of the applicant; (*b*) the prima facie correctness or nature of information given by him; and (*c*) the information being not vague and indefinite. The information should show gravity and seriousness involved. (Para 14)

In PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. Whenever frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. (Para 16)

The matter in the case at hand pertains to something which happened or not at Kolkata and what the truth about the news was or cause for the delay, even if it be, is not known or ascertained or even attempted to be ascertained by the petitioner before approaching the Supreme Court. To a pointed query, the petitioner submitted that the petitioner "may not be aware" of his rights, that except the news he heard he could not say any further and "the respondent State may come and clarify the position". This petition cannot be entertained on such speculative foundations and premises and to make a roving enquiry. Maybe, at times even on certain unconfirmed news but depending upon the gravity or heinous nature of the crime alleged to be perpetrated which would prove to be obnoxious to the avowed public policy, morals and greater societal interests involved, courts have ventured to intervene but this is not one such case, on the facts disclosed. (Para 17)

It is reliably learnt that a petition with almost identical prayers was filed before the Calcutta High Court by relatives of the accused and the same has recently been dismissed by the High Court. This is not a fit case which can be entertained and that too, under Article 32 of the Constitution and is accordingly dismissed, but without costs. (Paras 17 and 36)

C. Constitution of India — Art. 32 — Costs — Exemplary costs — Filtering out of frivolous PILs and imposition of exemplary costs

It would be desirable for the courts to filter out frivolous petitions and dismiss them with costs so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts. (Paras 16 and 12)

D. **Constitution of India — Art. 32 — PIL — Meaning of PIL**

[**Ed.**: See in this regard the discussion in paras 5 to 7.]

Janata Dal v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *relied on*

Stroud's Judicial Dictionary, Vol. 4, 4th Edn.; *Black's Law Dictionary*, 6th Edn.; *Report of Public Interest Law*, USA, 1976, Council for Public Interest Law, Ford Foundation, *referred to*

E. **Constitution of India — Art. 32 — PIL — Nature and scope of — PILs to be admitted with great care — Considerations and factors involved therein — Duty of courts — For redressal only of genuine public wrong or public injury — Not for the redressal of private, publicity-oriented or political disputes or other disputes not genuinely concerned with the public interest — Moreover, courts to be watchful that no one's character is besmirched, and that justifiable executive actions are not assailed for oblique motives — The court has to be extremely careful that it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature — Value to be placed on time of courts — Serpentine queues of genuinely aggrieved litigants being denied access to courts due to the admission of so-called PILs — Resultant waste of precious judicial time on admission of undeserving PILs though the parameters for admission thereof had been indicated in a large number of cases, deprecated and resultant loss of faith in administration of justice bemoaned — Constitutional Law — Separation of powers (Paras 4, 12 to 16)**

State of Maharashtra v. *Prabhu*, (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116; *A.P. State Financial Corpn.* v. *Gar Re-Rolling Mills*, (1994) 2 SCC 647 : AIR 1994 SC 2151; *Buddhi Kota Subbarao (Dr)* v. *K. Parasaran*, (1996) 5 SCC 530 : 1996 SCC (Cri) 1038; *State of H.P.* v. *A Parent of a Student of Medical College*, (1985) 3 SCC 169; *Sachidanand Pandey* v. *State of W.B.*, (1987) 2 SCC 295; *Ramsharan Autyanuprasi* v. *Union of India*, 1989 Supp (1) SCC 251; *Bandhua Mukti Morcha* v. *Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389; *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.*, (1990) 4 SCC 449; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584, *relied on*

Infringement of spheres of legislature and executive and defamatory allegations

Court has to strike balance between two conflicting interests: (*i*) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (*ii*) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. (Para 14)

Precious time of court wasted

It is depressing to note that on account of trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though the Supreme

Court spares no efforts in fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet it could not avoid but express its opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death and facing the gallows under untold agony, persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for the glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly, they lose faith in the administration of our judicial system. (Para 11)

No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public. The time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by the Supreme Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. (Paras 15 and 16)

F. **Constitution of India — Art. 32 — PIL — Standing/Locus standi — Rule for**

A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a

desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs. (Paras 4, 12 and 14)

Janata Dal v. *H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36; *Kazi Lhendup Dorji* v. *Central Bureau of Investigation*, 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873; *Ramjas Foundation* v. *Union of India*, 1993 Supp (2) SCC 20 : AIR 1993 SC 852; *K.R. Srinivas* v. *R.M. Premchand*, (1994) 6 SCC 620; *S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87; *Jasbhai Motibhai Desai* v. *Roshan Kumar*, (1976) 1 SCC 671; *Fertilizer Corpn. Kamgar Union (Regd.)* v. *Union of India*, (1981) 1 SCC 568; *Subhash Kumar* v. *State of Bihar*, (1991) 1 SCC 598, *relied on*

Sunil Batra (II) v. *Delhi Admn.*, (1980) 3 SCC 488 : 1980 SCC (Cri) 777; *Daya Singh* v. *Union of India*, (1991) 3 SCC 61 : 1991 SCC (Cri) 523, *cited*

G. **Constitution of India — Art. 32 — PIL — Maintainability — Service matters — *Duryodhan Sahu case*, (1998) 7 SCC 273, followed as to inadmissibility of PILs in respect of service matters — High Courts exhorted to throw out such matters on the basis of the said decision (Para 16)**

Duryodhan Sahu (Dr) v. *Jitendra Kumar Mishra*, (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114, *relied on*

D-M/29370/CR

Advocates who appeared in this case :
Petitioner in person.

Chronological list of cases cited ***on page(s)***

1. (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114, *Duryodhan Sahu (Dr)* v. *Jitendra Kumar Mishra* 358*f-g*
2. (1996) 5 SCC 530 : 1996 SCC (Cri) 1038, *Buddhi Kota Subbarao (Dr)* v. *K. Parasaran* 358*e*
3. (1994) 6 SCC 620, *K.R. Srinivas* v. *R.M. Premchand* 355*e*
4. (1994) 2 SCC 647 : AIR 1994 SC 2151, *A.P. State Financial Corpn.* v. *Gar Re-Rolling Mills* 358*d*
5. (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116, *State of Maharashtra* v. *Prabhu* 358*d*
6. 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873, *Kazi Lhendup Dorji* v. *Central Bureau of Investigation* 355*d*
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8. (1992) 4 SCC 666 : 1993 SCC (Cri) 17 : AIR 1993 SC 284, *Karamjeet Singh* v. *Union of India* 363*a*
9. (1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280, *Simranjit Singh Mann* v. *Union of India* 362*d-e*
10. (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *Janata Dal* v. *H.S. Chowdhary* 354*g*, 355*d*, 356*a*
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14. (1991) 1 SCC 598, *Subhash Kumar* v. *State of Bihar* 361*e-f*
15. (1990) 4 SCC 449, *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.* 361*b-c*
16. (1989) 1 SCC 678 : 1989 SCC (Cri) 248, *Triveniben* v. *State of Gujarat* 354*c-d*, 354*d-e*, 354*f*
17. 1989 Supp (1) SCC 251, *Ramsharan Autyanuprasi* v. *Union of India* 360*d*

18. (1987) 2 SCC 295, *Sachidanand Pandey* v. *State of W.B.* 359*h*, 360*d-e*
19. (1985) 3 SCC 169, *State of H.P.* v. *A Parent of a Student of Medical College* 359*g-h*
20. (1984) 3 SCC 161 : 1984 SCC (L&S) 389, *Bandhua Mukti Morcha* v. *Union of India* 360*e*
21. (1981) 1 SCC 568, *Fertilizer Corpn. Kamgar Union (Regd.)* v. *Union of India* 361*a-b*
22. 1981 Supp SCC 87, *S.P. Gupta* v. *Union of India* 354*g*, 359*e-f*
23. (1980) 3 SCC 488 : 1980 SCC (Cri) 777, *Sunil Batra (II)* v. *Delhi Admn.* 354*f-g*
24. (1976) 1 SCC 671, *Jasbhai Motibhai Desai* v. *Roshan Kumar* 360*e-f*

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— This petition under Article 32 of the Constitution of India (in short "the Constitution") has been filed purportedly in public interest. The prayer in the writ petition is to the effect that the death sentence imposed on one Dhananjay Chatterjee @ Dhana (hereinafter referred to as "the accused") by the Sessions Court, Alipur, West Bengal, affirmed by the Calcutta High Court and this Court, needs to be converted to a life sentence because there has been no execution of the death sentence for a long time. Reliance was placed on a Constitution Bench decision of this Court in *Triveniben* v. *State of Gujarat*[1].

2. According to the petitioner, he saw a news item on a TV channel wherein it was shown that the authorities were unaware of the non-execution of the death sentence and, therefore, the condemned prisoner, the accused, had suffered a great degree of mental torture and that itself is a ground for conversion of his death sentence to a life sentence on the basis of the ratio in *Triveniben case*[1]. It needs to be noted here that prayer for conversion of death sentence to life sentence has already been turned down by the Governor of West Bengal and the President of India in February 1994 and June 1994 respectively as stated in the petition. When the matter was placed for admission, we asked the petitioner who appeared in person as to what was his *locus standi* and how a petition under Article 32 is maintainable on such nature of information by which he claims to have come to know of it. His answer was that as a public-spirited citizen of the country, he has a locus to present the petition and when the matter involved life and liberty of a citizen, this Court should not stand on technicalities and should give effect to the ratio in *Triveniben case*[1]. There has been violation of Article 21 of the Constitution and the prolonged delay in execution of sentence is violative of Article 21, so far as the accused is concerned.

3. Reliance was also placed on a few decisions, for example, *Sunil Batra (II)* v. *Delhi Admn.*[2], *S.P. Gupta* v. *Union of India*[3], *Daya Singh* v. *Union of India*[4] and *Janata Dal* v. *H.S. Chowdhary*[5] to substantiate the plea that the petitioner had *locus standi* to present the petition in public interest and this was a genuine public interest litigation.

1 (1989) 1 SCC 678 : 1989 SCC (Cri) 248
2 (1980) 3 SCC 488 : 1980 SCC (Cri) 777
3 1981 Supp SCC 87
4 (1991) 3 SCC 61 : 1991 SCC (Cri) 523
5 (1992) 4 SCC 305 : 1993 SCC (Cri) 36

4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal case*[5] and *Kazi Lhendup Dorji* v. *Central Bureau of Investigation*[6]. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See *Ramjas Foundation* v. *Union of India*[7] and *K.R. Srinivas* v. *R.M. Premchand*[8].

5. It is necessary to take note of the meaning of the expression "public interest litigation". In *Stroud's Judicial Dictionary*, Vol. 4, 4th Edn., "public interest" is defined thus:

> "*Public interest.*—(1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

6. In *Black's Law Dictionary*, 6th Edn., "public interest" is defined as follows:

> "*Public interest.*—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

6 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873
7 1993 Supp (2) SCC 20 : AIR 1993 SC 852
8 (1994) 6 SCC 620

7. In *Janata Dal case*[5] this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, the Court has laid down as follows: (SCC p. 331)

"*53*. The expression 'litigation' means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows: (SCC p. 334)

"*62*. Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)

"*98*. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

"*109*. It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth

hundreds of millions of rupees and criminal cases in which persons sentenced to death and facing the gallows under untold agony, persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for the glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly, they lose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting *bona fide* and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

> "Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The court has to be satisfied about: (*a*) the credentials of the applicant; (*b*) the prima facie correctness or nature of information given by him; and (*c*) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests: (*i*) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (*ii*) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra* v. *Prabhu*[9] and *A.P. State Financial Corpn.* v. *Gar Re-Rolling Mills*[10].) No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See *Buddhi Kota Subbarao (Dr)* v. *K. Parasaran*[11].] Today people rush to courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr)* v. *Jitendra Kumar Mishra*[12] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to

9 (1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116
10 (1994) 2 SCC 647 : AIR 1994 SC 2151
11 (1996) 5 SCC 530 : 1996 SCC (Cri) 1038 : JT (1996) 7 SC 265
12 (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114

possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

17. Coming to the facts of the case, it has not been shown as to how and in what manner the accused condemned prisoner is handicapped in not seeking relief, if any, as available in law. The matter pertains to something which happened or not at Kolkata and what the truth about the news was or cause for the delay, even if it be, is not known or ascertained or even attempted to be ascertained by the petitioner before approaching this Court. To a pointed query, the petitioner submitted that the petitioner "may not be aware" of his rights, that except the news he heard he could not say any further and "the respondent State may come and clarify the position". This petition cannot be entertained on such speculative foundations and premises and to make a roving enquiry. Maybe, at times even on certain unconfirmed news but depending upon the gravity or heinous nature of the crime alleged to be perpetrated which would prove to be obnoxious to the avowed public policy, morals and greater societal interests involved, courts have ventured to intervene but we are not satisfied that this could be one such case, on the facts disclosed. It is reliably learnt that a petition with almost identical prayers was filed before the Calcutta High Court by relatives of the accused and the same has recently been dismissed by the High Court.

18. In *Gupta case*[3] it was emphatically pointed out that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the court under the guise of a public interest litigant. It has also left the following note of caution: (SCC p. 219, para 24)

> "*24*. But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

19. In *State of H.P.* v. *A Parent of a Student of Medical College*[13] it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

20. Khalid, J. in his separate supplementing judgment in *Sachidanand Pandey* v. *State of W.B.*[14] (SCC at p. 331) said:

13 (1985) 3 SCC 169
14 (1987) 2 SCC 295

"Today public-spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46)

* * *

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p. 334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants. (SCC p. 335, para 61)"

21. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in *Ramsharan Autyanuprasi* v. *Union of India*[15] was in full agreement with the view expressed by Khalid, J. in *Sachidanand Pandey case*[14] and added that "public interest litigation" is an instrument of the administration of justice to be used properly in proper cases. [See also separate judgment by Pathak, J. (as he then was) in *Bandhua Mukti Morcha* v. *Union of India*[16].]

22. Sarkaria, J. in *Jasbhai Motibhai Desai* v. *Roshan Kumar*[17] expressed his view that the application of a busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)

"*37.* It will be seen that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (*i*) 'person aggrieved'; (*ii*) 'stranger'; (*iii*) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than

15 1989 Supp (1) SCC 251
16 (1984) 3 SCC 161 : 1984 SCC (L&S) 389
17 (1976) 1 SCC 671

spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. Krishna Iyer, J. in *Fertilizer Corpn. Kamgar Union (Regd.)* v. *Union of India*[18] in stronger terms stated: (SCC p. 589, para 48)

"*48*. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

24. In *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.*[19] Sabyasachi Mukharji, C.J. observed: (SCC p. 452, para 8)

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. In *Union Carbide Corpn.* v. *Union of India*[20] (SCC at p. 610) Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p. 610, para 21)

"I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26. In *Subhash Kumar* v. *State of Bihar*[21] it was observed as follows: (SCC pp. 604-05, para 7)

"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained, it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must

18 (1981) 1 SCC 568
19 (1990) 4 SCC 449
20 (1991) 4 SCC 584
21 (1991) 1 SCC 598

approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation."

27. In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants".

28. It will be appropriate at this stage to take note of what this Court felt when dealing with petitions under Article 32 with somewhat similar issues. The petitioner in one case filed a writ petition under Article 32 of the Constitution challenging the order of this Court whereby it had affirmed the conviction of the two accused and confirmed the death sentence for reasons stated in its judgment in *State of Maharashtra* v. *Sukhdev Singh*[22].

29. The writ petition was dismissed holding that a third party has no *locus standi* to challenge the conviction by filing the writ petition under Article 32 of the Constitution. (See *Simranjit Singh Mann* v. *Union of India*[23].)

30. The petitioner there claimed to be a friend of the convicts, and it was held that he had no *locus standi* to move the court under Article 32 of the Constitution. Unless the aggrieved party is a minor or insane or one who is suffering from any other disability which the law recognizes as sufficient to permit another person e.g. next friend, to move the court on his behalf, for example, see Sections 320(4)(*a*), 330(2) read with Sections 335(1)(*b*) and 339 of the Code of Criminal Procedure, 1973 (in short "the Code"). Ordinarily, the aggrieved party has the right to seek redress. Admittedly, it was not the case of the petitioner that the two convicts are minors or insane persons but had argued that since they were suffering from an acute obsession, such obsession amounts to a legal disability which permits the next friend to initiate proceedings under Article 32 of the Constitution.

31. A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognized by the Code or any other law which would permit initiation of proceedings by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the court can be serious e.g. in the instant case itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction.

22 (1992) 3 SCC 700 : 1992 SCC (Cri) 705 : AIR 1992 SC 2100
23 (1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280

32. Similar view was expressed in *Karamjeet Singh* v. *Union of India*[24].

33. It was noted that Article 32, which finds a place in Part III of the Constitution entitled "fundamental rights", provides that the right to move this Court for the enforcement of the rights conferred in that part is guaranteed. It empowers this Court to issue directions or orders or writs for the enforcement of any of the fundamental rights. The petitioner did not seek to enforce any of his fundamental rights nor did he complain that any of his fundamental rights were violated. He sought to enforce the fundamental rights of others, namely, the two condemned convicts who themselves did not complain of their violation. Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognizes as sufficient to permit another person, e.g. next friend, to move the court on his behalf.

34. Unless an aggrieved party is under some disability recognized by law, it would be unsafe and hazardous to allow any third party, be it a member of the Bar, to question the decision against third parties.

35. Neither under the provisions of the Code nor under any other statute is a third-party stranger permitted to question the correctness of the conviction and sentence.

36. Based on the above backgrounds, we do not think this to be a fit case which can be entertained and that too, under Article 32 of the Constitution and is accordingly dismissed, but without costs.

(2004) 3 Supreme Court Cases 363

(BEFORE DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.)

DR B. SINGH . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Writ Petition (C) No. 122 of 2004† (D. No. 305 of 2004), decided on March 11, 2004

A. **Constitution of India — Arts. 32 and 217 — Appointment of High Court judges — Scope of judicial review — Maintainability of PIL challenging appointment of judge — Held, the scope of judicial review in such a matter had been specifically delineated, and did not include bias as a possible ground for impugning an appointment, which was in any case excluded by the element of plurality in the process of decision-making provided for under Art. 217 — Irresponsible public challenges to probity of judges and those under consideration for judgeship strongly deprecated — Imperativeness of stern action against such challenges stressed — Delay in appointment of judges attributed in part to such challenges**

24 (1992) 4 SCC 666 : 1993 SCC (Cri) 17 : AIR 1993 SC 284

† Under Article 32 of the Constitution of India

ORDER

1. We have today pronounced judgment in *Union of India* v. *Rajiv Yadav, IAS*[1]. The appeal has been allowed, the impugned judgment of the Central Administrative Tribunal has been set aside and the principles of "cadre allocation" for reserved candidates have been upheld.

2. This writ petition has been filed by Supriya Sahu who is a Scheduled Caste candidate. In the counter-affidavit filed on behalf of Union of India by Mr V.K. Cherian, Under Secretary, Department of Personnel and Training, it has been stated as under:

> "However, in this writ petition Kumari Supriya Sahu has claimed allotment to U.P. cadre, her home State. Even if the provision made in the principles of cadre allocation for reserved candidates is upheld by the Supreme Court that will not automatically entitle Kumari Supriya Sahu for allotment to U.P. cadre. This is because there is already a candidate belonging to reserved category above her in the merit list hailing from U.P., whose appointment is pending."

3. In view of the stand taken by the Union of India no relief can be given to the petitioner by this Court. We, however, direct the Union of India to consider the case of the petitioner in accordance with the principles of cadre allocation for reserved candidates as upheld by this Court in *Rajiv Yadav case*[1]. The writ petition is disposed of. No costs.

(1994) 6 Supreme Court Cases 51

(BEFORE R.M. SAHAI AND N.P. SINGH, JJ.)

Writ Petition (C) No. 97 of 1992

A. HAMSAVENI AND OTHERS .. Petitioners;

Versus

STATE OF T.N. AND ANOTHER .. Respondents.

With

Writ Petition (C) No. 955 of 1992

A. SOOSAI AND OTHERS .. Petitioners;

Versus

STATE OF T.N. AND ANOTHER .. Respondents.

With

Writ Petition (C) No. 715 of 1993

J. DEVID BASKAR AND OTHERS .. Petitioners;

Versus

STATE OF T.N. AND ANOTHER .. Respondents.

With

Writ Petition (C) No. 185 of 1993

S. RAMESHBABU AND OTHERS .. Petitioners;

Versus

STATE OF T.N. AND ANOTHER .. Respondents.

With

Writ Petition (C) No. 58 of 1994

K. PARTHASARATHY AND OTHERS .. Petitioners;

Versus

STATE OF T.N. AND ANOTHER .. Respondents.

Writ Petition (C) Nos. 97, 955 of 1992, 715, 185 of 1993 and 58 of 1994†, decided on August 3, 1994

A. **Constitution of India — Art. 32 — Laches and delay — Writ petitions seeking regularisation and absorption in accordance with guidelines and criteria laid down by Justice Khalid Commission — Filed by a large number of persons (1200 in this case) claiming to be helpers and working as contract labourers for long with Electricity Board — Justice Khalid Commission appointed by the Supreme Court in a different case to examine and recommend criteria for absorbing and regularising services of helpers who were parties to that case and others similarly situated — Although the functioning of the Commission was well known to all in the State, some of the instant petitioners for the first time approaching the Commission with request for absorption only after it had submitted its report — Being unsuccessful they further approaching the Supreme Court which rejected their Interim Appeals without prejudice to their rights, if any — At this stage, taking advantage of such observation of the Supreme Court, they and certain others filing the instant writ petition — Such writ petition, held, not maintainable — Labour Law — Regularisation — Absorption**

Held :

No reliance can be placed on the averment that the present writ petitioners did not approach earlier as they were not affected. Even if it be so they are to thank themselves. Sleeping over the rights, if there were any, with eyes open does not cure laches. In any case when the Commission publicised and it became known to every helper to the State that the Commission had been constituted for the specific purpose of identifying and regularising service of helpers then there was nothing to prevent the petitioners from approaching the Commission if they too were helpers as claimed by them, as intervention was permitted by the Commission of even those who were not parties in the writ petition or special leave petition. In view of the observations made by Khalid Commission that the proceedings were held

† Under Article 32 of the Constitution of India

openly and it was known to one and all in the State that the Commission was constituted for purpose of deciding the criteria for appointment of helpers in the service of the Board and their service conditions and the norms on which those who were working should be regularised it was incumbent on the petitioners to have approached the Commission by way of individual applications even if they were not sponsored by the union. The claim of the petitioners that since the Commission was concerned only with those petitioners who had approached this Court by way of special leave petition, does not appear to be correct as the Commission in the report itself has mentioned that even others who had intervened and whose claim was found to be justified were permitted to intervene and were impleaded and the orders were passed in their favour as well. The petitioners who had an opportunity to appear before the Commission but did not avail of it cannot be permitted to approach the Supreme Court after an observation was made by the Supreme Court in a different context and try to get the proceedings reopened. (Paras 4 and 5)

B. **Constitution of India — Art. 32 — Writ petition under — Condition for maintainability — Held, a case of violation of fundamental rights must be made out — Hence, where the writ petitioners had not adduced material to show that they were employees of the Electricity Board or that they satisfied the norms laid down by the Justice Khalid Commission, their writ petition for regularisation of their services and absorption in accordance with such norms, held, not entertainable — Labour Law — Regularisation — Absorption**

Held :

The Khalid Commission Report would indicate that the Commission had observed that the rule by which certain qualifications were prescribed for helpers in 1986 was not justified as it would have resulted in throwing out those who were working for long time. After determining that the qualification laid down by the Board would not stand in the way of those workers who were working since long it proceeded to lay down the method to identify such workers and the norms on which they could be regularised. Despite these guidelines laid down by the Commission the petitioners have not made any effort by placing any material which could establish that they were helpers who were working as such for long time even prior to 1986. The claim that they are not seeking any relief except a direction either to the Khalid Commission or to appoint any independent body to determine their identity is misconceived. The purpose of a writ petition under Article 32 is not a fishing or roving enquiry. The petition can succeed only if the petitioners make out a case of violation of any fundamental right. But what is claimed is a chance to establish their claim. In absence of any material to show that the petitioners were employees of the Board or they satisfied even the norms laid down by the Commission which could entitle them to claim that they are similarly situated the petitioners are not entitled to any relief. (Para 5)

R.K. Panda v. *Steel Authority of India*, (1994) 5 SCC 304: 1994 SCC (L&S) 1078: JT (1994) 4 SC 151, *relied on*

C. **Constitution of India — Art. 32 — Costs — Exemplary costs — Circumstances warranting exemption from — Writ petitions seeking regularisation and absorption filed by alleged contract labourers after a long delay and without substantiating the claim — Writ petitions dismissed but the petitioners spared from exemplary costs as they appeared to have been victims of improper guidance (Para 6)**

Petitions dismissed H-M/T/13335/CLA

Advocates who appeared in this case :

S. Sivasubramanium, Senior Advocate (V. Maya Krishnan, N. Subramanian and M.A. Krishnamoorthy, Advocates, with him) for the Petitioner in W.P. No. 97 of 1992.

A.B. Rohtagi, Senior Advocate (Ambrish Kumar, Advocate, with him) for the Petitioner in W.P. No. 955 of 1992.

R.K. Jain, Senior Advocate (P.R. Seetharaman, Advocate, with him) for the Respondent in W.P. Nos. 97 and 955 of 1992.

A. Mariarputham, Ms Aruna Mathur, Advocates, for Arputham Aruna & Co., for the Tamil Nadu Electricity Board.

The Judgment of the Court was delivered by

R.M. SAHAI, J.— The questions that arise for consideration in these petitions, filed by approximately 1200 persons claiming to be helpers and working for long time with Electricity Board are whether these petitions can be entertained under Article 32 of the Constitution and a direction be issued to opposite parties to regularise their services and absorb them in the post of helpers in keeping with the guidelines and the criteria laid down by Justice Khalid Commission in pursuance of an order passed by this Court.

2. The petitioners are not members of any union. They have approached this Court as individuals and claim that they have been working as contract labourers and performing the task of helpers, therefore, they are entitled to be regularised and paid the salary which is paid to a regular employee as the meagre amount that is being paid to them by their contractors is so low that it results in exploitation and is consequently violative of constitutional guarantee under Articles 14, 16 and 21 of the Constitution. It is alleged that in the year 1986 the Board passed orders prescribing qualifications for various posts including the post of helpers which was challenged by some of the unions but the petitioners did not choose to question its correctness as in 1986 there were 9000 regular posts of helpers which were sought to be filled through Employment Exchange which did not affect them. The High Court did not find any merit in the petitions filed by the unions challenging the rule prescribing minimum qualification; consequently, those petitioners approached this Court by way of special leave petition in which parties agreed for appointment of Mr Justice Khalid as one-man Commission to examine and recommend the criteria for absorbing and regularising the services of helpers. After submission of the report the Board approached this Court for clarification that the Commission report was confined to only those persons who were parties to the writ petition. These applications were decided on 30-4-1991 and following order was passed:

> "The Court's order dated 10-4-1991 is clear enough to indicate that the report of Mr Justice Khalid, former Judge of this Court is binding between the parties. The report deals with the workmen who were parties to the writ petition as well as other workmen similarly situated. It cannot be said that the order of this Court confined only to the workmen who were parties to the writ petition as now contended for the Board."

3. Till now the petitioners were not on scene. Since the Court had observed that its earlier order by which the Commission was constituted applied to other similarly situated five trade unions of workers of Tamil

Nadu Electricity Board who had not got impleaded before the Commission till submission of the report intervened for impleadment. Their application was rejected by the Commission on 20-7-1991. The Commission observed:

> "[I]t cannot be that the interveners did not know that two new parties had got themselves impleaded before the Commission. It is impossible to accept the case that the interveners were in the dark about the scope of the Commission and about the day-to-day proceedings before the Commission. That such a large number of alleged workmen with strong unions with political backing would have been unaware of what took place before the Commission and what was the scope of the Commission, cannot be accepted without reservation."

The Commission in the same order explained the misapprehension of the unions about the order passed by this Court in April 1991 and observed as under:

> "The argument fails to take note of the circumstances under which the above observations were made by the Supreme Court. In the objection petition filed by the Board, the contention was that the Commission could deal with only workmen who were parties to the 'writ petition'. This means that the Board wanted the benefits of the report to be extended only to the first petitioner before the Commission. It was in this context that the Supreme Court observed that the report dealt with workmen who were parties to the writ petition as well as the other workmen similarly situated. The pointed reference here was in answer to the objections filed by the Board regarding the two other petitioners before the Commission and it was in this context that the Supreme Court observed that its order could not be understood to be confined only to the workmen who moved it by the writ petition. This observation, therefore cannot be extended to secure benefits to all the workmen who were not before the Commission till the report was submitted. There was no agreement before me that the intervener Unions consisted of workmen similarly situated."

After rejecting the application the Commission proceeded to identify the helpers in the manner provided in its report and issued letters for holding interview on 23-8-1991. Now some of the petitioners who till now were nowhere claim to have addressed individual letters requesting the Board to absorb them. It was in fact creating ground for further action as the petitioners having sent letters in August approached this Court by way of IAs in the original SLP (Civil) No. 1820 of 1990 by which the Commission was constituted which were rejected on 23-9-1991 by the order extracted below:

> "The applications are rejected. The rejection of these applications does not mean that the rights of the applicants, if any are prejudiced. However, we make it clear that these petitioners are not covered by our previous orders in these cases."

Taking advantage of the observation in the order that the dismissal of the applications was without prejudice to their rights, if any, the petitioners filed these petitions.

4. Facts are self-demonstrative. No reliance can be placed on the averment that they did not approach earlier as they were not affected. Even if it be so they are to thank themselves. Sleeping over the rights, if there were any, with eyes open does not cure laches. In any case when the Commission publicised and it became known to every helper to the State that the Commission had been constituted for the specific purpose of identifying and regularising service of helpers then what prevented the petitioners from approaching the Commission if they too were helpers as claimed by them, as intervention was permitted by the Commission of even those who were not parties in the writ petition or special leave petition. We agree with the learned counsel for the respondents that in view of the observations made by Khalid Commission that the proceedings were held openly and it was known to one and all in the State that the Commission was constituted for purpose of deciding the criteria for appointment of helpers in the service of the Board and their service conditions and the norms on which those who were working should be regularised it was incumbent on the petitioners to have approached the Commission by way of individual applications even if they were not sponsored by the union. The claim of the petitioners that since the Commission was concerned only with those petitioners who had approached this Court by way of special leave petition, does not appear to be correct as the Commission in the report itself has mentioned that even others who had intervened and whose claim was found to be justified were permitted to intervene and were impleaded and the orders were passed in their favour as well.

5. Apart from this a perusal of the Khalid Commission Report would indicate that the Commission had observed that the rule by which certain qualifications were prescribed for helpers in 1986 was not justified as it would have resulted in throwing out those who were working for long time. After determining that the qualification laid down by the Board would not stand in the way of those workers who were working since long it proceeded to lay down the method to identify such workers and the norms on which they could be regularised. Despite these guidelines laid down by the Commission the petitioners have not made any effort by placing any material which could establish that they were helpers who were working as such for long time even prior to 1986. The claim that they are not seeking any relief except a direction either to the Khalid Commission or to appoint any independent body to determine their identity is misconceived. The purpose of a writ petition under Article 32 is not a fishing or roving enquiry. The petition can succeed only if the petitioners make out a case of violation of any fundamental right. But what is claimed is a chance to establish their claim. In absence of any material to show that the petitioners were employees of the Board or they satisfied even the norms laid down by the

Commission which could entitle them to claim that they are similarly situated the petitioners are not entitled to any relief. In *R.K. Panda* v. *Steel Authority of India*[1] a Bench of this Court of which one of us (Hon'ble N.P. Singh, J.) was a member, observed: (SCC p. 310, para 7)

> "However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smokescreen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits."

There is no whisper in the petitions if there was any contract entered between the petitioners and their employers. Further the petitioners who had an opportunity to appear before the Commission but did not avail of it cannot be permitted to approach this Court after an observation was made by this Court in a different context and try to get the proceedings reopened. Such speculative and stale litigation is harmful to the society and should be put to an end with strong hand. The petitions are imaginary in nature without any vestige of any violation of any fundamental right.

6. In the result, all these petitions fail and are dismissed. We are refraining from imposing exemplary costs as the petitioners are workers who appear to have been victims of improper guidance.

(1994) 6 Supreme Court Cases 57

(BEFORE KULDIP SINGH AND DR A.S. ANAND, JJ.)

STATE OF ORISSA .. Appellant;

Versus

M/s JOHRIMAL GAJANAND .. Respondent.

Civil Appeal Nos. 2947-50 (NT) of 1977, decided on July 18, 1994

A. **Sales Tax — Sale within the State — Scope — Subsequent sale by purchaser in the course of inter-State trade, held, violated that condition — That the goods when the contract of such sale was made, were within the State,**

1. (1994) 5 SCC 304 : 1994 SCC (L&S) 1078 : JT (1994) 4 SC 151